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Contents

Federal Register

Vol. 66, No. 235

Thursday, December 6, 2001

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Forest Service

Amtrak Reform Council
NOTICES
Meetings, 63359

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
North Dakota and South Dakota; sunflowers protection from red-winged blackbird damage; scoping document availability, 63356–63358

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

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 63359

Census Bureau
NOTICES
Surveys, determinations, etc.
Manufacturing area; annual, 63360–63361

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act:
Systems of records, 63392–63400

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
See Technology Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63359–63360

Commodity Credit Corporation
PROPOSED RULES
Conservation Reserve Program:
Cropland eligibility and private sector technical assistance, 63339–63341

Consumer Product Safety Commission
NOTICES
Settlement agreements:
MTS Products, Inc., 63379–63381

Defense Department
RULES
Acquisition regulations:
Multiyear contracting, 63336–63338
Performance-based contracting, 63335–63336
Technical amendments, 63334–63335
PROPOSED RULES
Acquisition regulations:
Research and development streamlined contracting procedures, 63348–63349

Employment and Training Administration
NOTICES
Grants and cooperative agreements, etc.:
Workforce Investment Act—
Disability Employment Program, 63415

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Petroleum technologies applications on Native American and Alaskan Native Corporation properties for benefit of entire Tribe/Native Corporation, 63381–63382

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors, 63313–63318
Air pollution control:
State operating permits programs—
Texas, 63318–63331
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 63311–63313
Antarctica; nongovernmental activities; environmental impact assessment; assessment and coordination requirements, 63453–63472
Hazardous waste program authorizations:
Indiana, 63331–63334
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Maine, 63343–63348
NOTICES
Pesticide programs:
Restricted use pesticides; applicators certification; State plans—
Nebraska, 63389–63390

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63361–63362

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Criminal history records checks, 63473–63486
Airworthiness directives:
Raytheon, 63307–63310

Restricted areas; correction, 63433
PROPOSED RULES
Airworthiness directives:
Rolls-Royce plc, 63341–63343
NOTICES
Airport noise compatibility program:
Hilo International Airport, HI, 63424–63425

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63390

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 63390–63391

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 63391

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Bluegrass Generation Co., L.L.C., et al., 63383–63385
Hydroelectric applications, 63385–63389
Applications, hearings, determinations, etc.:
Dominion Transmission, Inc., 63382–63383
Sithe/Independence Power Partners, L.P., 63383

Federal Highway Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63426

Federal Maritime Commission
NOTICES
Agreements filed, etc., 63391
Ocean transportation intermediary licenses:
George J. Young & Co., 63391
International Services Corp., 63391–63392

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 63392

Fish and Wildlife Service
PROPOSED RULES
Migratory bird permits:
Rehabilitation activities and permit exceptions, 63349–63355
NOTICES
Marine mammal permit applications, 63402

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Ultramar Diamond Shamrock Corp.; oil refinery complex, 63362

Forest Service
NOTICES
Environmental statements; notice of intent:
Florida National Forests, 63358
Winema National Forest, OR; cancellation, 63358

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Telehealth Advancement Office et al., 63400–63401

Housing and Urban Development Department
RULES
Multifamily properties; civil money penalties, 63435–63443

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

International Trade Administration
NOTICES
Antidumping:
Brake rotors from—
China, 63362–63363
Iron construction castings from—
Canada, 63363
Stainless steel sheet and strip in coils from—
Japan, 63364
Steel concrete reinforcing bars from—
Turkey, 63364–63365
Structural steel beams from—
Japan, 63365–63368
Welded large diameter line pipe from—
Japan, 63368–63369

International Trade Commission
NOTICES
Import investigations:
Integrated circuits, processes for making same, and products containing same, 63409–63410
Network interface cards and access points for use in direct sequence spread spectrum wireless local area networks and products containing same, 63410

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63410–63414

Land Management Bureau
RULES
Minerals management:
Mineral materials disposal; sales; free use
Correction, 63334
NOTICES
Environmental statements; availability, etc.:
Andrews Resource Area and Steens Mountain Cooperative Management and Protection Area, OR, 63402–63404
Environmental statements; notice of intent:
Jack Morrow Hills Area, WY, 63404–63405
Oil and gas leases:
Wyoming, 63405
Organization, functions, and authority delegations:
Oregon and Washington State Office move, 63405
Realty actions; sales, leases, etc.:
Nevada, 63405–63406

Resource management plans, etc.:
Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area et al., NV, 63406–63407
Survey plat filings:
Missouri, 63407–63408
Withdrawal and reservation of lands:
New Mexico, 63408

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Civil legal services to poor—
Louisiana, 63415

National Council on Disability
NOTICES
Meetings; Sunshine Act, 63415–63416

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
International Exhibitions Federal Advisory Committee, 63416

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Advanced Encryption Standard, 63369–63371

National Labor Relations Board
NOTICES
Organization, functions, and authority delegations:
Deputy General Counsel, 63416–63417

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63371–63373

National Park Service
NOTICES
Environmental statements; availability, etc.:
Cane River Creole National Historic Park, LA; general management plan, 63408–63409

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 63417

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Technology Opportunities Program, 63373–63378

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Exelon Generation Co., LLC, 63417–63418
University of Virginia Research Reactor, 63418–63419

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63378–63379

Personnel Management Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 63419–63420

Public Health Service
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63420–63421
Investment Company Act of 1940:
Deregistration applications—
Vanguard Preferred Stock Fund et al., 63421–63422
Meetings; Sunshine Act, 63422–63423
Self-regulatory organizations; proposed rule changes:
International Securities Exchange LLC, 63423–63424

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 63401–63402

Technology Administration
NOTICES
Meetings:
Digital entertainment and rights management; workshop, 63379

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Treasury Department
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 63433

Veterans Affairs Department
RULES
Medical benefits:
Copayments for medications, 63448–63451
Inpatient hospital care and outpatient medical care; copayments, 63445–63449
NOTICES
Privacy Act:
Systems of records, 63426–63432

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 63435–63443

Part III
Veterans Affairs Department, 63445–63451

Part IV
Environmental Protection Agency, 63453–63472

Part V
Transportation Department, Federal Aviation Administration, 63473–63486

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

1410 63339

14 CFR

39 63307
73 63433
107 63474
108 63474

Proposed Rules:

39 63341

24 CFR

30 63436

38 CFR

17(2 documents) 63446, 63449

40 CFR

8 63454
52 63311
62 63311
63 63313
70 63318
271 63331

Proposed Rules:

52 63343

43 CFR

3600 63334
3610 63334
3620 63334
3800 63334

48 CFR

202 63334
212 63335
215 63334
217 63336
237 63335
242 63334

Proposed Rules:

235 63348

50 CFR

Proposed Rules:

17 63349
21 63349

Rules and Regulations

Federal Register
Vol. 66, No. 235
Thursday, December 6, 2001

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–347–AD; Amendment 39–12528; AD 2001–24–11]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Beech 400, 400A, and 400T Series Airplanes, Model Mitsubishi MU–300 Airplanes, and Model Beech MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Raytheon Model Beech 400, 400A, and 400T series airplanes, Model Mitsubishi MU–300 airplanes, and Model Beech MU–300–10 airplanes. This action requires revising the Emergency Procedures Section of the Airplane Flight Manual to ensure the flightcrew is advised of in-flight procedures in the event of loss of airspeed indication. Such loss of airspeed indication and the resulting adverse effects on certain connecting systems could result in reduced controllability of the airplane.

DATES: Effective December 11, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 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), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–347–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–347–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bennett Sorensen, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of loss of the pilot's and/or the co-pilot's Indicated Airspeed (IAS) display on certain Raytheon Model Beech 400A series airplanes. Such loss of IAS display may lead to loss of the altitude displays and up to 10 degrees of pitch error in the pilot's and/or co-pilot's attitude display. Loss of the Indicated Airspeed (IAS) display can also adversely affect the display for altitude and attitude (Attitude/Heading/Reference System (AHRS)), and can result in uncommanded autopilot or yaw damper disengagement. The reported incidents occurred between 38,000 and 41,000 feet of altitude while the airplanes were in cruise or during initial descent. In the reported incidents, the altitude indication returned to normal at an undetermined point in the descent, and the airplanes landed without further incident. Investigation of those reports indicates that the cause of the loss of airspeed indication display may be due to water freezing in the pitot systems.

Loss of airspeed indication and the resulting adverse effects on certain connecting systems could result in reduced controllability of the airplane.

Similar Models

The pitot systems installation on Raytheon Model Beech 400, and 400T series airplanes, Model Mitsubishi MU–300 airplanes, and Model Beech MU–300–10 airplanes are identical to those installed on the affected Model Beech 400A series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Raytheon Temporary Changes to the FAA-approved Airplane Flight Manual:

- Beechjet 400T Temporary Change, P/N 132–590002–5TC3, dated November 12, 2001;
- Beechjet 400T Temporary Change, P/N 134–590002–1TC3, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–91TC5, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–95TC5, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–107TC5, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–109TC5, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–167TC7, dated November 12, 2001;
- Beechjet 400A Temporary Change, P/N 128–590001–169TC3, dated November 12, 2001;
- Beechjet 400 Temporary Change, P/N 128–590001–13BTC1, dated November 12, 2001;
- Beechjet 400 Temporary Change P/N 128–590001–13BTC2, dated November 12, 2001;
- MU–300 Diamond I Temporary Change, P/N MR–0460TC1, dated November 12, 2001;
- MU–300 Diamond IA Temporary Change, P/N MR–0873TC1, dated November 12, 2001.

The documents specified above describe certain in-flight procedures in the event of loss of airspeed indication for the various models specified.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to ensure the flightcrew is advised of in-flight procedures in the event of loss of airspeed indication. Such loss of airspeed indication and the resulting adverse effects of certain connecting systems could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the Temporary AFM's described previously, or insertion of this AD into the Airplane Flight Manual (AFM).

Interim Action

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

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity 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 shall 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–347–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–24–11 **Raytheon Aircraft Company** (Formerly Beech): Amendment 39–12528. Docket 2001–NM–347–AD.

Applicability: All Model Beech 400, 400A, and 400T series airplanes, Model Mitsubishi MU–300 airplanes, and Model Beech MU–300–10 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to loss of airspeed indication by ensuring that the flightcrew is advised of in-flight procedures in the event of loss of airspeed indication, accomplish the following:

(a) Within five days after the effective date of this AD, revise the Emergency Procedures Section of the FAA-approved Airplane Flight Manual (AFM), as applicable, by inserting a copy of Raytheon Beechjet 400T Temporary Change, P/N 132–590002–5TC3, dated November 12, 2001; Beechjet 400T Temporary Change, P/N 134–590002–1TC3, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–91TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–95TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–107TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–109TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–167TC7, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–169TC3, dated November 12, 2001; Beechjet 400 Temporary Change, P/N 128–590001–13BTC1, dated November 12, 2001; Beechjet 400 Temporary Change P/N 128–590001–13BTC2, dated November 12, 2001; MU–300 Diamond I Temporary Change, P/N MR–0460TC1, dated November 12, 2001; or MU–300 Diamond IA Temporary Change, P/N MR–0873TC1, dated November 12, 2001; as applicable, into the AFM or by inserting a copy of this AD into the AFM to include the following procedures:

''Emergency Procedures (400 & MU–300)

Loss of Airspeed

Note: If the pilot's and/or copilot's airspeed(s) are noted to be decreasing toward zero, refer to the AOA indicator for airspeed control and land at the nearest suitable airport.

1. Autopilot—Disconnect
2. Airspeed—Slow to and Maintain 0.2 AOA
3. Thrust—As Required

4. Speed Brakes—As Required (Slow to 0.25 AOA with speed brakes extended)

Note: An AOA of 0.2 (0.25 with speed brakes extended) will yield an airspeed of about 210 knots. Use pitch attitude as the primary reference. Make small changes in pitch and wait for the AOA to stabilize.

When Ready for Descent

5. Seat Belts/Shoulder Harnesses—Fastened
6. Cabin Sign—As Required
7. Recognition Light—As Required
8. Anti/De-Ice Systems—As Required

Caution

If icing conditions are anticipated during the descent and approach, turn ice protection systems ON as early as possible prior to penetrating clouds. Maintain wing anti/deice operation light ON (approximately 70% N2) during descent to assure proper wing anti-ice operation.

9. Cabin Pressure Control—Set Field Elevation + 500 Feet
10. Windshield Defog—As Required
11. Altimeters—Set

When Ready for Approach

12. Airspeed—Slow to and Maintain 0.3 AOA

Note: Maintain 0.3 AOA throughout the configuration change to Flaps 10° Gear Down. This will yield an airspeed of about 180 knots.

13. Fuel Management—Check
14. N1, Landing Distance—Confirm
15. Cabin Sign—Safety
16. Windshield Anti-Ice—Low
17. Hydraulic/Nitrogen Pressure—Check
18. Engine Sync—Off
19. Flaps 10°

Before Landing

20. AOA Index—Preset 1.3 V/Vs
21. Landing Gear—Down
22. Airspeed—Slow to 0.4 AOA
23. Recognition Light—Off
24. Landing Lights—As Required
25. Ignitions—On
26. Flaps—30°
27. Approach Airspeed (VREF)—Slow to and Maintain 0.57 AOA

Note: This will yield a normal approach speed of VREF (0.57 AOA) and normal landing distances.

Balked Landing

28. Thrust—Takeoff N1
29. Pitch Attitude—10°

When Positive Climb Has Been Established

30. Flaps—10°
31. Landing Gear—Up
32. Airspeed—Accelerate to 0.3 AOA
33. Flaps—Up
34. Airspeed—Accelerate and Maintain 0.2 AOA
35. Landing Lights—Ret/off

Emergency Procedures (400A & RJ–61)

Loss of Airspeed

Note: If the pilot's, or copilot's and standby, or all three airspeed(s) are noted to be decreasing toward zero, refer to the standby attitude indicator, standby altimeter, standby heading and the AOA indicator for aircraft control and land at the nearest suitable airport. On PFD equipped airplanes, the pilot's and copilots altimeters, attitude displays and heading displays may be unreliable and the autopilot may disconnect. This may be accompanied by amber boxed A/S, ALT, ATT and/or HDG comparator flags. The comparator flags may be followed by red FAIL flags and removal of airspeed and altitude tapes and attitude/heading displays.

1. Autopilot—Disconnect
2. Airspeed—Slow to and Maintain 0.2 AOA
3. Thrust—As Required
4. Speed Brakes—As Required (Slow to 0.25 AOA with speed brakes extended)

Note: An AOA of 0.2 (0.25 speed brakes extended) will yield an airspeed of about 210 knots. Use pitch attitude as primary reference. Make small changes in pitch attitude and wait for AOA to stabilize.

When Ready for Descent

5. Seat Belts/Shoulder Harnesses—Fastened
6. Cabin Sign—As Required
7. Recognition Light—As Required
8. Anti/De-Ice Systems—As Required

Caution

If icing conditions are anticipated during the descent and approach, turn ice protection systems ON as early as possible prior to penetrating clouds. Maintain wing anti/deice operation light ON (approximately 70% N2) during descent to assure proper wing anti-ice operation.

9. Cabin Pressure Control—Set Field Elevation + 500 Feet
10. Windshield Defog—As Required
11. Altimeters—Set

When Ready for Approach

12. Airspeed—Slow to and Maintain 0.3 AOA

Note: Maintain 0.3 AOA throughout the configuration change to Flaps 10°, Gear Down. This will yield an airspeed of about 180 knots.

13. Fuel Management—Check
14. N1, Landing Distance—Confirm
15. Cabin Sign—Safety
16. Windshield Anti-Ice—Low
17. Hydraulic/Nitrogen Pressure—Check
18. Engine Sync—Off
19. Flaps—10°

Before Landing

20. AOA Index—Preset 1.3 V/Vs
21. Landing Gear—Down
22. Airspeed—Slow to 0.4 AOA
23. Recognition Light—Off
24. Landing Lights—As Required
25. Ignitions—On
26. Flaps—30°
27. Approach Airspeed (VREF) Slow to and Maintain 0.57 AOA

Note: This will yield a normal approach speed of VREF (0.57 AOA) and normal landing distances.

28. Yaw Damp—Off

Balked Landing

29. Thrust—Takeoff N1
30. Pitch Attitude 10°

When Positive Climb Has Been Established

31. Flaps—10°
32. Landing Gear—Up
33. Yaw Damp—On
34. Airspeed—Accelerate to 0.3 AOA
35. Flaps—Up
36. Airspeed—Accelerate and Maintain 0.2 AOA
37. Landing Lights—Ret/off

Emergency Procedures 400T(T–1A)

Loss of Airspeed

Note: If the pilot's, or copilot's and standby, or all three airspeed(s) are noted to be decreasing toward zero, refer to the standby attitude indicator, standby altimeter, standby heading and the AOA indicator for aircraft control and land at the nearest suitable airport. The pilot's and copilots altimeter's, attitude displays and heading displays may be unreliable and the autopilot may disconnect. This may be accompanied by amber boxed A/S, ALT, ATT and/or HDG comparator flags. The comparator flags may be followed by red FAIL flags on the airspeed, altitude, attitude and heading displays.

1. Autopilot—Disconnect
2. Airspeed—Slow to and Maintain 0.2 AOA
3. Thrust—As Required
4. Speed Brakes—As Required (Slow to 0.25 AOA with speed brakes extended)

Note: An AOA of 0.2 (0.25 speed brakes extended) will yield an airspeed of about 210 knots. Use pitch attitude as primary reference. Make small changes in pitch attitude and wait for AOA to stabilize.

When Ready for Descent

5. Seat Belts/Shoulder Harnesses—Fastened
6. Cabin Sign—AS Required
7. Anti/De-Ice Systems—As Required

Caution

If icing conditions are anticipated during the descent and approach, turn ice protection systems ON as early as possible prior to penetrating clouds. Maintain wing anti/deice operation light ON (approximately 70% N2) during descent to assure proper wing anti-ice operation.

8. Cabin Pressure Control—Set Field Elevation + 500 Feet
9. Windshield Defog—As Required
10. Altimeters—Set

When Ready for Approach

11. Airspeed—Slow to and Maintain 0.3 AOA

Note: Maintain 0.3 AOA throughout the configuration change to Flaps 10°, Gear Down. This will yield an airspeed of about 180 knots.

12. Fuel Management—Check
13. N1, Landing Distance—Confirm
14. Cabin Sign—Safety
15. Windshield Anti-Ice—Low
16. Hydraulic/Nitrogen Pressure—Check
17. Engine Sync—Off
18. Flaps—10°
19. GPWS TAC and FLP ORIDE—Off

Before Landing

20. AOA Index—Preset 1.3 V/Vs
21. Landing Gear—Down

22. Airspeed—Slow to 0.4 AOA
23. Landing Lights—As Required
24. Ignitions—On
25. Flaps—Set for Landing
26. Approach Airspeed (VREF)—Slow to and Maintain 0.57 AOA

Note: This will yield an approach speed of VREF (0.57 AOA) and normal landing distances.

27. Yaw Damp—Off

Caution

If icing conditions are encountered during flight, the maximum landing flap is 10° unless one of the following are met.

The icing conditions are encountered for less than 10 minutes, and the RAM Air Temperature (RAT) during the encounter was warmer than −8°C.

A RAT of +10°C, or warmer, is observed during the descent, approach or landing.

If either of the above two conditions are met, Flaps 30° may be used for landing.

Balked Landing

28. Thrust—Takeoff N1
29. Pitch Attitude—10°

When Positive Climb Has Been Established

30. Flaps—10°
31. Landing Gear—Up
32. Yaw Damp—On
33. Airspeed—Accelerate to 0.3 AOA
34. Flaps—Up
35. Airspeed—Accelerate and Maintain 0.2 AOA
36. Landing Lights—Ret/off

Emergency Procedures 400T(TX)

Loss of Airspeed

Note: If the pilot's, or copilot's and standby, or all three airspeed(s) are noted to be decreasing toward zero, refer to the standby attitude indicator, standby altimeter, standby heading and the AOA indicator for aircraft control and land at the nearest suitable airport. The pilot's and copilots altimeter's, attitude displays and heading displays may be unreliable and the autopilot may disconnect. This may be accompanied by amber boxed A/S, ALT, ATT and/or HDG comparator flags. The comparator flags may be followed by red FAIL flags on the airspeed, altitude, attitude and heading displays.

1. Autopilot—Disconnect
2. Airspeed—Slow to and Maintain 0.2 AOA
3. Thrust—As Required
4. Speed Brakes—As Required (Slow to 0.25 AOA with speed brakes extended)

Note: An AOA of 0.2 (0.25 speed brakes extended) will yield an airspeed of about 210 knots. Use pitch attitude as primary reference. Make small changes in pitch attitude and wait for AOA to stabilize.

When Ready for Descent

5. Seat Belts/Shoulder Harnesses—Fastened
6. Cabin Sign—As Required
7. Anti/DeIce Systems—As Required

Caution

If icing conditions are anticipated during the descent and approach, turn ice protection systems ON as early as possible prior to penetrating clouds. Maintain wing anti/deice operation light ON (approximately 70% N2) during descent to assure proper wing anti-ice operation.

8. Cabin Pressure Control—Set Field Elevation + 500 Feet
9. Windshield Defog—As Required
10. Altimeters—Set

When ready for approach

11. Airspeed—Slow to and Maintain 0.3 AOA

Note: Maintain 0.3 AOA throughout the configuration change to Flaps—10°, Gear Down. This will yield an airspeed of about 180 knots.

12. Fuel Management—Check
13. N1, Landing Distance—Confirm
14. Cabin Sign—Safety
15. Windshield Anti-Ice—Low
16. Hydraulic/Nitrogen Pressure—Check
17. Engine Sync—Off
18. Flaps—10°

Before Landing

19. AOA Index—Preset 1.3 V/Vs
20. Landing Gear—Down
21. Airspeed—Slow to 0.4 AOA
22. Landing Lights—As Required
23. Ignitions—On
24. Flaps—30°
25. Approach Airspeed (VREF)—Slow to and Maintain 0.57 AOA

Note: This will yield a normal approach speed of VREF (0.57 AOA) and normal landing distances.

26. Yaw Damp—Off

Balked Landing

26. Thrust—Takeoff N1
27. Pitch Attitude 10°

When Positive Climb Has Been Established

29. Flaps 10°
30. Landing Gear—Up
31. Yaw Damp—On
32. Airspeed—Accelerate to 0.3 AOA
33. Flaps— 0°
34. Airspeed—Accelerate and Maintain 0.2 AOA
35. Landing Lights—Ret/off''

Note 1: When a previously specified Temporary AFM revision has been incorporated into the general revisions of the AFM, the general revision may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in the specified Temporary AFM revision.

Alternative Methods of Compliance

(b) 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, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

Special Flight Permits

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

Incorporation by Reference

(d) Except as provided by paragraph (a) of this AD, the AFM revision shall be done in accordance with Raytheon Beechjet 400T Temporary Change, P/N 132–590002–5TC3, dated November 12, 2001; Beechjet 400T Temporary Change, P/N 134–590002–1TC3, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–91TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–95TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–107TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–109TC5, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–167TC7, dated November 12, 2001; Beechjet 400A Temporary Change, P/N 128–590001–169TC3, dated November 12, 2001; Beechjet 400 Temporary Change, P/N 128–590001–13BTC1, dated November 12, 2001; Beechjet 400 Temporary Change P/N 128–590001–13BTC2, dated November 12, 2001; MU–300 Diamond I Temporary Change, P/N MR–0460TC1, dated November 12, 2001; or MU–300 Diamond IA Temporary Change, P/N MR–0873TC1, dated November 12, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on December 11, 2001.

Issued in Renton, Washington, on November 26, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–30083 Filed 12–5–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[CT067–7224a; A–1–FRL–7106–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Revisions to State Plan for Municipal Waste Combustors and Incorporation of Regulation Into State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to Connecticut's State Plan for Municipal Waste Combustors (MWC) submitted by the Connecticut Department of Environmental Protection (DEP) on November 28, 2000 and October 15, 2001. The MWC State Plan implements and enforces provisions at least as protective as the EPA's Emission Guidelines (EGs) applicable to existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste. Further, the EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut on October 15, 2001. This is a SIP-strengthening revision that incorporates the nitrogen oxide limits and related regulatory provisions of Connecticut's adopted Regulation Section 22a–174–38, Municipal Waste Combustors, into the SIP to further reduce emissions of nitrogen oxides (NO_X) from MWC units. The EPA proposed approval of these revisions on August 24, 2001, and received no comments during the public comment period which ended September 24, 2001. These actions are being taken under the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on January 7, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Daniel Brown, (617) 918–1532 or brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION: In the following text the terms ''we,'' ''us,'' or ''our'' mean the EPA. This notice is organized according to the following Table of Contents.

I. What was our Proposed Rulemaking on the Connecticut DEP's Revisions to the MWC Plan and SIP?
II. What was Connecticut DEP's final MWC Plan and SIP Revision?
III. What Action is the EPA Taking Today?
IV. What are the Administrative Requirements?

I. What Was Our Proposed Rulemaking on the Connecticut DEP's Revisions to the MWC Plan and SIP?

On August 24, 2001 we published a Notice of Proposed Rulemaking (NPR) for the Connecticut DEP's November 28, 2000 revision to its Municipal Waste Combustor (MWC) Plan and its June 4, 2001 proposed revision to its State Implementation Plan (SIP) for ozone. Please refer to our proposed rule published in the **Federal Register** on August 24, 2001 (66 FR 44582) for more information on the Connecticut DEP's submittals. Briefly, the November 28, 2000 submittal consisted of the revised Connecticut regulation 22a–174–38, Municipal Waste Combustors, which Connecticut DEP adopted and which became effective on October 26, 2000. The June 4, 2001 submittal consisted of the revised regulation 22a–174–38 and a request that the nitrogen oxide (NO_X) limits and related regulatory provisions be incorporated into the SIP to further reduce NO_X emissions from MWC units.

In our August 24, 2001 action, we proposed approval of the SIP revision through parallel processing. Under the parallel processing procedure, we work closely with the Connecticut DEP while it is developing its revision to its SIP. The State submitted its proposed SIP revision to us concurrent with its public hearing. We reviewed this proposed state action, and published our notice of proposed rulemaking and request for comments in the **Federal Register** on August 24, 2001.

We did not receive any comments on our proposed approval and the Connecticut DEP addressed all comments it received during its public comment period as described below.

II. What Was Connecticut DEP's Final MWC Plan and SIP Revision?

On October 15, 2001, Connecticut DEP submitted its final MWC Plan revision and SIP revision to the EPA for approval. The submittal includes the final regulation 22a–174–38 (state MWC rule), a certification of public hearing and a hearing report which responds to all public comments raised during the Connecticut DEP's public hearing on July 10, 2001.

Connecticut DEP's final MWC Plan revision and SIP revision submitted on October 15, 2001 is substantially the same as the June 4, 2001 proposed SIP revision which we proposed to approve on August 24, 2001. Therefore, in this action we are fully approving the MWC Plan and SIP revision. The rationale for our action is explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. What Action Is the EPA Taking Today?

EPA is approving Connecticut DEP's revisions to its MWC Plan and approving the provisions of the MWC regulation pertaining to NO_X controls into the ozone SIP.

IV. What Are the Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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. 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).

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

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Incorporation by reference.

40 CFR Part 62

Administrative practice and Procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: November 9, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(90) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(90) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 15, 2001, to incorporate the nitrogen oxide limits and related regulatory provisions of regulation 22a–174–38, Municipal Waste Combustors.

(i) Incorporation by reference.

(A) The nitrogen oxide emission limits and related regulatory provisions of State of Connecticut Regulation of Department of Environmental Protection Section 22a–174–38, Municipal Waste Combustors effective October 26, 2000, included in sections 22a–174–38 (a), (b), (c), (d), (i), (j), (k), (l), and (m).

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated October 15, 2001, submitting a revision to the Connecticut State Implementation Plan.

2. In § 52.385, Table 52.385 is amended by adding in numerical order a new entry for ''22a–174–38'' to read as follows:

§ 52.385 EPA-approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		**Federal Register** citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–38	Municipal Waste Combustors.	10/26/2000	12/6/01	[Insert FR citation from published date].	c(90)	The nitrogen oxide emission limits and related regulatory provisions of 22a–174–38, Municipal Waste Combustors, included in sections 22a–174–38 (a), (b), (c), (d), (i), (j), (k), (l), and (m).
*	*	*	*	*	*	*

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart H—Connecticut

2. Section 62.1500 is amended by adding paragraph (b)(2) to read as follows:

§ 62.1500 Identification of plan.

* * * * *

(b) * * *

(2) Revisions to Plan for Implementing the Municipal Waste Combustor Guidelines and New Source Performance Standards, submitted by the Connecticut Department of Environmental Protection on October 15, 2001 and including Connecticut DEP's revised regulation 22a–174–38. Certain provisions of the revised regulation 22a–174–38 submitted with the MWC Plan are stricken from the regulatory text. The stricken provisions include standards for MWC units constructed after September 20, 1994, more stringent mercury emission standards, and shutdown provisions for mass burn refractory MWC units.

* * * * *

[FR Doc. 01–30098 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7114–6]

RIN 2050–AE79

NESHAP: Emergency Extension of the Compliance Date for Standards for Hazardous Air Pollutants for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend for one year the compliance date for regulations for incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste, promulgated on September 30, 1999 (NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor ''floors'' and remanded for further proceedings. 255 F.3d at 871. The rules are still in effect, however, because the Court has issued an order (at the request of the parties to the proceeding) which stays issuance of the mandate and vacature does not occur until the Courts issue a mandate. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday–Friday, 9 am to 4 pm, Eastern Standard Time. For more information, contact Rhonda Minnick at 703–308–8771, minnick.rhonda@epa.gov, or write her at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Part One: Overview and Background for This Final Rule

I. Regulatory Information

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because a change in the compliance date is necessitated by the Court's opinion. There are imminent deadlines which are keyed to the existing compliance date, yet affected sources presently lack information to make necessary compliance decisions. Some immediate change of the compliance date is needed. Thus, notice and public procedure are impracticable. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). EPA also finds that good cause exists under U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

II. What Is the Purpose of This Final Rule?

Today's action extends for one year the compliance date for the NESHAP: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I) rule, published September 30, 1999 (64 FR 52828). We are taking this action in response to the Court's opinion in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001) issued on July 24, 2001, where the Court vacated the emission standards known as the hazardous waste combustor ''floors'' and remanded for further proceedings. 255 F.3d at 871. ''Vacature'', however, only actually takes effect when the Court issues an order called a mandate. In this case, the Court has stayed issuance of the mandate (until February 14, 2002) in response to a joint motion from all parties to the case requesting such action. The rules thus are still in effect. These existing regulations require sources to take actions based on the current compliance date, September 30, 2002. Deadlines for some of these actions are imminent. Given that some delay in compliance will be necessitated as a result of the uncertainty created by the Court's opinion, and that action is needed now because of imminent deadlines which are keyed to the compliance date, it is not appropriate to require sources to comply with the current regulatory schedule. Consequently, EPA is extending the compliance date for one year.

III. What Is the Phase I Rule?

In the Phase I final rule, we adopted National Emissions Standards for Hazardous Air Pollutants, pursuant to section 112(d) of the Clean Air Act, to control toxic emissions from the burning of hazardous waste in incinerators, cement kilns, and lightweight aggregate kilns. 64 FR 52828 (September 30, 1999). These emission standards created a technology-based national cap for hazardous air pollutant emissions from the combustion of hazardous waste in these devices. Additional risk-based conditions necessary to protect human health and the environment may be imposed (assuming a proper, site-specific justification) under section 3005(c)(3) of the Resource Conservation and Recovery Act (RCRA).

Section 112(d) of the Clean Air Act (CAA) requires emissions standards for hazardous air pollutants to be based on

the performance of the Maximum Achievable Control Technology (MACT). These standards apply to the three major categories of hazardous waste burners—incinerators, cement kilns, and lightweight aggregate kilns. For purposes of today's action, we refer to these three categories collectively as hazardous waste combustors (HWC).

Additionally, the Phase I HWC MACT rule satisfies our obligation under RCRA (the main statute regulating hazardous waste management) to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. 64 FR at 52833, 52839–41. By using both CAA and RCRA authorities in a harmonized fashion, we consolidate regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements.

More information on the Phase I HWC MACT rule is available electronically from the World Wide Web at *www.epa.gov/hwcmact.*

IV. What Related Actions Have Been Taken Since Publication of the Phase I Rule?

On November 19, 1999, we issued a technical correction to the HWC MACT rule (64 FR 63209). It clarified our intent with respect to certain aspects of the Notification of Intent to Comply and Progress Report requirements of the 1998 ''Fast Track'' final rule (63 FR 33783). Additionally, specific to the HWC MACT rule, we corrected several typographical errors and omissions.

On July 10, 2000, we issued a second technical correction to the HWC MACT rule (65 FR 42292). This action corrected additional typographical errors and clarified several issues to make the rule easier to understand and implement. This action also supplied one omission from the technical correction published on November 19, 1999, and made one correction to the related June 19, 1998 ''Fast Track'' final rule (63 FR 33783).

On July 25, 2000, the Court of Appeals for the District of Columbia decided *Chemical Manufacturers Association* v. *EPA,* 217 F. 3d 861 (D.C. Cir. No. 99–1236). The Court held that EPA had the legal authority to promulgate a requirement of early cessation of hazardous waste burning activity for those sources not intending to comply with the MACT emission standards. However, the Court also held that we had not adequately explained our reasons for imposing the early cessation requirement. As a result, the Court vacated the early cessation requirement and the related Notice of Intent to Comply (NIC) and Progress Report requirements. This vacature took effect on October 11, 2000. Since the requirements were not vacated until after sources were required to submit their NICs (on October 2, 2000), we determined that the Court's action does not impact a source's ability to request a RCRA permit modification using the streamlined procedures of § 270.42(j)(1). As long as a source complied with the NIC provisions (including filing the NIC before the provision was vacated), the source has met the requirements in § 270.42(j)(1) and is therefore eligible for the streamlined RCRA permit modification process. The Court's decision does not impact the emission standards or compliance schedule for the other requirements of the HWC NESHAP Subpart EEE.

On November 9, 2000, we issued a third technical correction to the HWC MACT rule (65 FR 67268). It clarified our intent with respect to the applicability of new source versus existing source standards for hazardous waste incinerators. This action also clarified three issues to make the rule easier to understand and implement.

On May 14, 2001, we issued a final rule implementing two court orders that removed affected provisions of the HWC MACT rule from the *Code of Federal Regulations* (66 FR 24270). This action removed the Notice of Intent to Comply provisions (discussed above) and certain operating parameter limits of baghouses and electrostatic precipitators.

On July 3, 2001, we published a direct final rule (66 FR 35087) and a notice of proposed rulemaking (66 FR 35124) promulgating and proposing thirteen amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule. We promulgated these amendments as direct final rules, with an accompanying proposed rule to supplant these rules in the event we received any adverse comment on the amendments. We subsequently received adverse comment on four of the amendments. On October 15, 2001, we published a withdrawal notice (66 FR 52361) removing those parts of the direct final rule that received adverse comment. The nine amendments for which we did not receive adverse comment became effective on October 16, 2001.

On July 3, 2001, we also issued a separate proposed rule soliciting comment on twenty amendments to several compliance, testing, and monitoring provisions of the HWC MACT rule (66 FR 35126). We will address comments to the proposed rule in the future in a final action.

On July 24, 2001, the D.C. Circuit Court issued an opinion vacating the HWC MACT emission standards known as the ''floors'' and remanded for further proceedings. See *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 872 (D.C. Cir. 2001). The Court also invited any party to file a motion asking that issuance of the mandate be stayed:

> Because this decision leaves EPA without standards regulating HWC emissions, EPA (or any of the parties to this proceeding) may file a motion to delay issuance of the mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards.

255 F.3d at 872.

Part Two: Rationale for Today's Action

I. Why Is a One-Year Extension of the Compliance Date Needed?

In response to the Court's opinion that the Phase I HWC MACT rule be vacated, the Agency and litigants are investigating options to retain some form of the current rules, or issuing some type of interim revised rules. Notwithstanding those efforts, however, and until the Court issues a mandate putting the opinion into force, sources must continue to comply with the rule. The compliance date for the rule is September 30, 2002, three years after the promulgation date.

To meet that compliance date, sources must take steps to comply with the rule prior to that date, and regulatory officials must respond to many of those actions. For example, sources must have submitted by September 30, 2001 requests to extend the compliance date because of inability to meet the emission standards by that date for reasons beyond their control. Regulatory officials should respond to those requests within 30 days of receipt of a complete application. See §§ 63.1206(b)(4), 63.6(i), and 63.1213. In addition, sources must submit the performance test plan to permit officials for review and approval by March 30, 2002, one year prior to the deadline for conducting the initial comprehensive performance test. See § 63.1206(c) and (e). Most sources were planning to submit their test plan and conduct the test in advance of the deadline to facilitate review and approval of the plan and ensure availability of stack testing personnel.

Given the uncertainty created by the opinion as to what standards will ultimately be in place and when sources will have to comply, it is appropriate to delay the compliance date.[1] Quite

[1] If the Agency were not to promulgate an interim rule prior to the Court's issuance of a mandate

simply, sources are (legitimately) unwilling to make the substantial commitments in time, effort, and capital to comply with standards when they no longer know what those standards will be. We believe a one-year delay of the compliance date is warranted. Many sources reasonably stopped most efforts to comply with the rule when the Court issued its opinion on July 24, 2001 because the rule's status was so uncertain. Further, although the Agency plans to promulgate interim rules prior to the Court's issuance of the vacature mandate, the interim rules will not be promulgated until approximately February 14, 2002. That hiatus would justify a six month delay in the compliance date, but the requirements of an interim rule will differ from the current rule to address concerns of litigants and the Court. Thus, sources may need additional time to address such differences. Consequently, we believe a one-year delay in the compliance date is within the range of time extensions that are appropriate.

Should EPA promulgate replacement rules, those rules would, of course, have their own compliance dates (to be determined as part of that rulemaking). Our action today deals only with the status of the existing rule, which date clearly needs to change as a result of the *Cement Kiln Recycling Coalition* opinion.

To implement the one-year delay in the compliance date, we are revising dates in several regulatory provisions. We are revising the compliance date provided by § 63.1206(a)(1) from September 30, 2002 to September 30, 2003. In addition, we are making conforming revisions to several paragraphs that establish deadlines based on the compliance date.

II. Why Is This Rule Issued Without Notice and Opportunity for Public Comment?

EPA finds that there is good cause to issue this rule without prior notice and opportunity for comment (although EPA notes that all of the litigants in the *Cement Kiln Recycling Coalition* proceedings have had actual notice of this action as a result of the on-going discussions following issuance of that opinion, and have had the opportunity to present their views to the appropriate EPA officials). First, as explained above, source owners and operators presently lack the information to make necessary compliance decisions: they do not know what the standards will be, or if there will be any national standards at all. The only thing that is clear is that the current rules, as a result of the Court's opinion and vacature remedy, will require some alteration. Yet there are imminent deadlines (September, 2001 and March, 2002) which are keyed to the September, 2002 compliance date. Some immediate change of the compliance date is thus needed. Second, EPA regards a change in the compliance date as necessitated by the Court's opinion in any case, and thus that this action is essentially non-discretionary. For all of these reasons, EPA finds that there is good cause to issue this rule without notice and opportunity for comment pursuant to 5 U.S.C. section 553(b)(B) (which applies to CAA rulemakings, see section 307(d)(1), final sentence), as well as good cause for this rule to take effect immediately pursuant to 5 U.S.C. section 553(d).

Part Three: Analytical and Regulatory Requirements

I. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one that may:

—Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, the Agency has determined that this rule is not a ''significant regulatory action''and is therefore not subject to OMB review.

The aggregate annualized compliance costs for this final rule are less than $100 million. Furthermore, this rule is not expected to adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The benefits to human health and the environment resulting from today's action have not been monetized but are deemed to be less than $100 million per year.

A. Why Is This Final Rule Necessary?

See Part Two, Section I of this Preamble.

B. Were Non-Regulatory Alternatives First Considered?

Section 1(b)(3) of Executive Order 12866 instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, ''to the extent permitted by law, and where applicable.'' The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s). The consideration of non-regulatory alternatives is not applicable to today's final rule.

C. What Regulatory Options Were Considered?

Alternative regulatory options are not applicable to this action.

II. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, a small entity is defined as: (1) A small business that has fewer than 750, or 500 employees per firm depending upon the SIC–NAICS code(s) the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and

vacating the rule, today's action to delay the compliance date for one year becomes moot. This is because vacature of the emission standards would as a practical matter vacate the compliance date for those standards.

operated and is not dominant in its field.

Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Furthermore, the Agency does not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

IV. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). We have no data indicating that today's final rule would result in disproportionately negative impacts on minority or low income communities.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any single year. The final rule may result in modified annualized incremental costs from those presented in the Assessment[2], due primarily to baseline adjustments over the one year extension period. However, no significant cost adjustments are anticipated. Because the Agency has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see Part Two, Section II of this action), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

VI. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this rule.

VII. Executive Order 13175: Consultation and Coordination with Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

[2] ''Assessment of Potential Costs, Benefits, and Other Impacts of the Hazardous Waste Combustion MACT Standards: Final Rule,'' U.S. EPA, July 1999.

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Today's rule will not significantly or uniquely affect the communities of Indian tribal governments, nor impose substantial direct compliance costs on them.

VIII Executive Order 13211: Energy Impact Analysis

Executive Order 13211, ''Actions Concerning Regulations That Affect Energy Supply, Distribution, or Use'' (May 18, 2001), addresses the need for regulatory actions to more fully consider the potential energy impacts of the proposed rule and resulting actions. Under the Order, agencies are required to prepare a Statement of Energy Effects when a regulatory action may have significant adverse effects on energy supply, distribution, or use, including impacts on price and foreign supplies. Additionally, the requirements obligate agencies to consider reasonable alternatives to regulatory actions with adverse affects and the impacts the alternatives might have upon energy supply, distribution, or use.

Today's final rule is not likely to have any significant adverse impact on factors affecting energy supply. We believe that Executive Order 13211 is not relevant to this action.

IX. Paperwork Reduction Act

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.*). Because there are no paperwork requirements as part of this final rule, we are not required to prepare an Information Collection Request in support of today's action.

X. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

XI. The Congressional Review Act (5 U.S. C. 801 et seq., as Added by the Small Business Regulatory Enforcement Fairness Act of 1996)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to public interest (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding. We have established an effective date of December 6, 2001.

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. Section 63.1206 is amended by:

a. Revising paragraphs (a)(1), (a)(2)(ii), and (a)(4).

b. Revising paragraphs (b)(6)(i), (b)(7)(i)(B), and (b)(7)(ii)(B).

The revisions read as follows:

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * * (1) *Compliance date for existing sources.* You must comply with the standards of this subpart no later than the compliance date, September 30, 2003, unless the Administrator grants you an extension of time under § 63.6(i) or § 63.1213.

(2) * * *

(ii) For a standard in this subpart that is more stringent than the standard proposed on April 19, 1996, you may achieve compliance no later than September 30, 2003 if you comply with the standard proposed on April 19, 1996 after September 30, 1999. This exception does not apply, however, to new or reconstructed area source hazardous waste combustors that become major sources after September 30, 1999. As provided by § 63.6(b)(7), such sources must comply with this subpart at startup.

(4) *Early compliance.* If you choose to comply with the emission standards of this subpart prior to September 30, 2003, your compliance date is the date you postmark the Notification of Compliance under § 63.1207(j)(1).

(b) * * *

(6) * * *

(i) If a DRE test performed after March 30, 1999 is acceptable as documentation of compliance with the DRE standard, you may use the highest hourly rolling average hydrocarbon level achieved during those DRE test runs to document compliance with the hydrocarbon standard. An acceptable DRE test is a test that was used to support successful issuance or reissuance of an operating permit under part 270 of this chapter.

* * * * *

(7) * * *

(i) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with the DRE standard if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

(ii) * * *

(B) You may use DRE testing performed after March 30, 1999 for purposes of issuance or reissuance of a RCRA permit under part 270 of this chapter to document conformance with

the DRE standard in lieu of DRE testing during the initial comprehensive performance test if you have not modified the design or operation of the source since the DRE test in a manner that could affect the ability of the source to achieve the DRE standard.

* * * * *

3. Section 63.1207 is amended by:

a. Revising paragraph (c)(2)(i)(A).

b. Revising paragraph (l) introductory text by designating the text after the heading as (l)(1) and revising newly designated paragraph (l)(1).

The revision read as follows:

§ 63.1207 What are the performance testing requirements?

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) Initiated after March 30, 1999;

* * * * *

(l) Failure of performance text—(1) *Comprehensive performance test.* The provisions of this paragraph do not apply to the initial comprehensive performance test if you conduct the test prior to September 30, 2003 (or a later compliance date approved under § 63.6(i)).

* * * * *

[FR Doc. 01–30267 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[TX–002; FRL–7113–6]

Clean Air Act Full Approval of Operating Permits Program; State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating full approval of the Operating Permit Program submitted by the Texas Natural Resource Conservation Commission (TNRCC or Commission) based on the revisions submitted on June 12, 1998, and June 1, 2001, which satisfactorily address the program deficiencies identified in EPA's June 7, 1995, and June 25, 1996, Interim Approval (IA) Rulemakings. *See* 60 FR 30037 and 61 FR 32693. The TNRCC revised its program to satisfy the conditions for full approval, and EPA proposed full approval in the **Federal Register** on October 11, 2001 (66 FR 51895). This notice only takes action on issues related to correcting interim approval issues. We will address other issues at a later date as described in sections V.C and V.D of this document.

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

ADDRESSES: Copies of documents relevant to this action are available inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two days in advance.

Environmental Protection Agency, Region 6, Air Permitting Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permitting Section (6PD-R), EPA, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212 or e-mail at *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Table of Contents

I. What is the Operating Permit Program?
II. What Is Being Addressed in This Document?
III. What Is Our Response to Comments?
IV. Did Texas Submit Other Title V Program Revisions?
V. What is Involved in This Final Action?
VI. What is the Effective Date of EPA's Full Approval of the Texas Title V Program?
VII. Administrative Requirements

I. What Is the Operating Permit Program?

Title V of the Clean Air Act (the ''Act'') Amendments of 1990 required all States to develop Operating Permit Programs that meet certain Federal criteria. In implementing the title V Operating Permit Programs, permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the Act. The focus of the title V Operating Permit Program is to facilitate compliance and improve enforcement by issuing each source a permit that consolidates all of the applicable requirements of the Act into a federally enforceable document. This consolidation of all applicable requirements enables the source, the public, and the permitting authority to readily determine which of the Act's 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 as defined by title V and certain other sources specified in the Act or in EPA's implementing regulations. This includes all sources regulated under the acid rain program, regardless of size, which must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year (tpy) or more of volatile organic compounds (VOC), carbon monoxide (CO), lead, sulfur dioxide, nitrogen oxides (NO_X), or particulate matter (PM–10); those that emit 10 tpy of any single hazardous air pollutant (HAP) specifically listed under the Act; or those that emit 25 tpy or more of a combination of HAP. In areas that are not meeting the National Ambient Air Quality Standards for ozone, CO, or PM–10, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tpy or more of VOC or NO_X.

II. What Is Being Addressed in This Document?

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, we granted IA contingent on the State revising its program to correct the deficiencies. Because Texas's Operating Permit Program substantially, but not fully, met the requirements of part 70, we granted a source category-limited IA to the program in a rulemaking published on June 25, 1996 (61 FR 32693). The IA notice stipulated numerous conditions that had to be met in order for the State's program to receive full approval. Texas submitted revisions to its interim approved Operating Permit Program dated June 12, 1998, and June 1, 2001. Texas also submitted supplementary information to EPA on August 22, 2001, August 23, 2001, and September 20, 2001. On November 5, 2001, EPA received a Statement by the Attorney General of Texas stating that the laws of Texas provide adequate authority to carry out all aspects of the program.

On October 11, 2001 (66 FR 51895), we proposed full approval of Texas's title V Operating Permits Program based on our determination that Texas had corrected the IA deficiencies identified in our June 7, 1995 and June 25, 1996 actions. On November 13, 2001, we received comments on our proposal. Our response to the comments are in section III of this action.

In today's action, we are promulgating final full approval of the Texas Operating Permits Program based upon our determination that Texas has corrected the deficiencies identified in the IA rulemaking. We are approving revisions which the TNRCC adopted October 15, 1997 (submitted June 12, 1998) and May 9, 2001 (submitted June 1, 2001). We will take appropriate action on the remaining provisions of the June 1, 2001, submittal in a separate **Federal Register** action. We are also not taking action on issues unrelated to correcting IA issues. We will address these issues at a later date as described in sections V.C and V.D of this notice.

III. What Is Our Response to Comments?

On November 13, 2001, we received two comment letters on the proposed full approval of the Texas program. We received comments from Public Citizen, on behalf of the Public Citizen's Texas Office, Lone Star Chapter of the Sierra Club, Environmental Defense, Citizens for Health Growth, Galveston Houston Association for Smog Prevention, Neighbors for Neighbors, Quality of Life El Paso, Clean Water Action, Texas Center for Policy Studies, and the law firm of Lowerre & Kelly (collectively referred to as Public Citizen). We also received comments from the law firm of Baker Botts, L.L.P., on behalf of the Texas Industry Project.

Below is our response to the comments received on the proposed full approval of the Texas Operating Permits program. In this notice, we are only addressing the comments which relate to our determination that Texas has corrected the IA deficiencies in its title V program. We also received comments which relate to (and in many cases are the same as) comments the we received from citizens in response to our **Federal Register** Notice published December 11, 2000. Because these comments are not related to the correction of IA deficiencies, they will be addressed in a separate **Federal Register** action as described in section V.C of this preamble. In addition, we also received comments not related to the correction of IA deficiencies and which were not raised in response to the December 11, 2000 **Federal Register** notice. These issues will be handled as described in section V.D.

A. Comment A—EPA Failed To Determine Whether Texas's Current Operating Permits Program Complies With Part 70 and Title V

Public Citizen states that since receiving IA, Texas has completely revised its operating permits program. However, EPA has never reviewed these changes to determine whether the interim program that Texas has been running substantially complies with the requirements of part 70. Public Citizen contends that EPA is proposing to grant Texas full approval of its federal operating program without ever analyzing whether or not Texas current program actually meets the minimum requirements of part 70. Public Citizen does not agree with EPA's position to only look narrowly at whether the problems in the 1996 program have been remedied.

Public Citizen believes that, in order to be granted full approval, EPA must evaluate whether Texas's entire program meets the requirements of part 70 and title V and that EPA's notice of proposed approval indicates that such an evaluation has not been undertaken. 66 FR 51895, 51896 (October 11, 2001). Public Citizen does not believe that EPA can turn a blind eye to elements of the program which were not raised as interim deficiency issues and which do not comply with part 70. Public Citizen realizes that EPA is proposing to look at the additional elements of the current program after full approval is granted; however, they believe that EPA has a duty to ensure that Texas's program meets statutory and regulatory requirements before approval can be granted. For the reasons noted below, Public citizen believes that Texas's program does not comply with part 70 and that full approval should be denied.

EPA Response to Comment A

We are aware that issues other than those listed in the June 25, 1996, IA exist in the Texas program and that the Texas regulations have undergone changes since 1996 that EPA has not approved. We agree that these issues must be addressed and that Texas must submit all changes made since 1996 to EPA for review and approval. For the reasons discussed below, however, we disagree that limiting our review to correction of IA deficiencies prohibits us from granting Texas full program approval at this time.

In 1990, Congress amended the Clean Air Act, 42 U.S.C. 7401 *et seq.*), 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). The 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 utilize 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 * * *'' The 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 IA provision of section 502(g). This section states: ''[i]f 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 IA. *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. The EPA believes this is so even if deficiencies have been identified sometime after final IA, either because the deficiencies arose after EPA granted IA or, if the deficiencies existed at that time, EPA failed to identify them as such in proposing to grant IA.

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 IA. The central question, therefore, is whether Texas by virtue of correcting the deficiencies identified in the final IA is eligible at this time for full

approval, or whether Texas 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.

In this situation, in order to give effect to the principles embodied in title V 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 Texas full approval in this situation while working simultaneously with the State, in its oversight capacity, on any additional problems that were identified. To conclude otherwise would disrupt the current administration of the state program and cause further delay in Texas's ability to issue operating permits to major stationary sources. A smooth transition from IA 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 any deficiencies that may exist and that have been identified in the past year 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 70.4(i) and 70.10 provides EPA with the authority to issue notices of deficiency (''NODs'') 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, in its NOD, EPA will specify a reasonable time frame for the permitting authority to correct any identified deficiencies. The Texas title V IA expires on December 1, 2001. This deadline does not provide adequate time for the State to correct any deficiencies that may be identified at this time prior to the expiration of IA. 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 Texas. 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 IA but prior to being granted full approval is a notice of program deficiency or administrative 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, Texas will be placed on notice that it must promptly correct the non-IA deficiencies within a specified time period or face the imposition of sanctions and disapproval of its program. Furthermore, because Texas is also required to submit for review and approval all changes that it has made to its title V program since we granted IA, EPA will also disapprove any program revisions that are inconsistent with part 70 through formal notice and comment rulemaking.

B. Comment B—Lack of Sufficient Attorney General (AG) Statement

Public Citizen contends that in the preamble to Texas's 2001 revisions to its program, Texas stated that it would provide an AG Opinion with its submittal package for full approval that would address such issues as Texas Audit Privilege Act.[1] Likewise, in Part I of Texas's Submittal Package, Texas stated that ''a legal opinion from the Office of the AG (AG) will be forwarded as a supplement to this submittal after the end of the 2001 Texas Legislative Session.'' Public Citizen also asserts that Texas had not, however, submitted an AG statement at the time EPA proposed full approval of Texas's program. Public Citizen contends that, in fact, Texas did not file an AG statement with EPA until November 8, 2001, five days before the end of the public comment period on EPA's proposed full approval, and that there was no notice to the public that such statement was available for comment.

Because an AG statement was not produced prior to EPA's proposed full approval of Texas's program, Public Citizen claims that EPA cannot possibly have had sufficient information to determine that Texas's program complied with the requirements of part 70. Likewise, Public Citizen contends that because an AG statement was not provided until five days before the close of the comment period, the public has not had an adequate opportunity to comment on the opinion.

Public Citizen also asserts that there were issues that should have been addressed in the AG statement, such as the Sunset legislation (House Bill 2912), as well as other statutes or regulations adopted by Texas since IA.

Furthermore, because the statement ''incorporates'' earlier AG statements, Public Citizen contends that it is impossible to determine exactly what is included in this certification and the statement is so vague that it is difficult to determine what authority is being certified. For example, Public Citizen refers to Section IV of the AG Statement which states that state law provides authority to incorporate monitoring consistent with 40 CFR 70.6.[2] It goes on, however, to state that Texas has authority to incorporate monitoring consistent with 40 CFR 70.6(a)(3)(i)(B). Public Citizen asserts that the Texas's program is flawed in that it does not include monitoring ''sufficient to assure compliance'' as required by 40 CFR 70.6(c)(1), and that the AG statement does not even address this issue.

Likewise, Public Citizen contends that the statement's analysis of SB766 is flawed. First, Public Citizen contends that the AG argues that Section 12 of SB766 does not impact the enforceability of title V permits because it only excuses modifications which occurred before March 1, 1999 and Texas's operating permits program did not include minor new source review conditions until 2001. Public Citizen contends that what the AG fails to state is that each day of operation after modification without the required permit is an ongoing violation.

[1] The EPA is unaware of such a statement in the preamble to Texas's Chapter 122 revisions. The TNRCC, however, did agree to address amnesty provisions of SB 766 in an AG statement. 26 TexReg 3747, 3758–59 (May 25, 2001).

[2] This provision is actually in Section VI of the AG statement.

Therefore, Public Citizen contends that facilities covered by title V may be in continuous violation for modifications made prior to March 1, 1999. Public citizen also argues that the statement argues that Section 12 does not excuse violations of PSD or Nonattainment NSR requirements. Public Citizen contends that while the AG crafts an argument based on legislative history, the AG will not be the final authority on whether or not Section 12 applies to PSD or Nonattainment NSR violations. Public Citizen also contends that the courts will have to decide this issue. Finally, Public citizen believes that the statement misstates important facts. For example, the statement says that applying for *and* obtaining a Voluntary Emission Reduction Permit (VERP) permit is one of the preconditions of Section 12's applicability. Public Citizen argues that SB766 only requires, however, that sources apply for a VERP permit to be eligible for Section 12's immunity and that the statute does not require that such a permit be issued. Public Citizen believes SB766 impermissibly limits Texas's enforcement authority.

EPA Response to Comment B

As stated in our response to Comment A above, EPA believes that Texas only needs to correct the IA deficiencies in order for EPA to grant the State full program approval. As such, for the purpose of this approval, the revised AG statement must only address issues related to the correction of IA deficiencies. The EPA will address the AG discussion of SB 766 in its response to the Citizen Comment letters, as explained in section V.C. Any potential flaws in Texas's program that EPA did not identify as IA deficiencies will also be addressed as set forth in Sections V.C and D.

The EPA believes that it did have sufficient information to propose full approval even though it had not yet received the revised AG statement. The EPA received three previous AG opinions (1993, 1996, and 1998) stating that the laws of Texas provide adequate authority to carry out all aspects of the program. Furthermore, EPA worked closely with TNRCC to correct the IA deficiencies, and was well aware of the changes that were made by TNRCC regarding the IA deficiencies prior to proposing full approval. The EPA did not find any problems in the previous AG statements relating to TNRCC's authority to correct the IA deficiencies to meet the part 70 requirements. In fact, all of the IA deficiencies that EPA identified were corrected by regulatory changes. Based on the three prior AG statements, EPA believed that these changes were within the authority of TNRCC to promulgate. Furthermore, Public Citizen did not raise any issues regarding TNRCC's authority to revise its regulations to correct the IA deficiencies or that the revisions were beyond the scope of TNRCC's authority in its comments. Therefore, EPA believes that it did have sufficient information to propose full approval even though it had not yet received the revised AG statement. For the same reasons, EPA also believes that although Public Citizen had less than 30 days to review the AG statement, this does not prevent EPA from promulgating final approval of the Operating Permits Program.

We also believe, contrary to Public Citizen's assertion, that one can determine what authority is included in the AG statement. For example, Public Citizen claims that the AG states that state law provides authority to incorporate monitoring consistent with 40 CFR 70.6. However, Public Citizen asserts that the Texas's program is flawed in that it does not include monitoring ''sufficient to assure compliance'' as required by 40 CFR 70.6(c)(1), and that the AG statement does not even address this issue.

40 CFR 70.4(b)(3) provides that the AG statement must include citations to administrative regulations that demonstrate adequate authority to carry out the program. In section VI of the AG statement (Monitoring, Recordkeeping and Reporting), the Texas AG cites to several provisions of the Texas Administrative Code which relate to monitoring. These regulations include 30 TAC 122.142(c) & (h), and 30 TAC Chapter 122, Subchapters G (Periodic Monitoring—122.600 *et seq.*) and H (Compliance Assurance Monitoring—122.700 *et seq.*). Sections 122.142(c) and (h) require permits to contain periodic monitoring and compliance assurance monitoring. Subchapters G and H implement the periodic monitoring and compliance assurance monitoring requirements. Therefore, one can determine what authority is included in the AG statement, and the AG statement addresses the issue of monitoring sufficient to determine compliance. The issue of whether Texas's periodic monitoring regulations and compliance assurance monitoring regulations are deficient will be addressed in our response to the citizen comment letters, as set forth in section V.C. Therefore, we do not agree with these comments.

C. Comments on Minor New Source Review (MNSR)/Part 70 Integration

The EPA received six comments pertaining to minor new source review (MNSR)/Part 70 Integration. The comments pertain to (1) Incorporation of MNSR, (2) Timing of incorporation on minor new source review requirements, (3) Procedure for incorporation of MNSR requirements, (4) Lack of sufficient monitoring, (5) Lack of specificity in MNSR permits, and (6) TNRCC's schedule for incorporating MNSR requirements into existing title V permit and authorizations.

1. Comment C1—Incorporation of Minor New Source Review (MNSR)

Public Citizen acknowledged that Texas has included Chapters 106 and 116 as applicable requirements. While Chapters 106 and 116 are the chapters that provide for preconstruction permits, Public Citizen is concerned that Texas's language is not as clear as the part 70 requirement that the definition of applicable requirement include ''any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.'' 40 CFR 70.2. Public Citizen believes that EPA should explain whether and how the Texas definition of applicable requirement is consistent with the part 70 definition and includes both past and future minor new source review requirements. In addition, because of the facial discrepancy between the Texas regulations and the part 70 definition, Public Citizen believes that the Texas AG should provide a legal opinion affirming this understanding.

EPA Response to Comment C1

As the commenter noted, Chapters 106 and 116 implement Texas's preconstruction permit program. These chapters are part of the definition of applicable requirements. Texas's regulations also defines ''applicable requirement'' to include the terms and conditions of all preconstruction permits. The definition of ''applicable requirement'' in Section 122.10(2)(H) now provides that an applicable requirement includes:

(H) All of the requirements of Chapter 106, Subchapter A of this title (relating to permits by rule), or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) *and any term or condition of any preconstruction permit.* (Emphasis added).

Furthermore, Section 122.231(c) provides that:

The executive director shall institute proceeding to reopen permits * * * to incorporate the requirements of Chapter 106, Subchapter A * * * or Chapter 116 of this title *or any term or condition of any preconstruction permit.*'' (Emphasis added).

Thus, the definition for ''applicable requirement'' and the regulations for incorporating MNSR permits include the terms and conditions of preconstruction permits, and includes the Texas regulations which implement Texas's preconstruction review program. The preconstruction review program in Chapters 106 and 116 includes MNSR. Therefore, EPA believes that the definition of applicable requirement in 30 TAC 122.10(2)(H) includes any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act and is consistent with part 70.

We disagree with Public Citizen's contention that an AG statement must confirm this understanding. State regulations must be consistent with the part 70 regulations, but they do not have to track the exact language of part 70. The EPA believes that Section 122.10(2)(H) is consistent with part 70 definition, and therefore disagrees with this comment.

2. Comment C2—Timing of Incorporation of MNSR Requirements

Public Citizen asserts that under Texas's proposal, MNSR requirements will not be incorporated before or upon transition to full approval. In fact, Public Citizen argues that some permits will not be reopened to include minor new source review permit terms and conditions for up to four years, or even up to renewal. Public Citizen also contends that Texas proposes to merely send notification to permit holders upon transition to full approval that their permits will have to be reopened at some time in the future to include minor new source review.

Further, Public Citizen contends that Texas's program does not assure that all permits issued by the State after full approval would include minor new source review permit terms and conditions. Public Citizen argues that the state is allowing those permits that went out for public notice prior to June 3, 2001 to be issued without incorporating minor new source review permit terms and conditions. Public Citizen contends that this violates 40 CFR 70.4(d)(3)(ii)(D) and should not be permitted.

EPA Response to Comment C2

We disagree that the procedures Texas will use to incorporate MNSR requirements into title V permits violates part 70. Texas will reopen its title V permits consistent with 40 CFR 70.4(d)(3)(ii)(D). The September 20, 2001 agreement, as set forth in the **Federal Register**, describes the process for reopening permits to incorporate MNSR requirements. 66 FR at 51897.

The reopening procedure (which begins no later than December 1, 2001) consists of notification of title V permit holders as follows: (1) Direct notification in writing to each individual permit holder no later than December 1, 2001; (2) during stakeholder meetings; (3) through the TNRCC website; and (4) another follow-up letter which will be sent to each permit holder when it is time to reopen the permit holder's permit to incorporate the MNSR permits and permits by rule (PBR).[3]

The procedure provides that all title V permits will be reopened to incorporate MNSR. Permits nearing renewal (*i.e.,* those with less than two years remaining until renewal) will be reopened at renewal to incorporate MNSR. Permits not close to renewal (*i.e.,* those with two or more years remaining until renewal (which includes permits issued prior to June 3, 2001)) will be reopened within three to four years initial issuance to incorporate MNSR. 66 FR at 51898.

This process is consistent with the requirement in 40 CFR 70.4(d)(3)(ii)(D) that a state ''institute proceedings to reopen part 70 permits,'' and provides for a reasonable transition time for a State to reopen title V permits to incorporate MNSR. The reopening process that TNRCC described in its September 20, 2001 letter, and is described above, represents an agreement between EPA and TNRCC on how proceedings will be instituted to reopen all title V permits and ensure that they will have the MNSR requirements. This agreement meets the requirements of part 70 and ensures that all title V permits will be reopened in a timely manner to incorporate MNSR. Furthermore, the requirements of the MNSR permits are enforceable by Texas and EPA even if they have not yet been incorporated into the title V permit. Therefore, we do not agree with this comment.

[3] Although the September 20, 2001 letter from Texas did not reference PBRs as to this issue, the letter did state that PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility. Furthermore, PBRs also fall under Texas's MNSR program.

3. Comment C3—Procedure for Incorporation of MNSR Requirements

Public Citizen alleges the following:

First, Texas is not proposing to use the reopening provisions of 40 CFR 70.7(f) and (g) in order to incorporate minor new source review requirements into its existing title V permits, but instead will utilize its minor revision process. Public Citizen contends that part 70 only allows the use of streamlined procedures during the interim period. Because Texas did not adopt provisions during the IA period to ensure that MNSR would be properly incorporated into all title V permits upon full approval, Texas must follow the reopening provisions of 40 CFR 70.7(f) and (g) to incorporate MNSR into title V permits.

Second, Public Citizen argues that the 40 CFR 70.4(d)(3)(ii)(D) requirement that states ''institute proceedings to reopen permits * * * upon or before granting of full approval'' requires the immediate submission of applications or updates to pending applications and does not allow for the delay provided by Texas rules.

Third, Public Citizen argues that Texas is proposing to assume that applicants who have already certified compliance are in compliance with the minor new source review permit terms and conditions which are now applicable. Consequently, Public Citizen contends that Texas will not require an updated compliance certification to certify compliance with these permit terms and conditions, contrary to 40 CFR 70.5(c)(8) and 70.5(b) for compliance certifications and supplementary information.

EPA Response to Comment C3

In response to the first allegation, EPA disagrees that the streamlined procedures set forth in part 70 may only be used during the interim period, and that Texas must use the reopening provisions of 40 CFR 70.7(f) and (g) to incorporate MNSR into its existing title V permits. To the contrary, 40 CFR 70.4(d)(3)(ii)(D) specifies that the State must upon or prior to receiving full approval, ''institute proceedings to reopen part 70 permits to incorporate excluded minor NSR permits * * * [and] * * * [s]uch reopenings need not follow full permit issuance procedures nor the notice requirement of § 70.7(f)(3), but may instead follow the permit revision procedure in effect under the State's approved part 70 program for incorporation of minor NSR permits.'' As described in our **Federal Register** notice proposing approval of the Texas Operating Permits Program,

Texas will institute proceedings to reopen its part 70 permits on or before full program approval and will use the provisions in 30 TAC 122.215 and 122.217 to incorporate the MNSR permits into existing title V permits, which is the permit revision procedure in effect under Texas's approved part 70 program. 66 FR 51897–98. Thus, for the reasons stated herein, EPA believes that Texas's procedures for reopening title V permits to incorporate MNSR is consistent with the requirements of part 70.

In response to the second allegation, EPA disagrees that 40 CFR 70.4(d)(3)(ii)(D) requires the immediate submission of applications or updates to pending applications. As previously discussed, this section requires a state to ''institute proceedings to reopen part 70 permits'' to incorporate MNSR *on or before a State receives full approval.* The TNRCC will institute proceedings to reopen previously issued title V permits and draft title V permits for which TNRCC issued or authorized the initiation of public notice prior to June 3, 2001. The TNRCC has stated that it will begin these proceedings no later than December 1, 2001. The TNRCC will accomplish this reopening through direct notification in writing to each individual permit holder, during stakeholder meetings, and through the TNRCC website. Another follow-up letter will be sent to each permit holder when it is time to reopen the permit holder's permit to incorporate the MNSR permits and PBRs. 66 FR at 41897–98. Thus, as required by part 70, TNRCC will have *instituted proceedings* to incorporate MNSR prior to full approval. Part 70 does not require that the reopening occur prior to full approval, just that the process begin.

In response to the third allegation, EPA disagrees that Texas will assume that applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions which are now applicable. Furthermore, we believe that the allegation is consistent with of the September 20, 2001, agreement set forth in the October 11, 2001 **Federal Register** notice. 66 FR 51897–98. The process described in the agreement contains no provision which would allow Texas to assume the applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions. To the contrary, 30 TAC 122.142(e) provides that if an emission unit is not in compliance with the applicable requirements (e.g., MNSR requirements) at time of permit issuance, the permit must contain a compliance schedule. Furthermore, Public Citizen's assertion is not consistent with the provisions in 30 TAC 122.146—Compliance Certification Terms and Conditions, which contains no provision which would allow Texas to assume the applicants who have already certified compliance are in compliance with the MNSR permit terms and conditions. Thus, we do not agree with these comments.

4. Comment C4—Lack of Sufficient Monitoring

Public Citizen alleges that Texas has stated that all minor new source review permits incorporated into title V permits will include monitoring that complies with 40 CFR 70.6(a)(3) and (c)(1). Public Citizen argues that those Texas operating permits that were issued or sent to public notice prior to June 3, 2001, clearly will not include adequate monitoring. Thus Public Citizen contends that these operating permits will not include all required applicable requirements or the monitoring sufficient to assure compliance with those requirements. Further, as discussed below, Public Citizen maintains that Texas's program does not provide for incorporation of sufficient monitoring into its title V permit. Public Citizen argues that Texas's program does not require that monitoring sufficient to assure compliance be incorporated into its title V permits. Further, Public Citizen contends that the provisions for incorporation of 40 CFR 70.6(a)(3) monitoring allow this monitoring to be incorporated in an untimely manner that does not provide for sufficient public participation. Public Citizen argues that Texas's program does not assure that adequate monitoring for minor new source review requirements will be incorporated into Texas permits.

EPA Response to Comment C4

The first allegation is that permits that were issued or sent to public notice prior to June 3, 2001 will not include all applicable requirements (*e.g.* MNSR is missing) and will not include all required monitoring. As described in the October 11, 2001 **Federal Register** notice, the TNRCC will reopen all title V permits which the TNRCC had authorized for public notice before June 3, 2001. Those permits which as of December 1, 2001, are two years or less before renewal will be reopened to incorporate MNSR no later than renewal. Permits for which renewal is longer than two years after December 1, 2001 will be reopened within three to four years of initial issuance, which is more expeditious than renewal. The September 20, 2001 agreement provides that all the MNSR permits include all monitoring, reporting and recordkeeping (MRR) requirements as required by part 70. 66 FR at 51898. Thus, Texas will add any necessary provisions to its title V permits to ensure that the requirements of part 70 concerning periodic monitoring (40 CFR 70.6(a)(3)(i)(B)) and monitoring sufficient to assure compliance as required by 40 CFR 70.6(c)(1) are met. It is the continuing responsibility of the source and permitting authority to ensure that a title V permit is not issued until it fully complies with the requirements of part 70. Therefore, we do not agree with this comment.

Public Citizen further alleges that Texas's program does not require that monitoring sufficient to assure compliance be incorporated into its title V permits. Under 30 TAC 122.142(c), each permit must contain periodic monitoring requirements that are designed to produce data that is representative of the emissions unit's compliance with applicable requirements. This is consistent with 40 CFR 70.6(c)(1) which provides that title V permits must contain ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit * * *'' In addition, 30 TAC 122.142(b)(2)(B)(ii) provides that each emission unit in the permit must contain specific terms and conditions for monitoring requirements associated with the applicable requirement sufficient to ensure compliance with the permit. Therefore, we do not agree with this comment.

Finally, Public Citizen alleges that the Texas program does not provide for sufficient public participation when Texas incorporates monitoring requirements into its title V permits. As stated above, the September 20, 2001, agreement assures that Texas will reopen title V permits in a timely manner to incorporate MNSR and that the incorporation procedures are consistent with part 70. 66 FR at 51897–98. Finally, with regard to the public participation aspect of the comment, if Texas adds MRR when the permit is reopened, then Texas is not required to follow the public participation requirements of 70.7(f)(3) when it adds monitoring. However, if MRR is not included at this time, then Texas would be required to provide for public participation (see 40 CFR 70.7(e)(4)(i)). Therefore, we do not agree with this comment.

5. Comment C5—Lack of Specificity in MNSR Permits

Public Citizen alleges the following:

First, Texas is not requiring permittees to identify all applicable MNSR provisions, but will instead produce a list of all PBRs (one type of minor new source review authorization) developed before 1991. Permittees would then attach the list of PBRs to their title V permit and application and indicate that some of the authorizations on the list applied to them. Permittees would not be required to identify which specific authorizations applied to them until a later date. Public Citizen contends that this makes it impossible for the public to evaluate whether a permittee has correctly identified applicable requirements and will prevent the addition of required monitoring to assure compliance with the applicable pre-1991 PBRs.

Second, Texas will not require all MNSR authorizations to be incorporated into its title V permits. Only those authorizations listed on the unit attribute form will be required to be incorporated into Texas's title V permits.

Third, the Texas approach for incorporating MNSR permit terms and conditions and PBR into title V permits violates title V and part 70. Public Citizen argues that the statute and EPA regulations require title V permits to assure compliance with all applicable requirements, including enforceable emissions limitations and standards. For example, Public Citizen refers to section 504(c) which requires each permit to ''set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' Public Citizen also contends that 40 CFR 70.2 defines applicable requirements to include ''[a]ny term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.'' Public Citizen also contends that section 70.6(a)(1) further requires that each permit shall include ''emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Public Citizen contends that the permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.'' Similarly, Public Citizen contends that 40 CFR 70.6(a)(3) requires each operating permit to contain all monitoring and testing associated with applicable requirements, such as minor NSR permit terms and conditions.

Therefore, Public Citizen contends that the Texas approach for assuring compliance with minor NSR permit terms and conditions by identifying and cross-referencing the minor NSR permit by permit number, and PBRs by their Section number, fails to comply with the aforementioned requirements of title V and part 70. Public Citizen contends that the aforementioned provisions require the terms and conditions of minor NSR permits, including actual enforceable emissions limitations and standards, operational requirements, and monitoring, for example, to be identified in title V permits, an obligation that is not fulfilled by unhelpful cross-references to permit numbers or rule sections.

EPA Response to Comment C5

In response to the first allegation, in the September 20, 2001 agreement, as set forth in the October 11, 2001 **Federal Register** notice, the TNRCC agreed that each title V permit will state: (1) That the terms and conditions of MNSR permits and PBR identified and cross-referenced in the title V permit are included as applicable requirements; [4] (2) the MNSR permits and PBR are incorporated by reference into the title V permit by identifying its permit number or the PBR by its Section number; and (3) the terms and conditions of each MNSR permit and PBR are included in the title V permits and are subject to part 70 requirements. 66 FR at 51897. The September 20, 2001, agreement further ensures that TNRCC will ensure availability of all MNSR permits and files to the public. The table of contents to the title V permit will also indicate the location within the title V permit of each MNSR preconstruction authorization numbers (file numbers).[5] 66 FR at 51898.

In response to the second allegation, the September 20, 2001, agreement, as set forth in the October 11, 2001 **Federal Register** notice, requires *all* MNSR permits and PBR to be incorporated into title V permits. The September 20, 2001 agreement does not contain any provision which would limit Texas only to incorporating only those authorizations listed on the unit attribute form as alleged by Public Citizen.

In response to the third allegation, we do not agree that Texas's approach for incorporating MNSR permits and PBR violates title V and part 70. As stated above, all the title V permits will incorporate the necessary MRR which will assure compliance with the title V permit, including MNSR and PBR requirements. Texas's program provides for inspection, entry, monitoring, compliance certification, and reporting requirements. See 30 TAC 122.142—122.146. Furthermore, the September 20, 2001 agreement provides that under the incorporation by reference process, Texas must incorporate all terms and conditions of the MNSR permits and PBR, which would include emission limits, operational and production limits, and monitoring requirements. We therefore believe that the terms and conditions of the MNSR permits so incorporated are fully enforceable under the full approved title V program that we are approving in this action. We therefore do not agree with these comments.

6. TNRCC's Schedule for Incorporating MNSR Requirements Into Existing Title V Permit and Authorizations

Baker Botts, L.L.P., does not support TNRCC's schedule for incorporating MNSR requirements into existing title V permits. The commenter believes that such incorporation should take place no sooner than renewal of the operating permit.

EPA Response to Comment C6

As set forth in our response to Comment C2—Timing of Incorporation of MNSR requirements, Texas will reopen its title V permits as follows: permits nearing renewal (*i.e.,* those with less than two years remaining until renewal) will be reopened at renewal to incorporate MNSR. Permits not close to renewal (*i.e.,* those with two or more years remaining until renewal (which includes permits issued prior to June 3, 2001)) will be reopened within three to four years initial issuance to incorporate MNSR. 66 FR at 51898. This schedule provides for a reasonable transition time for a State to reopen title V permits to incorporate MNSR. Baker Botts'

[4] As previously stated, although the September 20, 2001 did not reference PBRs as to this issue, it did state that PBRs will be cited to the lowest level of citation necessary to make clear what requirements apply to the facility. PBRs also fall under Texas's MNSR program.

[5] The September 20, 2001 agreement does not mention a table of contents, as was indicated in the **Federal Register** notice. 66 FR at 51898. This was not part of the agreement because TNRCC was already including a table of contents in its title V permits which references attachments for preconstruction authorizations. The attachment lists the relevant preconstruction authorizations, including PBRs. Likewise, the reference to providing the entire permit file to the requestor in Items 4 and the modification procedures in Item 5 of the MNSR procedures (66 FR at 51898) were not included in the September 20, 2001 agreement. TNRCC will, of course, provide the entire permit file to anyone to requests it. As to Item 5, this relates to modification permit revision procedures, as required by its regulations.

proposal would delay this incorporation for permits with two or more years until renewal until the permit is renewed, thus further delaying the incorporation of MNSR requirements. The EPA believes that the commenter's approach is not consistent with part 70, and therefore disagrees with this comment.

D. Comment D—Emergency Provisions and TNRCC Upset/Maintenance Reporting Rules

Baker Botts, L.L.P. acknowledges that the TNRCC had removed its upset/maintenance reporting rules from its June 2001 submittal and is not proposing to use the upset/maintenance reporting rules to satisfy emergency provisions of 40 CFR part 70. As a result of TNRCC's actions, this deficiency no longer exists. However, Baker Botts also believes that the TNRCC's upset/maintenance reporting rules do not undermine the part 70 deviation reporting requirements. If a site's upset report previously submitted to TNRCC contains the information required for title V deviation reporting purposes, that report may be referenced in a site's deviation report; however, if a site has not already reported a deviation under sections 101.6 or 101.7, the Texas title V program requires the site to include the event in its next title V deviation repot. Thus, Baker Botts believes TNRCC's upset/maintenance reporting rules are not grounds for finding of deficiency.

EPA Response to Comment D

The EPA agrees that emergency provision deficiency has been corrected. However, Baker Botts claims that the upset/maintenance rules do not undermine part 70 deviation reporting requirements, and that the upset/reporting rules are not grounds for a finding of deficiency. The EPA did not state in its October 11, 2001 **Federal Register** notice that the upset/maintenance rules undermine Part 70 deviation reporting requirements, or that the upset/reporting rules are deficient. Therefore, this comment is beyond the scope of this action.

E. Comment E—Definition of ''Major Source''

Public Citizen asserts that part 70 requires fugitive emissions for all sources subject to Clean Air Act section 111 and 112 standards to be included in the calculation to determine whether a source is ''major.'' Public Citizen contends that Texas current definition of ''major source'' only requires inclusion of fugitives for source categories regulated under section 111 or 112 as of August 7, 1980.

Public Citizen states that Texas has not changed its regulations in response to this deficiency. The EPA's proposed approval acknowledges that Texas definition does not match the current requirement in 40 CFR 70.2. 66 FR 51895, 51899 (October 11, 2001). The fact that EPA has proposed to amend the regulation does not alter Texas's obligation to comply with it.

EPA Response to Comment E

Texas' definition of major source for category 27 reads as follows:

> (xxvii) any stationary source category regulated under FCAA, § 111 (Standards of Performance for New Stationary Sources) or § 112 for which EPA has made an affirmative determination under FCAA, § 302(j) (Definitions).

On November 27, 2001, EPA revised the definition of ''major source'' for category 27 to read as follows:

> (xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

66 FR 59161, 59166. Texas' regulation is consistent with the revised definition because both cover the same universe of sources. The Texas requirement to count fugitive emissions applies to sources ''for which EPA has made an affirmative determination under FCAA section 302(j)'' whereas the part 70 definition applies to sources which were ''subject to section 111 or 112 standards promulgated as of August 7, 1980.'' Because, August 7, 1980, was the date of EPA's last ''affirmative determination under section 302(j)'' the Texas requirement is now consistent with the current requirements of both parts 70 and part 71. Therefore, EPA does not agree with this comment.

F. Comment F—Definition of ''Title I Modification''

Public Citizen asserts that part 70 states that minor permit modification procedures may be used only for those permit modifications which ''are not modifications under any provision of title I of the Act.'' 40 CFR 70.7 (e)(2)(i)(A)(5). Public Citizen further argues that part 70 states that off-permit changes may be made if certain conditions are met, including the requirement that the changes not be ''modifications under any provision of title I of the Act.'' 40 CFR 70.4(b)(12).

Public Citizen states that in EPA's notice of proposed interim approval for Texas, EPA interpreted ''title I modifications'' to include minor new source review and pre-1990 National Emissions Standards for Hazardous Air Pollutant (''NESHAP'') requirements. 60 FR 30037, 30041 (June 7, 1995). Public Citizen argues that because Texas defined title I modification to exclude changes reviewed under a minor new source review program or changes that trigger the application of NESHAPS established prior to the 1990 amendments, EPA found Texas's program deficient. *Id.*

Public Citizen maintains that Texas removed the definition of title I modification from its regulations in response to EPA's comments. They contend that Texas has clearly stated, however, that it maintains its interpretation that largely excludes modifications made pursuant to Texas's minor new source review program from the definition of title I modification. As a result Public Citizen argues that Texas is proposing to allow minor new source review authorizations and modifications to be incorporated into its title V permits through minor modification and off-permit procedures.

Public Citizen contends that ''title I modifications'' clearly include modifications under State minor new source review programs. Public Citizen refers to Section 110(a) of the Clean Air Act is clearly within title I of the Act. Further, Public Citizen contends that section 110(a)(2)(c) refers to ''modifications'' of minor new source review authorizations. Public Citizen contends that the interpretation adopted by EPA in the preamble to the 1994 proposal for revisions to part 70 constitutes the Agency's initial, definitive interpretation of ''title I modification.'' 59 FR 44460, 44462 (Aug. 29, 1994). Accordingly, Public Citizen contends that EPA may only change such an interpretation pursuant to notice and comment rulemaking. *See* generally, *Paralyzed Veterans* v. *D.C. Arena,* 111 F.3d 579, 586 (D.C. Cir. 1997).

EPA Response to Comment F

As stated in proposal and in the June 7, 1995 **Federal Register** notice, we noted that at the time of interim approval Texas's definition of ''title I modification'' in Section 122.10 did not include changes reviewed under a minor source preconstruction review plan (MNSR), nor did it include changes that trigger the application of National Emission Standards for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments. 60 FR at 30041. In the 1998 submittal, Texas deleted the definition of title I modification from Section 122.10. Since part 70 does not have a definition of title I modification, Texas's elimination of its definition of title I modification corrected the deficiency by removing

the possibility of a conflicting regulatory definition.

Thus, as to the adequacy of the Texas regulations, the commenter's assertions regarding the meaning and status of EPA's statements in the August 29, 1994 proposed Part 70 revisions, and the June 7, 1995 proposed approval concerning the definition of ''Title I modification'' have been rendered moot by Texas' removal of the definition from its regulations. It follows that there is no need for EPA to respond to the commenter's views regarding EPA's statements for the purpose of resolving a possible regulatory conflict. Moreover, to the extent that the commenter remains concerned about this issue due to the manner in which Texas has implemented its program, the commenter's generalized allegations that Texas maintains interpretations that are at odds with what the commenter believes EPA's interpretations are, or should be, such allegations lack sufficient specificity to require a response. If there are specific permits as to which the commenter believes Texas is implementing its program in a manner inconsistent with the requirements of applicable Federal law, it may of course present them to EPA for response.

G. Comment G—Fugitive Emissions in Applications

Public Citizen states that EPA noted in the June 7, 1995, notice of proposed IA that Texas did not require fugitive emissions to be included in permit applications in the manner required by 40 CFR 70.3. 60 FR 30037 (June 7, 1995). Public Citizen contends that Texas still does not require that complete permit applications include fugitive emissions. While Texas did adopt Section 122.132(e)(10), as indicated in the proposed full approval notice, Public Citizen contends that this provision does not ensure that applications and permits will include fugitive emissions. Public Citizen contends that Texas allows facilities to submit ''abbreviated applications,'' which are required to include only: (1) Identifying information regarding the site and applicant, (2) certification by a responsible official and (3) any other information deemed necessary by the executive director. 30 TAC 122.132(c). Public Citizen contends that these applications do not require the submissions of fugitive emission information.

Similarly, Public Citizen contends that Texas's regulations provide for a ''phased permit detail process.'' 30 TAC 122.131. Public Citizen contends that this process allows sites with 75 or more emission units in nonattainment areas, or with 150 or more emission units in attainment areas, to qualify for the phased permit detail process. Public Citizen contends that these sites are allowed to submit permit applications that include fugitive emission information and all other detailed information for only a portion of their emissions units. Public Citizen contends that the sites are then required to follow a schedule, included as a term and condition of the permit, for submitting the additional detailed information. 30 TAC 122.131(b).

Thus, Public Citizen contends that Texas's abbreviated application and phased permit detail process do not comply with Part 70's requirement that permit applications include fugitive emissions in the same manner as stack emissions. 40 CFR 70.3(d).

EPA Response to Comment G

Although TNRCC does allow facilities to submit an abbreviated application, the fact remains that the remaining information, including fugitive emissions information, is required for every operating permit. The TNRCC informs the facility when the remaining information needs to be submitted. 30 TAC 122.132(c) & 122.132(e)(10). This applies even if the ''phased permit detail process'' is followed. 30 TAC 122.131(b). The abbreviated application procedure was developed to allow TNRCC to develop the application submittal schedule without requiring the applicant to continually update and certify the detailed application information prior to the technical review of the permit. 26 TexReg at 3762. It does not make any difference that the abbreviated application does not contain fugitive emissions information so long as this information is submitted when requested by TNRCC and is available to the public when the draft permit goes out for public comment. A full application, including fugitive emissions information, is required prior to TNRCC issuing a draft permit. 30 TAC 122.132(c) & (e); 26 TexReg at 3762. Therefore, EPA does not agree with this comment.

H. Comment H—Inadequate Personnel and Funding

Public Citizen contends that EPA noted in the proposed approval that Texas had to provide complete projection of program costs for four years after approval was required for full approval. 66 FR 51895, 51902 (Oct. 11, 2001). Public Citizen argues that Section 70.4(b)(8) of EPA's regulations require states to submit a statement that adequate personnel and funding have been made available to develop, administer, and enforce the operating permit program. Public Citizen contends that this statement must include an estimate of the permit program costs for the first four years after approval and a description of how the state plans to cover those costs. 40 CFR 70.4(b).

Public Citizen further contends that Texas's supplemental ''Statement of Adequate Personnel and Funding'' submitted on August 22, 2001, acknowledges that the agency will face a funding shortfall for its operating permits program in 2003 unless the fees charged by the State are increased. The statement says, ''staff will recommend to the Commission to raise the emissions fee to $30 per ton. Public Citizen contends that this increase is necessary to provide the funding to support the title V activities of the state and is contingent on approval by the Commission.'' Likewise, Public Citizen contends that the Texas Sunset Commission Staff Report on the TNRCC noted that the title V fund—the Clean Air Account—will have a $3.2 million shortfall by fiscal year 2003. Commenters believe that the State must commit to raising the emission fee in 2003, rather than merely stating that staff will recommend such an increase.

Even with the increase in fees, however, Commenters do not believe that Texas has demonstrated adequate personnel and funding to run the state operating permits program. Public Citizen argues that the most complex and time-consuming title V facilities in Texas are due to be permitted over the next few years. Further, minor new source review requirements will have to be incorporated into Texas permits during this period. Public Citizen contends that in EPA's proposal for revisions to IA criteria, EPA noted:

> Texas has pointed to the exceptionally large number of part 70 sources which are located in the State and which are candidates for minor NSR. Texas estimates that it has over 3,000 part 70 sources, including the nations largest concentration of chemical manufacturing and petroleum refining facilities. Many of these sources have large numbers of emission units, making part 70 permitting difficult and time-consuming. * * * While Texas's burden of processing part 70 applications will be heavy in any event, Texas contends that the added burden of integrating minor NSR into part 70 permits will completely overwhelm the State's processing system in the initial years of implementation.

59 FR 44572, 44574–44575 (Aug. 29, 1994).

Public Citizen contends that despite this huge increase in workload, Texas has projected that only a very small increase in the percentage of time,

required by only some of the divisions assigned to title V, will be needed in the coming years. For example, Public Citizen argues that the air permits division is projected to only provide an 8.3% increase in staff time, while the field operations and enforcement divisions project no increase. Public Citizen does believe Texas had projected costs for staff adequate to handle incorporation of minor new source review and the processing and enforcement of the large, complex sites that will require permitting in the next few years.

In addition, Public Citizen contends that as a result of the low salaries offered by the Texas Natural Resource Conservation Commission (TNRCC), the agency often has numerous vacancies. Public Citizen contends that the high turnover means that there is often a lack of trained, experienced personnel and that remaining personnel must shoulder an unreasonable workload.

EPA Response to Comment H

As stated in the proposal, on August 22, 2001, Texas submitted a complete four-year projection. In its fee demonstration, Texas documented that it requires an average of $34,274,000 per year to cover the cost of the title V program. Texas projects that it will collect an average of approximately $36,840,000 per year in fees from title V sources. This demonstration indicates that the title V fees that Texas anticipates will be collected are sufficient to cover the program costs with an adequate margin of safety. The TNRCC has the authority to adjust the emissions fee as necessary using its rulemaking authority (Texas Health & Safety Code Section 382.0621). The demonstration submitted by Texas meets the requirements of 40 CFR 70.4(b)(7) and (8), and therefore we do not agree with this comment.

I. Comment I—Monitoring Requirements and Public Participation

Baker Botts L.L.P. responded to our proposal to take no action on TNRCC's Chapter 122 revisions relating to periodic monitoring (PM), compliance assurance monitoring (CAM), and public participation. It believes that these provisions meet the requirements of part 70 and that we should approve them. Baker Botts further states that Texas's part 70 program satisfies all part 70 requirements with respect to compliance and deviation reporting based on the monitoring requirements and that the deviation reporting and compliance certification of 30 TAC Chapter 122 fully comply with part 70.

EPA Response to Comment I

As stated in the October 11, 2001, proposal and in section IV of this preamble, we are not taking action on provisions relating to General Operating Permits (promulgated February 26, 1999), Public Participation (promulgated September 24, 1999), and Compliance Assurance Monitoring and Periodic Monitoring (promulgated September 1, 2000) at this time. Texas submitted these revisions to EPA for approval on June 1, 2001. Some of these revisions are related to the comments we received from citizens in response to our **Federal Register** notice published December 11, 2000. The citizens identified areas where they believe that certain of these provisions are deficient. The rationale for taking no action on these provisions is outlined in detail in our response to Comment A, section III of this notice. We will respond to the citizen comments as described in section V.C of this preamble which provides additional information on the citizen comment letters. As discussed therein, we will respond either by publishing a notice of deficiency if 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. Any provisions unrelated to the citizen comment letters will be addressed in accordance with section V.D.

J. Comment J—Statutory Changes Enacted After State Submittal of Operating Program

Public Citizen claims that several statutory changes adopted since 1995 constitute program deficiencies, and that these changes were not adequately addressed, or not addressed at all, in the AG statement. These statutes include the following:

a. Audit Privilege—Tex. Rev. Civ. Stat. Art. 4447cc. (2 commenters);

b. Voluntary Emissions Reduction Permit Program—SB766;

c. Regulatory Flexibility—SB 1591 (1997) Section 5.123, Texas Water Code; and

d. TNRCC Sunset Legislation—HB2912.

Audit Privilege Act Comments

Baker Botts, L.L.P. states that the Audit Privilege Act does not limit the TNRCC's ability to adequately administer and enforce the title V program.

Public Citizen states that the Audit Privilege Act prevents the State from having the authority to seek appropriate penalties and injunctive relief for Clean Air Act violations. Public Citizen argues that there is no AG statement reflecting the interpretation or implementation of the Texas audit privilege law to respond to the deficiency noted in EPA's IA of the Texas title V Program. Public Citizen further argues that Texas has implemented and interpreted the law contrary to EPA's audit policy and the requirements for state title V permit programs. While the EPA reached an agreement with Texas on amendments to its law in 1997, Public Citizen contends that EPA made it clear that the actual implementation of the law would be a critical factor in EPA's future evaluation of the law.

Public Citizen contends that the Audit Privilege Act violates EPA guidance [6] because of inadequate limits on privileged information. Public Citizen contends that The EPA guidance limits the circumstances under which information may be ''privileged'' pursuant to an audit law. Public Citizen also contends that Information may not be privileged if (1) it is required by law, regulation or permit (2) state access is needed to verify compliance, or (3) an audit presents evidence of criminal conduct. It also contends that it is unclear under the Texas audit law whether information required to be reported or maintained pursuant to title V or a title V permit may be considered exempt. Thus, Public Citizen contends that EPA must require Texas law to be amended to make clear that none of this information may be privileged, withheld from the public, or excluded from any judicial or administrative proceeding involving any party.

Also, Public Citizen alleges that Texas law does not have a sufficient limit on claims of privilege regarding documents needed to verify compliance. Because Texas Audit law allows certain information collected during an audit to be held as privileged, even if no notice of audit is filed with the state, Public Citizen contends that many companies do audits just to claim the privilege. Thus, Public Citizen contends that whether violations were found during an audit cannot be determined under Texas law because industry can simply claim privilege for all information collected during the audit. Public Citizen contends that no subsequent inspection will include inspection of the ''privileged'' documents because TNRCC has instructed its personnel to not ask for information from audits and to even refuse to look at information offered by the regulated entity. There is no provision for reviewing documents

[6] Herman & Nichols, Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce title V Requirements (April 5, 1996).

that are required to be made available or public under Texas law.

Furthermore, Public Citizen contends that the law does not prevent all evidence of criminal conduct from being disclosed. While the law provides that such information may be used in criminal proceedings, it does not remove the barrier to obtaining such information for use in criminal investigations.

Public Citizen also claims that the Audit Privilege Act violates EPA guidance by providing inadequate limits on immunity from penalties. Public Citizen contends that EPA's guidance requires state audit laws to limit the types of violations that may be exempt from penalties. Public Citizen argues that the guidance provides that state audit laws must not exempt (1) repeat violations, (2) violations of previous court or administrative orders, (3) violations resulting in serious harm or risk of harm, or (4) violations resulting in substantial economic benefit to the violator. *Id.* at p. 4. The Texas Audit Privilege Law exempts repeat violations and violations of previous court orders or administrative orders. Tex. Rev. Civ. Stat. art. 4447cc, Sec. 10. (2000).

Public Citizen contends that the Texas audit law does provide that a violation is not exempt if the violation resulted in ''injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.'' *Id.* at Sec. 10(b)(7). Public Citizen argues that this standard is higher than the ''resulting in serious harm or risk of harm'' provided by EPA guidance. Likewise, the Texas law provides that immunity does not apply if ''the violations have resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors'' conflicts with EPA's requirement that immunity not be granted where the violation resulted in a substantial economic benefit.

Public Citizen contends that these problems with Texas law are exacerbated by the fact that Texas does not require facilities to prove their entitlement to immunity. Public Citizen contends that facilities are not required to submit proof of such entitlement to the State when they conduct an audit. The audit documents themselves are simply labeled as privileged by the permittee. Further, Public Citizen contends that the Audit Privilege Act expressly states that in a civil or administrative enforcement action ''[a]fter the person claiming the immunity establishes a *prima facie* case of voluntary disclosure * * * the enforcement authority has the burden of rebutting the presumption by a preponderance of the evidence or, in a criminal case, by proof beyond a reasonable doubt.'' Tex. Rev. Civ. Stat. art. 4447cc, Sec. 10(f) (2000).

Although more than 500 disclosures of violation have been filed, Public Citizen contends that TNRCC has never collected a penalty because a violation was a continuous or repeat violation, caused the risk of serious injury, or because a competitive advantage or economic benefit was obtained through the violation.

Public Citizen also claims that as a result of its audit law, Texas lacks the minimum enforcement authority required by title V to administer a state operating permits program because Texas lacks authority to recover civil penalties for ''each violation'' occurring at a title V source, if that violation qualifies for the immunity provisions of the Texas Audit Privileges Law. Therefore, EPA must disapprove the Texas program as a result of the state's inadequate enforcement authority.

EPA Response to Audit Privilege Act Comments

Public Citizen has raised a mixture of authority and implementation issues regarding the Audit Privilege Act. EPA is responding below to the authority issue and will respond to the implementation issues at a later date, as the implementation issues are unrelated to correcting interim approval deficiencies.

The EPA believes that the Texas Audit Privilege Act (Audit Act) is not in conflict with Texas's authority to enforce Title V. In evaluating the Audit Act, as well as those of other states, EPA has looked to the requirements for enforcement authority contained in the federal environmental statutes and their implementing regulations for all federal programs to determine if the state retains the minimum requirements necessary for approval or authorization of those federal programs.[7]

With respect to the issue regarding alleged inadequate limits on privileged information, Texas has said that it will interpret Section 9(c) of the Audit Act[8] as giving the public the right to obtain any information in the state's possession required to be made available under federal or Texas law, irrespective of whether it is privileged under Texas law. This interpretation is consistent with federal delegation provisions that require States to make information publicly available. For example, Section 3006(f) of the Resource Conservation and Recovery Act (RCRA) requires that to be authorized, a state must make public any information it has obtained on ''facilities and sites for the treatment, storage and disposal of hazardous waste * * * in substantially the same manner * * * as would be the case if the Administrator [of EPA] was carrying out the provisions of this subchapter in such state.'' Section 3007(b) of RCRA goes even further in requiring public availability of information obtained from ''any person'' by the state or EPA, as long as the information may not be claimed as confidential under the Freedom of Information Act (FOIA). Federal regulations governing the Safe Drinking Water Act provide the same degree of public access.

Likewise, under Section 114(c) of the Act, any records, reports or information obtained under section 114(a) of the Act must be available to the public, as long as the information may not be claimed as confidential under FOIA. Sections 502(b)(8) and 503(c) of the Act and 40 CFR 70.4(b)(3)(viii) provide that the permit application, compliance plan, permit, monitoring and compliance report are available to the public, subject to the same protections under FOIA. In addition, these same authorities provide that the contents of a Title V permit cannot be claimed as confidential. The Texas AG has certified that:

> State law provides authority to make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report, except for information entitled to confidential treatment. State law provides that the contents of an operating permit shall not be entitled to confidential treatment.

Attorney General Statement, Section XIII (October 29, 2001). Therefore, EPA believes that the Audit Privilege Act meets the minimum federal statutory and regulatory requirements for access to information.

Furthermore, EPA disagrees that the Audit Privilege Act provides a barrier to obtaining information for use in criminal investigations. The Audit Privilege Act limits the application of the privilege to ''civil or administrative proceedings'', which cannot reasonably be read as encompassing criminal investigations. *See* Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 5(b). In addition,

[7] See, for example, Clean Air Act sections 110, 114, and 502 and 40 CFR 70.11; Resource Conservation and Recovery Act section 3006 and 40 CFR part 271; Clean Water Act Section 402 and 40 CFR 123.27.

[8] ''If information is required to be available to the public by operation of a specific state or federal law, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under Subsection (a) or (b).'' Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 9(c).

Section 9(b) removes any limit on the State's ability to review any information that is required to be made available under federal or state law prior to any in camera determination that such material may be privileged.[9] Those requirements encompass virtually all information that is relevant to determining a violation, leaving the State with ample authority to conduct both civil and criminal investigations without the encumbrance of a prior hearing to determine whether the material can be reviewed.

As to the issues regarding alleged inadequate limits on immunity from penalties, EPA points out that if the violation ''results in injury or imminent and substantial risk of serious injury to one or more persons at the site or off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment'', or ''the violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors'', immunity does not apply. Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 10(b)(7) and 10(c)(5). Furthermore, EPA believes that Texas has retained authority to curb abuses because it can issue administrative or consent orders for violations even if these are voluntarily disclosed, and the subsequent violation of such orders is not entitled to immunity under State law. In addition, Texas has the discretion to determine that a pattern of significant violations should disqualify a company from further penalty amnesty.

Therefore, for the reasons set forth in the **Federal Register** notice (66 FR at 51903) and as set forth above, EPA believes that TNRCC has adequate authority to enforce Title V. Because implementation issues are not related to interim approval issues, we will address those allegations as set forth in Section V.D.

K. Comment K—Confidentiality

In this comment, Public Citizen is concerned that public air-related information that should not be classified as confidential is being withheld under claims of confidentiality. Much of this comment is identical to a comment received in a citizen comment letter. This portion of the comment will be addressed as set forth in section V.C. Public Citizen did raise one additional issue, namely, the alleged change in the treatment of emissions data by the Texas AG. Public Citizen contends that previously, a 1975 AG statement prevented companies from stopping the release of emissions data to the public if a company had claimed the emissions data as confidential. Now, Public Citizen contends that the AG has stated that emissions related data, including modeling of impacts, and information in a number of other documents of impacts, and information in a number of a other documents claims as confidential business information must be excluded from public access. Thus, Public Citizen asserts that Texas should submit a supplemental AG statement on this issue, and EPA should withhold approval until this issue is resolved.

EPA Response to Comment K

As previously noted, EPA is fully approving the Texas operating permit program because we believe that Texas has adequately addressed the IA deficiencies we identified in our 1995 and 1996 **Federal Register** notices. As such, for the purpose of this approval, Texas is only required to address issues related to the correction of IA deficiencies. The EPA will address the issue relating to the confidentiality of emissions data as set forth in section V.D.

IV. Did Texas Submit Other Title V Program Revisions?

The June 1, 2001, submittal included other changes that Texas made to Chapter 122. These changes were made after we granted IA of Texas's operating permits program and do not address the IA deficiencies. Because the following changes do not address the IA issues, they do not affect our decision to grant full approval of Texas operating permits program. The additional revisions to Chapter 122 relate to General Operating Permits (promulgated February 26, 1999), Public Participation (promulgated September 24, 1999) and Compliance Assurance Monitoring and Periodic Monitoring (promulgated September 1, 2000).

We have received comments from citizens concerning these additional provisions in response to our **Federal Register** notice published December 11, 2000. The citizens identified areas where they believe these provisions are deficient. We will respond to the citizen comments as described in section V.C of this preamble which provides additional information on the citizen comment letters. We will take appropriate action on the other revisions to Chapter 122 at a later date.

V. What Is Involved in This Final Action?

A. Final Action

In this action, we are promulgating full approval of the operating permits program submitted by the State of Texas. The program was submitted by Texas to us for the purpose of complying with federal requirements found in title V of the Act and in part 70, which mandate that States develop, and submit to us, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands. We have reviewed this submittal of the Texas operating permits program and are granting full approval.

B. Indian Lands and Reservations

In its program submission, Texas did not assert jurisdiction over Indian country. To date, no tribal government in Texas 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 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. 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.

C. Citizen Comment Letters

On May 22, 2000, EPA promulgated a rulemaking that extended the IA 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

[9] ''Notwithstanding the privilege established under this Act, a regulatory agency may review information that is required to be available under a specific state or federal law, but such review does not waive or eliminate the administrative or civil evidentiary privilege where applicable. Tex. Rev. Civ. Stat. Art. 4447cc, Sec. 9(b).

within 90 days of publication of the **Federal Register** notice.

Several citizens commented on what they believe to be deficiencies with respect to the Texas title V program. As stated in the October 11, 2001 **Federal Register** notice proposing to fully approve the Texas operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 14, 2001 to timely public comments on programs that have obtained IA. 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. 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.

D. Non IA Issues Not Addressed in Citizen Comment Letter Responses

Public Citizen raised many issues in response to our October 11, 2001, proposal that are not related to the IA issues and were not raised in response to EPA's December 2000 notice soliciting citizen comments on state operating permit programs. These issues include sufficiency of the AG Statement, statutory changes enacted after 1995, Audit Privilege Act implementation, confidentiality of emissions data, alleged failure of Texas's compliance assurance monitoring provisions to comply with part 64, public participation in enforcement, emergency orders, temporary sources, alleged violation of statutory deadlines, insignificant emission units, and acid rain requirement. For the reasons set forth in our response to Comment A in section III, EPA believes that limiting our review to IA issues does not limit our ability to grant full approval to Texas. Therefore, EPA will address the issues at a later date.

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

The 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, 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. EPA's IA of Texas's prior program expires on December 1, 2001. In the absence of this full approval of Texas's amended program taking effect on November 30, 2001, the federal program under 40 CFR part 71 would automatically take effect in Texas 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 Texas 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 Texas has been administering the title V permit program for six years under an IA. 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.

VII. 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. 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 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.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 29, 2001.

Lawrence E. Starfield,

Acting Deputy Regional Administrator, Region 6.

For the reasons set out in the preamble, Appendix A of Part 70 of 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 under the entry for Texas by adding paragraph (b) to read as follows:

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

* * * * *

Texas

* * * * *

(b) The Texas Natural Resource Conservation Commission submitted program revisions on June 12, 1998, and June 1, 2001, and supplementary information on August 22, 2001; August 23, 2001; September 20, 2001; and November 5, 2001. The rule revisions adequately addressed the conditions of the IA effective on July 25, 1996, and which will expire on December 1, 2001. The State is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01–30270 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7110–7]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Indiana final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on August 17, 2001 at 66 FR 43143 and provided for public comment. The public comment period ended on September 17, 2001. We received no comments. No further opportunity for comment will be provided. EPA has determined that Indiana's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will be effective on December 6, 2001.

ADDRESSES: You can view and copy Indiana's application from 9 am to 4 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Lynn West (317) 232–3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION: On August 17, 2001, U.S. EPA published a proposed rule proposing to grant Indiana authorization for changes to its Resource Conservation and Recovery Act program, listed in section E of that notice, which was subject to public comment. No comments were received. We hereby determine that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus,

EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Indiana is being authorized by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On August 17, 2001 (66 FR 43143) EPA published a proposed rule. In that rule we proposed granting authorization of changes to Indiana's hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal. EPA found Indiana's RCRA program to be satisfactory.

E. What Has Indiana Previously Been Authorized for?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692), and January 4, 2001, effective January 4, 2001 (66 FR 733).

F. What Changes Are We Authorizing With Today's Action?

On March 16, 2001, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes: n

Description of Federal Requirement (include Checklist #, if relevant)	FEDERAL REGISTER date and page (and/or RCRA statutory authority)	Analogous State Authority
Hazardous and Used Oil Fuel Criminal Penalties; Checklist CP	November 8, 1984 SWDA 3006(h), 3008(d), 3014	IC 13–30–6 Effective 1996 previously codified at IC 13–17–13–4 Effective 1985 IC 13–17–13–3 Effective 1986
Hazardous Waste Management System; Testing and Monitoring Activities; Checklist 158.	June 13, 1997 62 FR 32452	329 IAC 3.1–1–7; 3.1–9–1; 3.1–10–1; 3.1–11–1 Effective April 5, 2000
Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Checklist 159.	June 17, 1997 62 FR 32974	329 IAC 3.1–6–1; 3.1–6–2(17); 3.1–6–2(18); 3.1–6–2(19); 3.1–6–2(20); 3.1–12–1; 3.1–12–2(10); 3.1–12–2(12) Effective April 5, 2000
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance; Checklist 160.	July 14, 1997 62 FR 37694	329 IAC 3.1–12–1; 3.1–12–2(10) Effective April 5, 2000
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment; Checklist 163.	December 8, 1997 62 FR 64636	329 IAC 3.1–9–1; 3.1–10–1; 3.1–13–1; 3.1–13–2(8), (9) Effective April 5, 2000
Kraft Mill Steam Stripper Condensate Exclusion; Checklist 164	April 15, 1998 63 FR 18504	329 IAC 3.1–6–1 Effective April 5, 2000
Recycled Used Oil Management Standards; Technical Correction and Clarification; Checklist 166; as amended Checklist 166.1.	May 6, 1998 63 FR 24963 July 14, 1998 63 FR 37780	329 IAC 3.1–6–1; 3.1–6–2(4); 13–1–1; 13–1–2; 13–3–1; 13–3–1(b)(2); 13–4–3; 13–6–6; 13–7–5; 13–8–5; 13–9–5 Effective April 5, 2000
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes. Checklist 167A	May 26, 1998 63 FR 28556	329 IAC 3.1–12–1; 3.1–12–2(6); 3.1–12–2(10); 3.1–12–2(12); 3.1–12–2(13) Effective April 5, 2000
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions Checklist 167B.	May 26, 1998 63 FR 28556	329 IAC 3.1–12–1; 3.1–12–2(1)(D); 3.1–12–2(2)(D); 3.1–12–2(3); 3.1–12–2(6) Effective April 5, 2000
Land Disposal Restrictions Phase IV—Corrections; Checklist 167C; as amended Checklist 167C.1.	May 26, 1998 63 FR 28556 June 8, 1998 63 FR 31266	329 IAC 3.1–12–1; 3.1–12–2(1)(C); 3.1–12–2(2)(C); 3.1–12–2(3); 3.1–12–2(12); 3.1–12–2(13) Effective April 5, 2000

Description of Federal Requirement (include Checklist #, if relevant)	FEDERAL REGISTER date and page (and/or RCRA statutory authority)	Analogous State Authority
Bevill Exclusion Revisions and Clarification; Checklist 167E	May 26, 1998 63 FR 28556	329 IAC 3.1–6–1 Effective April 5, 2000
Exclusion of Recycled Wood Preserving Wastewaters; Checklist 167F	May 26, 1998 63 FR 28556	329 IAC 3.1–6–1 Effective April 5, 2000
Hazardous Waste Combustors Revised Standards; Checklist 168	June 19, 1998 63 FR 33782	329 IAC 3.1–6–1; 3.1–13–1 Effective April 5, 2000
Petroleum Refining Process; Checklist 169; as amended; Checklist 169.1.	August 6, 1998 63 FR 42110 October 9, 1998 63 FR 54356	329 IAC 3.1–6–1; 3.1–6–2(4); 3.1–6–2(17); 3.1–6–2(19); 3.1–11–1; 3.1–12–1; 3.1–12–2(12) Effective April 5, 2000
Land Disposal Restrictions Phase IV; Checklist 170	August 31, 1998 63 FR 46332	329 IAC 3.1–12–1; 3.1–12–2(12) Effective April 5, 2000
Emergency Revisions of LDR Treatment Standards (Carbamate Production); Checklist 171.	September 4, 1998 63 FR 47409	329 IAC 3.1–12–1; 3.1–12–2(12); 3.1–12–2(13) Effective April 5, 2000
Emergency Revisions of LDR Treatment Standards (Characteristic Slags); Checklist 172.	September 9, 1998 63 FR 48124	329 IAC 3.1–12–1; 3.1–12–2(10) Effective April 5, 2000
Land Disposal Restrictions Treatment Standards (Spent Potliners); Checklist 173.	September 24, 1998 63 FR 51254	329 IAC 3.1–12–1; 3.1–12–2(10); 3.1–12–2(12) Effective April 5, 2000
tandards Applicable to Owners and Operators of Closed/Closing Facilities; Checklist 174.	October 22, 1998 63 FR 56710	329 IAC 3.1–9–1; 3.1–9–2(9); 3.1–10–1; 3.1–10–2(11); 3.1–10–2(12); 3.1–10–2(13); 3.1–10–2(14); 3.1–13–1; 3.1–13–2(1),(2),(3),(4); 3.1–13–2(8),(9); 3.1–13–3; 3.1–13–4; 3.1–13–5; 3.1–13–6; 3.1–13–7; 3.1–13–8; 3.1–13–9; 3.1–13–10; 3.1–13–11; 3.1–13–12; 3.1–13–13; 3.1–13–14; 3.1–13–15; 3.1–13–16; 3.1–13–17; 3.1–14; 3.1–15 Effective April 5, 2000
Hazardous Remediation Waste Management Requirements (HWIR Media); Checklist 175.	November 30, 1998 63 FR 65874	329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–9–1; 3.1–9–2(1),(2); 3.1–10–1; 3.1–10–2(1),(2),(3),(4); 3.1–12–1; 3.1–12–2(6); 3.1–13–1; 3.1–13–2(15) Effective April 5, 2000
Universal Waste Rule; Technical Amendment; Checklist 176	December 24, 1998 63 FR 71225	329 IAC 3.1–11–1; 3.1–11–2(3); 3.1–16–1; 3.1–16–2(3) Effective April 5, 2000
Organic Air Emission Standards; Checklist 177	January 21, 1999 64 FR 3381	329 IAC 3.1–7–1; 3.1–9–1 Effective April 5, 2000
Petroleum Refining Process Wastes; Checklist 178	February 11, 1999 64 FR 6806	329 IAC 3.1–6–1 Effective April 5, 2000

G. Where Are the Revised State Rules Different From the Federal Rules?

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1–12–2 and 3.1–13–2(4). EPA will continue to implement those requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. What Is Codification and Is EPA Codifying Indiana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart P for this authorization of Indiana's program changes until a later date.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or

uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.'' This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Indiana is not approved to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State. Thus, Executive Order 13175 does not apply to this rule.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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 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).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 2, 2001.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 01–30269 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 3610, 3620, and 3800

[WO–320–1430–PB–24 1A]

RIN: 1004–AD29

Mineral Materials Disposal; Sales; Free Use; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** of November 23, 2001, a final rule revising the regulations on Mineral Materials Disposal. The final rule inadvertently contained an incorrect effective date.

EFFECTIVE DATES: The effective date of the final rule published on November 23, 2001 (66 FR 58892), is corrected to read January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, Federal Register Liaison Officer, at (202) 452–5042. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On November 23, 2001, BLM published a final rule in the **Federal Register** (66 FR 58892) revising the regulations on Mineral Materials Disposal in 43 CFR part 3600. In FR Doc. 01–29001, we stated the wrong effective date in the first column of page 58892. The effective date should have been 60 days after the date of publication, or January 22, 2002.

Dated: November 26, 2001.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 01–30231 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 215, and 242

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement to

update activity names and addresses and reference numbers.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR),IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0311; facsimile (703) 602–0350.

List of Subjects in 48 CFR Parts 202, 215, and 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202, 215, and 242 are amended as follows:

1. The authority citation for 48 CFR Parts 202, 215, and 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended in the definition of ''Contracting activity'', under the heading ''ARMY'', by removing the entry ''Troop Support Agency''.

PART 215—CONTRACTING BY NEGOTIATION

215.404–71–3 [Amended].

3. Section 215.404–71–3 is amended in paragraph (e)(3), in the second sentence, by removing ''75'' and ''25'' and adding in their place ''80'' and ''20'', respectively.

4. Section 215.404–76 is amended in paragraph (b) by revising the table to read as follows:

215.404–76 Reporting profit and fee statistics.

* * * * *

(b) * * *

Contracting office	Designated office
ARMY	
All	U.S. Army Contracting Support Agency, ATTN: SARD–RS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201.
NAVY	
All	Commander, Fleet and Industrial Supply Center, Norfolk, Washington Detachment, Code 402, Washington Navy Yard, Washington, DC 20374–5000.
AIR FORCE	
Air Force Materiel Command (all field offices).	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433–5006.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.202 [Amended]

5. Section 242.202 is amended in paragraph (e)(1)(A) in the first sentence, in the parenthetical, by removing ''www'' and adding in its place ''home''.

242.302 [Amended]

6. Section 242.302 is amended in paragraph (a)(13)(B)*(1)* in the last parenthetical by removing ''www'' and adding in its place ''home.''

[FR Doc. 01–30263 Filed 12–5–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF DEFENSE

48 CFR Parts 212 and 237

[DFARS Case 2000–D306]

Defense Federal Acquisition Regulation Supplement; Performance-Based Contracting Using Federal Acquisition Regulation Part 12 Procedures

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001. Section 821(b) permits DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items.

DATES: *Effective date:* December 6, 2001.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before February 4, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2000–D306 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2000–D306.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Part 212, Acquisition of Commercial Items, and DFARS Part 237, Service Contracting, to implement Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398).

Section 821(b) of Public Law 106–398 establishes an incentive for the use of performance-based service contracts. Section 821(b) permits a contracting officer to use the same procedures used for the acquisition of commercial items under Part 12 of the Federal Acquisition Regulation (FAR) for a performance-based service contract or task order, if certain conditions are met. These conditions include—

1. The contract or task order must—

(a) Be firm-fixed-price;

(b) Have a value of $5 million or less;

(c) Set forth specifically each task to be performed;

(d) Define each task in measurable, mission-related terms; and

(e) Identify the specific end products or output to be achieved for each task;

2. The contractor must provide similar services at the same time to the general public under terms and conditions similar to those in the contract or task order; and

3. The procedures in FAR Subpart 13.5, Test Program for Certain Commercial Items, must not be used.

Since procurements undertaken pursuant to the authority of Section

821(b) will be conducted under FAR Part 12, the clauses at FAR 52.212–4 and 52.212–5 will be incorporated into resulting contracts. In this regard, when soliciting offers, contracting officers may need to modify paragraph (a) of the provision at 52.212–4 in particular, addressing inspection and acceptance, as may be necessary to ensure the contract's remedies adequately protect the Government's interests. For example, contracting officers may wish to negotiate the inclusion of commercial remedies such as extension of contract performance or the right to reduce the contract price to reflect the reduced value of the services performed when defects in services cannot be corrected by reperformance.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to those small entities that will be awarded performance-based service contracts or task orders meeting the conditions specified in the rule. Therefore, DoD has not prepared an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D306.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 821(b) of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 821(b) establishes an incentive for the use of performance-based service contracts by permitting DoD to treat a performance-based service contract as a contract for the procurement of commercial items if certain conditions are met. Section 821(b) became effective on October 30, 2000, and the contracting authority provided under that section expires on October 30, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 212 and 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212 and 237 are amended as follows:

1. The authority citation for 48 CFR Parts 212 and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Subpart 212.1 is added to read as follows:

Subpart 212.1—Acquisition of Commercial Items—General

Sec.
212.102 Applicability.
212.102 Applicability.

(a)(i) In accordance with Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), the contracting officer also may use FAR part 12 for any performance-based contracting for services if the procedures in FAR Subpart 13.5 are not used, and the contract or task order—

(A) Is entered into on or before October 30, 2003;

(B) Has a value of $5 million or less;

(C) Meets the definition of performance-based contracting at FAR 2.101;

(D) Uses quality assurance surveillance plans;

(E) Includes performance incentives where appropriate;

(F) Specifies a firm-fixed price; and

(G) Is awarded to an entity that provides similar services at the same time to the general public under terms and conditions similar to those in the contract.

(ii) In exercising the authority specified in paragraph (a)(i) of this section, the contracting officer should modify paragraph (a) of the clause at FAR 52.212–4 as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

PART 237—SERVICE CONTRACTING

3. Subpart 237.6 is added to read as follows:

Subpart 237.6—Performance-Based Contracting

Sec.
237.601 General.
237.601 General.

See 212.102 for the use of FAR part 12 procedures with performance-based contracting.

[FR Doc. 01–30262 Filed 12–5–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2000–D303/304]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 802 and 806 of the National Defense Authorization Act for Fiscal Year 2001. Sections 802 and 806 amend requirements pertaining to multiyear contracting.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2000–D303/304.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) relocated provisions relating to multiyear contracts for services from 10 U.S.C. 2306(g) to a new 10 U.S.C. 2306c. Section 806 of Public Law 106–398 amended 10 U.S.C. 2306b to add reporting requirements pertaining to multiyear contracts for property. This final rule updates DFARS Subpart 217.1 to reflect current statutory requirements pertaining to multiyear contracts.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D303/304.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 217 is amended as follows:

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

2. Sections 217.170 through 217.172 are revised to read as follows:

217.170 General.

(a) Before awarding a multiyear contract, the head of the agency must compare the cost of that contract to the cost of an annual procurement approach, using a present value analysis. Do not award the multiyear contract unless the analysis shows that the multiyear contract will result in the lower cost (10 U.S.C. 2306b(l)(7); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts).

(b) The head of the agency must provide written notice to the congressional defense committees at least 10 days before termination of any multiyear contract (10 U.S.C. 2306b(l)(6); 10 U.S.C. 2306c(d)(3); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts).

(c) Every multiyear contract must comply with FAR 17.104(c), unless an exception is approved through the budget process in coordination with the cognizant comptroller.

(d)(1) DoD must receive authorization from, or provide notification to, Congress before entering into a multiyear contract for certain procurements, including those expected to—

(i) Exceed $500 million (see 217.171(a)(5); 217.172(c); and 217.173(b)(4));

(ii) Employ economic order quantity procurement in excess of $20 million in any one year (see 217.174(a)(1));

(iii) Employ an unfunded contingent liability in excess of $20 million (see 217.171(a)(4)(i) and 217.172(d)(1));

(iv) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (see 217.174(a)(2)); or

(v) Include a cancellation ceiling in excess of $100 million (see 217.171(a)(4)(ii) and 217.172(d)(2)).

(2) A DoD component must submit a request for authority to enter into multiyear contracts described in paragraphs (d)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's Budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (Section 8008(b) of Public Law 105–56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (d)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees. (Section 8008(b) of Public Law 105–56)

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (d)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) DP), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD (C) (P/B)).

217.171 Multiyear contracts for services.

(a) *10 U.S.C. 2306c.* (1) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated:

(i) Operation, maintenance, and support of facilities and installations.

(ii) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(iii) Specialized training requiring high quality instructor skills (*e.g.,* training for pilots and aircrew members or foreign language training).

(iv) Base services (*e.g.,* ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(2) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(i) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, ''useful commercial life'' means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(ii) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(iii) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(3) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(i) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(ii) Furnishing the services will require—

(A) A substantial initial investment in plant or equipment; or

(B) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

(4) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a

multiyear contract for services that include—

(i) An unfunded contingent liability in excess of $20 million (Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts); or

(ii) A cancellation ceiling in excess of $100 million.

(5) The head of the agency must not initiate a multiyear contract for services exceeding $500 million unless a law specifically provides authority for the contract.

(b) *10 U.S.C. 2829.* (1) The head of the agency may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year from annual appropriations for that year.

(2) The head of the agency may use this authority only if the term of the contract does not exceed 4 years.

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems. For policies that apply only to multiyear contracts for weapon systems, see 217.173.

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States.

(c) The head of the agency must not enter into or extend a multiyear contract that exceeds $500 million (when entered into or when extended) until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(l)(5)).

(d) The head of the agency must provide written notice to the congressional defense committees at least 30 days before award of a multiyear contract that includes—

(1) An unfunded contingent liability in excess of $20 million (10 U.S.C. 2306b(l)(1); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts); or

(2) A cancellation ceiling in excess of $100 million (10 U.S.C. 2306b(g)).

(e) The Secretary of Defense may instruct the head of the agency proposing a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

3. Section 217.174 is revised to read as follows:

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—

(1) A multiyear contract providing for economic order quantity procurement in excess of $20 million in any one year; or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year. (10 U.S.C. 2306b(l)(1); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts)

(b) Before initiating an advance procurement, the contracting officer must verify that it is consistent with DoD policy (e.g., Chapter 2 of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, and the full funding policy in Volume 2A, Chapter 1, of DoD 7000.14–R, Financial Management Regulation).

[FR Doc.01–30264 Filed 12–5–01; 8:45 am]

BILLING CODE 5000–04–U

Proposed Rules

Federal Register
Vol. 66, No. 235
Thursday, December 6, 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

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AF77

Conservation Reserve Program—Cropland Eligibility and Private Sector Technical Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes a series of amendments to the Conservation Reserve Program (CRP) regulations. These proposed amendments would make certain orchard lands, vineyards, berry lands, and hay lands eligible for enrollment, provide for acquisition of private sector technical assistance, and make minor technical and clerical adjustments to the regulations. This action would allow producers greater flexibility in enrolling in the CRP, thereby allowing CCC greater flexibility in conducting the CRP, and provide enhanced environmental benefits under the CRP.

DATES: Comments must be submitted on or before February 4, 2002.

ADDRESSES: All comments concerning these proposed regulations should be either addressed to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513 or sent electronically to: *crprule@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Stephenson, (202) 720–6221.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental impact assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. This proposed rule, if adopted, would not be retroactive and would not pre-empt State laws. Before any judicial action may be taken with respect to the provisions of the proposed rule, if adopted, administrative remedies at 7 CFR parts 11 and 780 would have to be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, agencies generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in the current regulations at 7 CFR part 1410 under provisions of 44 U.S.C. Chapter 33 and OMB Control Number 0560–0125, effective through October 31, 2002.

Background

The purpose of the Conservation Reserve Program (CRP) is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enter into contracts for 10 to 15 years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible cropland to participate in the CRP. Applicants submit offers in such a manner as the Secretary prescribes. The maximum rental payments CCC will pay reflect site-based soil productivity, prevailing local cash equivalent rental rates, maintenance costs, and other factors. Offers by producers who request rental payments greater than the amount CCC is willing to pay for their soil type are automatically rejected by CCC. Except for the continuous signup process, remaining offers are evaluated for possible acceptance based on a comparison of environmental benefits indicators with the rental payment cost.

The continuous signup process does not include an evaluation based on environmental benefits indicators because only those practices designed to obtain high environmental benefits are eligible to be offered during the continuous signup. Acreage determined eligible and suitable to be devoted to continuous signup practices by the Secretary is automatically accepted in the CRP provided all other eligibility requirements are met.

Program Changes

Proposed changes fall into three general categories: (1) Changes to § 1410.6, Eligible Land; (2) permitting CCC to acquire private sector technical assistance; and (3) minor editorial, technical, and conforming amendments.

Section 1410.6 Eligible Land

Generally, by statute, CRP land enrolled in the program must be cropland, but the rules for the program provide that the crop history must generally be a history of production of tillable crops. That limitation provides for focusing the CRP on the conversion of land with the most intensive uses to a cover crop. Also, this focus emphasizes the ''reserve'' nature of the program and can provide a greater amount of public benefit by producing savings in other programs as recompense for the monies spent on this program. This rule, however, proposes that for the continuous sign-ups held for the CRP and for enrollments in the Conservation Reserve Enhancement Program (CREP), certain orchard lands, vineyards, berry fields, and hay land be permitted to be enrolled. These lands can provide significant benefits in those special sign-ups which involve special, often narrow (geographically) practices such as conservation measures along stream banks where these enrollments may even be more beneficial than the enrollment of normal cropland. Such an expansion of the eligibility criteria for the program had been requested by a number of State governments involved in CREP agreements.

Private Sector Technical Assistance

Currently, technical assistance for running the CRP is generally conducted through the auspices of the Natural Resources Conservation Service (NRCS) and a number of decisions which may be needed for the CRP are by regulation committed to the NRCS. However, because of funding and other considerations it may be necessary for some determinations, from time to time, to be made using private contractors or other agencies. Accordingly, this rule proposes that some references to the NRCS in the regulations be replaced or amended. This change will allow greater flexibility in running the program even though no fundamental change in program operations is contemplated at this time. No changes for the participant are anticipated regarding eligibility or paperwork. These adjustments to the regulations are found at 7 CFR 1410.1(f), 1410.2, 1410.3(b), 1410.6(b)(2)(i), 1410.6(b)(2)(iv), and 1410.22.

Minor Editorial, Technical, and Conforming Amendments

CCC further proposes a number of minor amendments for clarity at §§ 1410.4, 1410.20, and 1410.62(f) and to more closely track the CRP legislation. These modifications involve: (1) Adding a specific reference to the statutory requirement that allowing greater than a certain maximum level of CRP participation in a county requires a finding that producers are having trouble complying with conservation plans; (2) changing the limit on how much land one farm can have in both the CRP and in the Production Flexibility Program to that based on the amount of the farm's ''agricultural use'' land rather than the farm's ''cropland''; and (3) specifying that only that land which was ''cropland'' at the start of the contract will be treated as ''cropland'' during the duration of the contract. Also, § 1410.1(g), which currently provides for the development by State FSA committees of State-specific evaluation processes to rank acreage, is removed because no State FSA committee has developed a State-specific evaluation process for bid acceptance for over 2 years.

List of Subjects in 7 CFR Part 1410

Administrative practices and procedures, Agriculture, Conservation plan, Natural resources, Technical assistance.

For reasons set out in the preamble, 7 CFR part 1410 is proposed to be amended as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

1. The authority citation for 7 CFR part 1410 continues to reads as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

2. In § 1410.1:

a. Paragraphs (a) and (f) are revised;

b. Paragraph (g) is removed; and

c. Paragraphs (h) through (k) are redesignated as paragraphs (g) through (j).

The revisions read as follows:

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), through the Deputy Administrator for Farm Programs (Deputy Administrator) of the Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the State and county FSA committees (''State committees'' and ''county committees'', respectively). Further, CCC may enter into agreements to perform technical assistance with the private sector; however, national level concurrence between FSA and the Natural Resource Conservation Service (NRCS) or Forest Service (FS), as appropriate, is required for CCC to acquire private sector technical assistance, except when NRCS or FS cannot provide technical assistance due to funding or other restrictions. Further, private sector costs should be comparable when practicable, to the cost of technical assistance provided by NRCS and FS.

* * * * *

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the Erosion Index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS), or any other technical authority approved by CCC. Any CCC-approved technical authority shall utilize the NRCS Field Office Technical Guide (FOTG), or other CRP guidelines established by CCC.

* * * * *

3. In § 1410.2, the definition of technical assistance is revised to read as follows:

§ 1410.2 Definitions.

* * * * *

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by CCC in developing conservation plans, determining the eligibility of land and practices, and implementing and certifying conservation practices, and forestry issues.

* * * * *

4. Section 1410.3 paragraph (b) is revised to read as follows:

§ 1410.3 General description.

* * * * *

(b) A participant must obtain a conservation plan prepared in accordance with NRCS planning policy for eligible acreage, available in the National Conservation Planning Handbook and the General Manual at the Natural Resource Conservation Service State offices and field offices.

* * * * *

5. Section 1410.4 is revised to read as follows:

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section, the maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county; further, no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement;

(b) The restrictions in paragraph (a) of this section may be waived if CCC determines that such action would not adversely affect the local economy of the county, and also that operators in the county are having difficulties complying with conservation plans directed under part 12 of this title;

(c) These restrictions on participation shall be in addition to any other restriction imposed by law.

6. In § 1410.6, revise paragraphs (a)(2)(ii), (b)(2)(i) introductory text, (b)(2)(iv), (b)(4), (b)(8) and (b)(9) and add a new paragraph (b)(12) to read as follows:

§ 1410.6 Eligible land.

(a) * * *

(2) * * *

(ii) As determined by CCC, is or will be planted to trees, and such other woody and non-woody vegetation as appropriate, for water quality purposes in or near riparian areas or in other areas where, as determined by CCC in accordance with the FOTG, the same or similar water quality enhancement benefits will be obtained; or

* * * * *

(b) * * *

(2)(i) Be a field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by CCC in accordance with the FOTG. In addition such land must:

* * * * *

(iv) Be planted to an appropriate tree species, unless tree planting is determined by CCC to be inappropriate under provisions of the FOTG, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover identified as appropriate in the FOTG; or

* * * * *

(4) Be devoted to certain covers, which are established and maintained in accordance with the FOTG and other guidelines approved by CCC provided such acreage is not required to be maintained as such under any life span obligations; or

* * * * *

(8) Be within a public wellhead protection area or in an approved Hydrologic Unit Area as determined by the NRCS or other delegatee as determined by NRCS;

(9) Be within a designated conservation priority area as determined by CCC; or

* * * * *

(12) is cropland devoted to orchard lands, vineyards, berry land, or hay lands, as determined by CCC, but will only be eligible for continuous signup practices authorized by § 1410.30 or practices authorized by § 1410.50(b).

* * * * *

7. Section 1410.20, paragraph (a)(4)(ii), is revised to read as follows:

§ 1410.20 Obligations of participant.

(a) * * *

(4) * * *

(ii) Reduce production flexibility contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part so that the total of such acres does not exceed the total agricultural use land on the farm;

* * * * *

8. Section 1410.22 paragraphs (a) and (e) are revised to read as follows:

§ 1410.22 Conservation plan.

(a) The applicant shall obtain a conservation plan which is developed in accordance with NRCS conservation planning policy and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the conservation plan, such approval may be waived by CCC.

* * * * *

(e) All conservation plans and revisions of such plans shall be made in accordance with the NRCS conservation planning policy and be subject to the approval of CCC.

9. Section 1410.62, paragraph (f), is revised to read as follows:

§ 1410.62 Miscellaneous.

* * * * *

(f) Cropland enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

* * * * *

Signed at Washington, D.C., on November 29, 2001.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–30213 Filed 12–5–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 Series 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 RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. This proposal would require reapplication of dry film lubricant to low pressure compressor (LPC) fan blade roots. This proposal is prompted by an aborted take-off resulting from LPC fan blade loss. Since this event, four additional cracked LPC fan blade roots have been reported. The actions specified by the proposed AD are intended to prevent LPC fan blade loss, which could result in an uncontained engine failure and possible aircraft damage.

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–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location 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. The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–245–418. This information may be examined,

by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

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–12–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–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines. The CAA advises that a Trent 800 series powered aircraft experienced an aborted take-off as a result of an inability to achieve the commanded exhaust pressure ratio (EPR) on the Number 1 engine. Ground inspection of the engine revealed loss of one LPC fan blade. Since this event, four additional LPC fan blade roots have been reported cracked. Loss of the LPC fan blade resulted from high stresses and subsequent cracking in the fan blade root. Investigation by the engine manufacturer has shown that regular reapplication of dry film lubricant on the LPC fan blade root results in reduced blade to disk friction during engine operation and hence reduced blade root stressing. The FAA concurs with the manufacturer's determination as to the optimum times to perform the reapplication of the dry film lubricant, as provided in this proposal. The actions specified by the proposed AD are intended to prevent LPC fan blade loss, which could result in an uncontained engine failure and possible aircraft damage.

Manufacturer's Service Information

Rolls-Royce has issued Mandatory Service Bulletin (MSB) RB.211–72–D347, Revision 2, dated May 30, 2001, that requires initial and reapplication of dry film lubricant to LPC fan blade roots. The CAA classified this service bulletin as mandatory and issued AD 001–03–2001 in order to ensure the airworthiness of these Rolls-Royce engines in the U.K.

Bilateral Agreement Information

This engine model is manufactured in the U.K. and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines of the same type design , the proposed AD would require initial and reapplication of dry film lubricant to LPC blade roots. The actions would be required to be accomplished in accordance with the SB described previously.

Economic Impact

The FAA estimates that 88 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 6 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total labor cost impact of the proposed AD on U.S. operators is estimated to be $31,680 to accomplish each application of lubricant. The FAA estimates that operators will apply lubricant an average of 1.5 times per year, making the total annual cost of compliance with this proposal $ 47,520.

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–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc RB211 Trent 875, 877, 884, 892, 892B, and 895 series turbofan engines with low pressure compressor (LPC) fan blade part numbers: FK 30838, FK30840, FK30842, FW12960, FW12961, FW12962, FW13175, or FW18548. These engines are installed on, but not limited to Boeing 777 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 (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 LPC fan blade loss, which could result in an uncontained engine failure and possible aircraft damage, accomplish the following:

TABLE 1.—INITIAL AND REPETITIVE APPLICATION THRESHOLDS

LPT Fan blade part Nos.	Initial compliance criteria	Repetitive compliance criteria
FK30842, FK30840, and FK30838	Before achieving 600 cycles since installation	Repeat at intervals not exceeding 600 cycles since last compliance.
FW12961, FW12960, FW12962, FW13175, FW18548.	Before achieving 1200 cycles since installation.	Repeat at intervals not exceeding 1200 cycles since last compliance.

(a) Apply an approved dry film lubricant to low pressure compressor (LPC) fan blade roots as specified in Table 1 above. Aircraft Maintenance Manual (AMM) task 72–31–11–300–801–R00 (Repair Scheme FRS A031 by air spray method only) or engine manual 72–31–11–R001 (Repair Scheme FRS A028) contain procedures for renewing the dry film lubricant on the blade roots. For purposes of this AD, approved lubricants are Dow Corning 321R (Rolls-Royce (RR) Omat item 4/52), Rocol Dry Moly Spray (RR Omat item 4/52), Molydag 709 (RR Omat item 444), or PL.237/R1 (RR Omat item 4/43).

Fan Blades Exceeding Initial Application Thresholds

(b) For blades that have, on the effective date of the AD, more cycles since installation than the initial compliance criteria in Table 1 of this AD, inspect blades within 100 cycles in service after the effective date of this AD.

Alternative Methods 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 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.

Special Flight Permits

(d) 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 done.

Note 3: The subject of this AD is addressed in Civil Aviation Authority Airworthiness Directive 001–03–2001, dated March 2, 2001.

Issued in Burlington, Massachusetts, on November 30, 2001.

Francis A. Favara,

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

[FR Doc. 01–30266 Filed 12–5–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME065–7014; A–1–FRL–7114–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on June 7, 2000 and May 29, 2001, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in southern Maine which includes York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln Counties. Maine has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Maine's fuel requirements into the Maine SIP because EPA has found that the requirements are necessary for southern Maine to achieve the national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of Maine's request to control the RVP of fuel in these seven southern counties. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before January 7, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA–New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Description of the SIP Revision and EPA's Action

A. What Is the Background for This Action?
B. What is Reid Vapor Pressure?
C. What are the relevant Clean Air Act requirements?
D. How has the State met the Test Under Section 211(c)(4)(C)?
E. What Comments were Previously Submitted on Maine's low-RVP Rule?
F. Why is EPA Taking this Action?

II. Proposed Action

III. What Are the Administrative Requirements?

I. Description of the SIP Revision and EPA's Action

A. What is the Background for this Action?

Under the Clean Air Act Amendments of 1990, southern Maine was divided into three separate ozone nonattainment areas: the Portland area which is comprised of York, Cumberland and Sagadahoc Counties; the Lewiston-Auburn area which is comprised of Androscoggin and Kennebec counties; and the Knox and Lincoln County area. Each of these areas was classified as moderate nonattainment for ozone. The ozone attainment deadline for these areas was initially November 15, 1996. Just downwind from these areas, the largely rural counties of Hancock and Waldo were designated nonattainment for ozone and classified as marginal.

To bring these areas into attainment, the State has adopted and implemented a broad range of ozone control measures including stage II vapor recovery on larger gasoline retail facilities, numerous stationary and area source VOC controls, a vehicle inspection and maintenance (I/M) program, and the California low emission vehicle program. In addition, the State participated in the federal reformulated gasoline (RFG) program in the seven southern counties in Maine from January 1, 1995 until March 10, 1999, when the State's opt-out of the federal RFG became effective. This strategy and other measures resulted in significant air quality improvements in southern Maine.

EPA issued a direct final rule to approve a low RVP control program for the seven southern Maine counties on May 14, 1999 (64 FR 26306), but received adverse comment on that action. As a result, that direct final action was withdrawn on June 28, 1999 (64 FR 24557). Those comments are addressed in this notice for the purpose of developing this proposal.

After EPA withdrew the 1998 direct final approval of the State's low-RVP program, Maine Department of Environmental Protection (DEP) amended its low RVP control program and revised its SIP submittal request. The amendments changed the RVP of a compliant fuel and became effective on June 1, 2000. The rule as amended requires that beginning May 1, 1999 through September 15, 1999, and each May 1 through September 15 thereafter, no gasoline may be sold with an RVP greater than 7.8 psi in the counties of York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln. The State's low-RVP rule is codified in Chapter 119 of the Maine Department of Environmental Protection's regulations, entitled ''Motor Vehicle Fuel Volatility Limit.''

The DEP submitted this amended low-RVP rule to EPA as a revision to the SIP on June 7, 2000. On May 29, 2001, Maine submitted additional technical support for the SIP revision, including materials supporting the State's request to waive Clean Air Act preemption of state fuel controls pursuant to section 211(c)(4) of the Act and a description of its fuel enforcement strategy.

By this low-RVP rule, Maine is ensuring that it replaces much of the VOC benefits that RFG had been required to achieve. These emission reductions were critical to Maine's attainment of the 1-hour ozone standard in several areas.

B. What Is Reid Vapor Pressure?

Reid Vapor Pressure, or RVP, is a measure of a gasoline's volatility at a certain temperature and is a measurement of the rate at which gasoline evaporates and emits VOC; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its more volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

The primary emission reduction benefits from low-RVP gasoline used in motor vehicles comes from reductions in VOC evaporative emissions; exhaust emission reductions are much smaller. Because oxides of nitrogen (NO_X) are a product of combustion from motor vehicles, they will not be found in evaporative emissions, and low-RVP gasoline will have little or no effect on NO_X.

C. What Are the Relevant Clean Air Act Requirements?

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standards in a SIP:

> only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA's August, 1997 ''Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPS'' gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: identify the quantity of reductions needed to reach attainment; identify other possible control measures and the quantity of reductions each measure would achieve; explain in detail which of those identified control measures are considered unreasonable or impracticable; and show that even with the implementation of all reasonable and practicable measures, that the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at Maine's demonstration that the low-RVP fuel control is necessary in accordance with 211(c)(4)(C) and agrees with the State's conclusion that a fuel measure is needed to achieve the 1-hour ozone NAAQS.

The SIP submittal contains: (1) Chapter 119, Maine Department of Environmental Protection regulations, as amended by the Maine Board of Environmental Protection and effective on June 1, 2000; (2) documentation of

the public notice dated December 4, 1999, and a transcript of the public hearing regarding the amendment of Chapter 119, dated January 6, 2000; (3) evidence of State legal authority; and (4) application for waiver of federal preemption. Information regarding prohibitions on the sale of non-conforming gasoline, test procedures and sampling for the SIP revision can be found in Chapter 119 of the Maine Department of Environmental Protection regulations, and Maine statutes on enforcement and penalties can be found at Title 38 of Maine Revised Statutes Annotated (M.R.S.A.) sections 348 and 349. Based on this and a detailed enforcement strategy in the May 29, 2001 submittal, EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the 7.8 psi RVP limit.

D. How Has the State Met the Test Under Section 211(c)(4)(C)?

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted Federal RVP controls under sections 211(c) and 211(h). See 56 FR 64704 (Dec. 12, 1991). These regulations are found in 40 CFR 80.27. Maine is required under the Federal rule to meet the 9.0 psi RVP standard. See 40 CFR 80.27(a)(2).

A state may prescribe and enforce an otherwise preempted low-RVP requirement only if the EPA approves the control into the state's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other reasonable or practicable measures exist to bring about timely attainment. Thus, to determine whether Maine's low-RVP rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 1-hour ozone NAAQS.

With the State's decision to opt-out of the federal RFG program, additional VOC reductions are necessary to ensure that the Portland area meets the 1-hour ozone standard. The Portland area has measured air quality in recent years fluctuating between meeting and exceeding the 1-hour standard. Maine has had exceedances of the 1-hour ozone standard in 1999 and 2001—two out of the three years since the State opted out of the federal RFG program. Given this situation, it is clear that the VOC reductions provided by participation of the seven counties of southern Maine in the federal RFG program are critical to the Portland area's achievement of the ozone NAAQS.

For purposes of demonstrating necessity, EPA has used the phase 1 RFG VOC reductions required in the SIP submitted by Maine on July 19, 1995 for its 15 percent rate of progress plan as an estimate of the emission reductions that are necessary for southern Maine to achieve the ozone NAAQS. EPA believes this estimate of necessary reductions is conservative. In its 15-percent rate of progress plan for the Portland area, Maine had estimated that RFG would achieve 6.96 tons of VOC reduction per summer day. This figure was calculated using only vehicle miles traveled in the three-county Portland area. The sale of RFG in the surrounding four counties further benefitted the Portland area due to driving patterns into and around the Portland area and the geographic proximity of these surrounding four counties (Knox, Lincoln, Androscoggin, and Kennebec). These counties are downwind of the Portland area, and had previously participated in the RFG program. While these areas are no longer violating the one-hour ozone NAAQS, they did benefit from the fuel program's reductions. Further, persons traveling from these areas do travel into the Portland area, exacerbating the air quality problem in that area.

With this estimate of the VOC reductions necessary to achieve the ozone NAAQS, the State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be implemented to provide sufficient VOC reductions in a timely manner. The State analyzed potential control measures by reviewing previously prepared emission inventories to determine if other non-fuel control measures could be adopted and used to replace the VOC reductions that RFG had achieved. The State reviewed all the source categories that comprised the emission inventory, and evaluated control measures on each source category. For a variety of reasons, most control measures were either already implemented, or were found to be unreasonable or impracticable for achieving reductions in a timely manner. (See May 29, 2001 submittal from the State of Maine.)

As one example, the State evaluated the possibility of further controlling gasoline refueling, or stage II, emissions. The State does have a stage II vapor recovery program for larger facilities, but expanding the geographic coverage, and requiring smaller facilities (i.e., gas stations) to comply would yield among the most additional VOC reductions of any control strategy that the State reviewed. The State concluded that a legislative change, as well as a regulatory change, would be necessary to further control emissions from this source category. As a result, such controls could not be adopted and implemented as quickly as the low-RVP fuel control. Further, the actual installation of these controls would take additional time, which would not be reasonable or practicable because the State needed to replace the reductions as soon as possible. For these reasons, the State concluded that further stage II controls were not a practical measure for achieving VOC emission reductions. Other control measures were similarly evaluated, and determined to be either technically impossible or unreasonable and impracticable, or in a longer time frame when the State needed to secure the replacement emission reductions as soon as possible to achieve the NAAQS.

The State's analysis identified several non-fuel alternative controls that could conceivably be implemented by the summer of 2001—the earliest time frame for EPA approval of this low-RVP standard. (See May 29, 2001 State submittal) At best, adoption of all available measures would result in about 0.5 tons per day (tpd) of emission reductions—substantially less than the estimated reductions needed. Thus, even with implementation of all reasonable and practicable non-fuel control measures, additional VOC reductions are necessary. It should be noted that this low-RVP rule has been in effect at the State level since 1999, and the State reports that fuel sold in this area has been complying with this RVP limit.

Maine's low-RVP rule achieves approximately 4.5 tpd of VOC reductions beginning the summer of 1999 (based on vehicle miles traveled in the Portland area). Because low-RVP fuel sales in the four surrounding counties will reduce emissions in the Portland area when drivers from these areas travel into Portland, EPA believes RVP controls in these areas will further benefit the Portland area. EPA believes these emission reductions are necessary to achieve the applicable ozone NAAQS

in southern Maine. EPA is basing today's action on the information available to the Agency at this time, which indicates that adequate reasonable and practicable non-fuel measures are not available to the State that would achieve these needed emission reductions, and protect Maine's air quality in a timely manner. Hence, EPA is finding that the RVP standards are necessary for attainment of the applicable ozone NAAQS, and EPA is proposing to approve them as a revision to the Maine SIP.

E. What Comments Were Previously Submitted on Maine's low-RVP Rule?

On May 14, 1999 (64 FR 26306, 64 FR 26352), EPA published a Direct Final Rulemaking (DFR) and parallel Notice of Proposed Rulemaking (NPRM) proposing approval of a SIP revision for Maine for a low-RVP fuel control program. The NPRM provided the public with the opportunity to comment. On June 11, 1999, the Oxygenated Fuels Association (OFA) provided comment on that rulemaking. In accordance with established Direct Final Rulemaking procedures, EPA withdrew the DFR and would have had to respond to OFA's comments before taking final action on the NPRM.

After EPA withdrew the DFR, however, Maine DEP amended its low-RVP program and submitted a revised SIP revision, which is the basis for today's new proposed rulemaking. While EPA is not taking final action on the 1999 NPRM on which OFA commented, EPA has nevertheless considered the comments raised by OFA in developing this new proposal and has decided to address those points in developing today's proposal. Because EPA's prior withdrawn action is distinct from the action proposed today, parties seeking to participate in this rulemaking for comment and judicial review purposes should submit comments during the comment period on this action.

Comment 1. OFA commented that the State of Maine can not adopt a fuel strategy under section 211(c) because it is not necessary for attainment. Under the Clean Air Act (CAA), EPA can only waive the federal preemption of state fuel programs when the state fuel program is necessary for attainment. The State had already achieved attainment of the 1-hour ozone standard using RFG, and chose to no longer participate in the RFG program. OFA argues the State cannot adopt a new fuel control measure and justify it as necessary for attainment when it is choosing to no longer implement a control measure that helped achieve attainment. OFA also takes issue with the fact that RFG actually sold in Maine achieved more reductions than it was required to, and that we were only requiring Maine to replace the reductions that RFG was required to achieve.

Response 1. The commenter is correct in that EPA believes that RFG contributed to cleaner air in Maine. Maine, however, has decided that RFG is no longer a desirable fuel control for the State and has adopted the low-RVP control measure to replace at least some of the emission reductions provided by RFG. Maine chose to implement RFG, and Federal regulations allowed the State to choose to no longer implement RFG subject to the constraints in the RFG opt-out rule. With RFG no longer viewed as a viable option in the State, due to concerns about MTBE contaminating groundwater, Maine moved forward to replace the fuel measure by achieving the emission reductions it had planned for in its SIP.

It is important to note, however, that EPA required the State to take several steps before allowing the State to ''opt-out'' of the RFG program. Consistent with the RFG opt-out procedures (40 CFR 80.72), the State identified an alternative control measure to make up for planned emission reductions lost from opting-out of RFG, and provided adequate lead time to industry to notify that the State was opting-out of the program. Nevertheless, Maine made a decision fully allowed under the RFG program, and followed the criteria outlined in the rule. The State had relied upon RFG in the Portland area in the plan submitted under section 182(b)(1) of the CAA (*i.e.,* the 15 percent plan). As required by the RFG opt-out rule (40 CFR 80.72(b)(3)), Maine identified the measures with which it intended to replace RFG. Based on that, EPA allowed the RFG opt-out to proceed.

As OFA pointed out, current data suggests that RFG has achieved more clean air benefits than required under the Clean Air Act and the RFG rules. As the commenter correctly pointed out, RFG achieved emission reductions of VOC, air toxics and NO_X well in excess of that required by law. However, the RFG opt-out rule only requires that States move to replace emission reductions that were planned for. In light of the fact that RFG did in fact achieve more emission reductions than required, EPA intends to continue to work with Maine to ensure that Maine's actual air quality is not degraded by the State's choice to opt-out of the RFG program.

The relevant the issue for today's action, however, is whether or not Maine, in fact, needed emission reductions from RFG to attain the 1-hour ozone standard. The fact that RFG was cleaner than required would seem to argue even more strongly that the emission reductions from RFG were necessary to achieve attainment. In fact, as pointed out in the May 14, 1999 **Federal Register** (64 FR 26308), Maine achieved the 1-hour standard by the slimmest of margins. Since then, Maine has fluctuated between meeting and violating the 1-hour ozone standard. Not sustaining those emission reductions will jeopardize Maine's attainment of the 1-hour standard.

Comment 2. OFA commented that this 211(c) waiver was not necessary to meet the 1-hour ozone standard, since EPA had proposed in December, 1998 that the 1-hour standard was achieved in the Portland area, and had previously found that the 1-hour standard had been met in all other parts of the State. OFA further contends that, based on DC court ruling (*ATA* vs. *EPA*—May 14, 1999), that EPA could not justify the need for fuel controls based on the fact that Maine's air quality was violating the new 8-hour ozone NAAQS.

Response 2. On June 9, 1999, EPA determined that the Portland, Maine area had attained the 1-hour ozone standard (64 FR 30911), and revoked the one-hour standard. This determination was based on data collected from 1996–1998. For the time period 1997–1999, however, Maine again violated the one-hour ozone standard. On July 20, 2000 (65 FR 45182), due to uncertainty regarding the implementation of the 8-hour ozone standard, EPA determined that the one-hour standard should apply again in all areas where it was previously revoked, such as Maine. Subsequently, based on data collected in 1998–2000 and 1999–2001, Maine is again measuring air quality which meets the one-hour ozone standard.

Because Maine achieved the 1-hour ozone standards by only the slimmest of margins with reductions achieved though fuel controls, and because Maine continues to monitor exceedances that could be even worse without the current RVP controls, EPA concludes that the VOC reductions provided by the State fuel controls are necessary to achieve the 1-hour ozone NAAQS. In today's action, we are proposing to approve the State's 7.8 psi RVP fuel control program into the SIP to replace much of the emission reductions that RFG was designed to achieve. Failure to do so would jeopardize Maine's ability to achieve the 1-hour standard. EPA is not relying upon a finding that the State's

fuel control is necessary under section 211(c)(4)(C) to achieve the 8-hour ozone NAAQS.

Comment 3. OFA contends that Maine (or EPA) did not identify the level of reductions necessary to achieve attainment of the ozone standard in Maine.

Response 3. EPA, and Maine, identified a conservative amount of reductions that were necessary for Maine to achieve the 1-hour ozone standard. Maine had previously established that, as part of the 15 percent rate of progress plan for the Portland area, RFG had been expected to achieve 6.96 tons of VOC reductions per summer day. As pointed out in our earlier rulemaking (64 FR 26308), EPA had also determined that, with the strategies that Maine had implemented, the 1-hour ozone standard had been achieved by the slimmest of margins. In short, the Portland area needed all of the reductions that had been achieved to secure attainment. As discussed in the previous response, this is further evidenced by the fact that Maine subsequently violated the 1-hour standard after opt-out. Even this past summer, 2001, Maine has recorded 1-hour exceedances. As such, in order to preserve clean air, Maine would need to replace emission reductions from any program implemented and relied upon in the 15 percent rate of progress plan. As stated earlier, because RFG is no longer being implemented, those reductions must be replaced.

OFA made the additional point that the emission reductions from RFG were underestimated for two reasons, and that more than 6.96 tons of VOC reductions per summer day would need to be replaced for the Portland area. First, OFA pointed out that the 6.96 tpd estimate represents only the emission reductions required to be achieved in the Portland area (York, Cumberland, and Sagadahoc Counties) from RFG, and that RFG was also sold in four other counties (Androscoggin, Kennebec, Knox and Lincoln counties). Second, OFA explained that RFG in practice actually achieved more emission reductions than required, and that this should be the clean air target.

EPA agrees with OFA that RFG likely provided more than 6.96 tpd of VOC reductions for the Portland area. As explained above, this further stresses the importance and necessity of Maine replacing this control measure even if the State's 7.8 psi RVP fuel control program does not require the same level of reductions that RFG achieved in practice. Nevertheless, EPA intends to continue to work with Maine to ensure that all of the actual emissions reductions achieved by RFG will be replaced to ensure sustained clean air for Maine's citizens.

Comment 4. OFA argues that this low-RVP fuel control strategy was not the only available control measure to bring about timely attainment. OFA contends that RFG was available, and in fact brought about attainment in Maine and that RFG should have been among the measures that EPA evaluated as a measure which could bring about attainment, since it was technically possible to implement, and was reasonable and practicable. OFA also took issue with Maine's argument that other non-fuel measures were not available to achieve the level of reductions necessary because of the lead time needed to implement those additional programs (such as further Stage 2 vapor recovery). OFA argued that Maine had known since at least 1997 that the State was considering opting-out of the RFG program, and that proper planning would have allowed the State to achieve any requisite emission reductions with other non-fuel control measures.

Response 4. We address this comment in two parts. First is to discuss EPA policy requiring that a State's section 211(c) analysis look at only non-fuel measures to secure the emission reductions necessary for attainment, prior to being allowed to adopt or enforce otherwise preempted fuel controls. The second point will discuss, in this instance, whether or not sufficient non-fuel control measures exist which could eliminate the need for the low-RVP fuel control pursuant to section 211(c)(4)(C).

On the first point, section 211(c)(4)(C) provides that EPA can approve an otherwise preempted state fuel control only if there are no other reasonable or practicable measures available to achieve the NAAQS. EPA interprets the reference to other measures that must be evaluated as generally not encompassing other fuels measures. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable non-fuels measures. This interpretation minimizes the burden on the oil industry of different state fuel measures where non-fuel measures are available, and thereby satisfies one of the underlying purposes of section 211(c)(4). But where the state must turn to a fuel measure, it gives the state flexibility to choose whatever particular fuel measure best suits its needs. Under this interpretation, EPA retains the ability not to approve a state fuel measure that is grossly over-burdensome, however, because the state must show that whatever fuel measure it selects is necessary to achieve needed emissions reductions. Thus, in demonstrating that measures other than requiring 7.8 psi RVP gasoline are unreasonable or impracticable, Maine need not address the reasonableness or practicability of other possible state fuel measures, such as RFG. EPA expects that once States determine that fuel controls are necessary, they will work judiciously with suppliers to find a fuel which balances the environmental need, against the cost to industry and consumers. EPA has articulated this principal in earlier rulemaking actions in St. Louis on July 2, 1997 (62 FR 35756), Phoenix on February 10, 1998 (63 FR 6653), and Pittsburg on June 8, 1998 (63 FR 31116).

With respect to OFA's claim that measures would have been available had Maine properly planned for the possibility that RFG opt-out could be occurring, we believe the history is not so plain. Maine clearly had wrestled with RFG through several legislative sessions. However, each year, the State maintained its commitment to the RFG program. It would have been unreasonable to expect the State to adopt control measures based on the possibility of one day opting-out of the RFG program. It would be even more extreme to suggest that Maine should attempt to secure legislative authority to adopt additional controls measures before a decision was made to opt-out of RFG.

On October 13, 1998, Maine made the formal decision that it no longer felt it could continue to participate in the RFG program. From that point forward, though it was clear that the State preferred to adopt a fuel control measure, it had also looked at an extensive list of non-fuel measures, relying in large part upon the State's detailed analysis prepared in the Spring of 1996 in support of its 15 percent rate of progress plan. Part of the reason the State stayed in the RFG program at that time was that no other reasonable alternatives existed. When Maine reanalyzed the availability of further control measures under this 211(c)(4) waiver request, the State again found that no additional non-fuel measures were available that could provide emission reductions in sufficient quantity in an expeditious fashion. EPA has reached that same conclusion in our independent analysis of the situation (see EPA's Technical Support Document). It would not be reasonable

to expect Maine (or any area) to be adopting control measures to replace the reductions from RFG at the same time the State was defending the program. Instead, we reviewed the availability of control measures to secure the needed reductions today.

Comment 5. Maine did not demonstrate that low RVP gasoline standards are necessary to attain a national ambient air quality standard (NAAQS), and maintenance is not a statutory basis for a waiver.

Response 5. EPA believes, as discussed elsewhere in this notice, that the emission reductions from a fuels control program (i.e., RFG, or this low RVP fuel) are necessary for Maine to achieve the 1-hour ozone NAAQS. As stated in response 3, Maine has had recent exceedances of the 1-hour ozone NAAQS, and they clearly need all of the emission reductions they have achieved through this control program. The Portland area remains designated nonattainment for ozone, and these emission reductions are necessary.

F. Why Is EPA Taking This Action?

EPA is proposing to approve a SIP revision at the request of the Maine DEP. This rule has been adopted at the State level since the summer of 1999. However, to ensure that it secures the needed approval under section 211(c)(4)(C) of the Clean Air Act, Maine submitted this action for EPA approval, to make it part of the SIP.

II. Proposed Action

EPA is proposing to approve a SIP revision submitted by the State of Maine on June 7, 2000 and May 29, 2001, establishing a 7.8 psi RVP fuel requirement for gasoline distributed in southern Maine which includes York, Cumberland, Sagadahoc, Kennebec, Androscoggin, Knox, and Lincoln Counties. This revision will propose to approve into the SIP Maine DEP's Chapter 119, entitled ''Motor Vehicle Fuel Volatility Limit'' as amended on June 1, 2000. Maine has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Maine's fuel requirements into the SIP because EPA has found that the requirements are necessary for southern Maine to achieve the national ambient air quality standard for ozone.

III. What Are the Administrative Requirements?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve a state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule would approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: November 26, 2001.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 01–30271 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 2001–D002]

Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate the requirement for posting of solicitations at the research and development streamlined solicitation website. Instead, each contracting activity will use its own procedures for electronic posting of research and development streamlined solicitations. Contracting activities will continue to make synopses and solicitations available through the Governmentwide point of entry (FedBizOpps).

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 4, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2001–D002 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Angelena Moy, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D002.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Subpart 235.70 contains streamlined procedures for acquiring research and development using a standard solicitation and contract format. The standard format is available on the research and development streamlined solicitation (RDSS) website at http://www/rdss.osd.mil. DFARS 235.7003–2 presently requires that each solicitation issued in the standard format be posted at the RDSS website. This proposed rule eliminates the requirement for contracting activities to post their solicitations at the RDSS website, to permit each activity to use its own procedures for electronic posting of solicitations. However, contracting activities will continue to make synopses and solicitations available through the Governmentwide point of entry (FedBizOpps) in accordance with FAR 5.102 and 5.203.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et *seq.*, because the rule does not significantly change solicitation procedures or limit public access to solicitation information. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D002.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 235 as follows:

1. The authority citation for 48 CFR part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.7003–2 is revised to read as follows:

235.7003–2 RDSS process.

(a) *Synopsis.* The synopsis required by FAR 5.203 must include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C website.

(b) *Solicitation.*

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Must be in the format shown at the RDSS/C website;

(ii) Must include the applicable version number of the RDSS standard format; and

(iii) Must incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

[FR Doc. 01–30261 Filed 12–5–01; 8:45 am]

BILLING CODE 5000–04–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 21

RIN 1018–AH87

Migratory Bird Permits; Regulations Governing Rehabilitation Activities and Permit Exceptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would create a permit category to specifically authorize rehabilitation activities involving migratory birds. Migratory bird rehabilitation is the practice of caring for sick, injured, or orphaned migratory birds with the goal of releasing them back to the wild. Currently, in the absence of a permit specifically for this purpose, migratory bird rehabilitation activities are authorized by issuance of a special purpose permit under 50 CFR 21.27. In addition, this proposed regulation would create a permit exception for public officials responsible for tracking infectious diseases.

DATES: You should submit written comments by March 6, 2002, to the address below.

ADDRESSES: You may mail or deliver written comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. Please reference ''RIN 1018–AH87'' at the top of your letter. Alternatively, you may submit your comments via the Internet to: *migbird_rehab@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation that we have received your message, contact us directly at 703/358–1714.

The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 703 / 358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) prohibits possession

of any bird protected by treaties between the U.S. and Canada, Mexico, Japan, and Russia. Birds covered by the Act are referred to as ''migratory birds.'' Presently, if you wish to provide treatment to sick, injured, or orphaned migratory birds, you must obtain a special purpose permit from the U.S. Fish and Wildlife Service under 50 CFR 21.27. The special purpose permit category is used to authorize activities not specifically covered by other existing types of permits. In order to more effectively promote rehabilitation and conservation of migratory birds, and to facilitate the activities of rehabilitators nationwide by providing them with a reliable, consistent regulatory framework, we are proposing this rule to create a new permit category specifically authorizing rehabilitation of migratory birds.

Currently, approximately 2,500 special purpose permits for migratory bird rehabilitation purposes are active nationwide, representing almost half the approximately 5,500 currently active special purpose permits. Because the special purpose permit can cover numerous types of activities, the framework for issuing these permits is necessarily broad and general. The Service has addressed this generality by issuing standard conditions with which holders of special purpose permits for rehabilitation must conform. This proposed rehabilitation permit regulation largely incorporates—and expands upon—those existing standard conditions.

The impetus behind creating a rehabilitation permit category is threefold: to codify permit conditions through the public rulemaking process; to clarify what is expected from migratory bird rehabilitators by providing more specificity and detail to permit requirements; and to bring greater consistency nationwide to the regulation of migratory bird rehabilitation.

This proposed rule addresses rehabilitation of threatened and endangered migratory bird species, and amends 50 CFR 17 (Endangered and Threatened Wildlife), to exempt persons who obtain a rehabilitation permit from having to obtain a permit under part 17. The rule was written with the premise that migratory bird rehabilitators should not be required to obtain two separate permits when there is always some possibility that they may be presented with a sick or injured, endangered or threatened migratory bird species. Accordingly, the rule contains numerous provisions addressing rehabilitation of threatened and endangered migratory bird species, including additional requirements to notify and coordinate with the Service. Some rehabilitators may not be authorized to care for threatened and endangered species. Individual permits may be further conditioned at the time of issuance to specify which categories of migratory bird species the permittee is authorized to rehabilitate.

The proposed rule also provides an exemption to the permit requirements of 50 CFR part 17 and 50 CFR part 21 for vets who treat listed migratory bird species, under certain conditions.

In conjunction with an ongoing review of all U.S. Fish and Wildlife Service permit fee schedules, the Division of Migratory Bird Management is reviewing and revising migratory bird permit application processing fees. Currently, applicants for Special Purpose—Rehabilitation permits do not pay a processing fee. This proposed rule would require rehabilitation permit applicants to pay the permit application fee listed in 50 CFR 13.11.

Permit Exception for Authorities Tracking Infectious Disease

This proposed rule also adds a new permit exception to § 21.12 to allow wildlife managers and public health officials responsible for monitoring West Nile virus and other health threats to collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence or absence of infectious disease. It would also cover authorities dealing with avian diseases caused by natural toxins, such as botulism. The exception does not apply to healthy birds, or where circumstances indicate that the death, injury, or disability of a bird was caused by factors other than infectious disease. This permit exception will facilitate timely response to public health concerns and outbreaks of avian infectious disease.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat.'' This proposed rule is currently being reviewed pursuant to section 7 of the ESA. Section 7 consultation on this rule will be concluded before this rule is finalized. Individual decisions to issue rehabilitation permits to cover species that are listed as endangered or threatened will require consultation pursuant to section 7 of the ESA.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (Executive Order 13186)

This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in E.O. 13186.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this final determination of significance under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. The Fish and Wildlife Service is the only Federal agency responsible for enforcing the Migratory Bird Treaty Act.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not have anything to do with the afore-mentioned programs.

d. This rule does not raise novel legal or policy issues. Rehabilitation activities for migratory birds currently operate under a different permit than that proposed in this rule.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must either certify that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small business, small organizations, and small governmental jurisdictions), or prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. This proposed rule requires applicants for migratory bird

rehabilitation permits to pay the fee listed in the Service permit application fee schedule at 50 CFR 13.11. Currently, the Service waives fees for rehabilitation permit applicants, although the fee schedule is being revised as part of a separate proposed rule revising part 13. We will consider and address the economic effects of proposed fee revisions as part of that rulemaking. Because permit application fees will be addressed in another proposed rule, we certify that this action will not have a significant economic impact on a substantial number of small entities. A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collection associated with migratory bird permit programs is covered by an existing OMB approval, No. 1018–0022. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

National Environmental Policy Act

We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov.*

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 703/358–2329 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife, Birds, Migratory birds.

For the reasons set forth in this preamble, the U.S. Fish and Wildlife Service proposes to amend Title 50, Chapter I, Subchapter B of the CFR as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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 § 17.21 by adding paragraphs (c)(6), (c)(7), (d)(3), and (d)(4) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(c) * * *

(6) Notwithstanding paragraph (c)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may take endangered migratory birds without an endangered

species permit if such action is necessary to aid a sick, injured, or orphaned specimen, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Program Office immediately upon receipt of such bird (contact information can be obtained from the Internet at *http://offices.fws.gov*), and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Program Office.

(7) Notwithstanding paragraph (c)(1) of this section, persons exempt from the permit requirements of part 21 under paragraphs 21.12(c) and (d) may take endangered migratory birds without an endangered species permit in performing the activities authorized under paragraphs 21.12(c) and (d).

(d) * * *

(3) Notwithstanding paragraph (d)(1) of this section, any person acting under a valid migratory bird rehabilitation permit issued pursuant to § 21.31 of this subchapter may possess and transport endangered migratory birds without an endangered species permit when such action is necessary to aid a sick, injured, or orphaned specimen, provided the permittee:

(i) Notifies the issuing Migratory Bird Permit Program Office immediately upon receipt of such bird (contact information can be obtained from the Internet at *http://offices.fws.gov*), and

(ii) Disposes of or transfers such birds, or their parts or feathers, as directed by the Migratory Bird Permit Program Office.

(4) Notwithstanding paragraph (d)(1) of this section, persons exempt from the permit requirements of part 21 under paragraphs 21.12(c) and (d) may possess and transport endangered migratory bird species without an endangered species permit in performing the activities authorized under paragraphs 21.12(c) and (d) .

* * * * *

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

4. Amend § 21.2 by revising paragraph (b) to read as follows:

§ 21.2 Scope of regulations.

* * * * *

(b) This part, except for § 21.22 (banding and marking), § 21.29 (falconry), and § 21.31 (rehabilitation), does not apply to the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*), for which regulations are provided in part 22 of this subchapter.

* * * * *

5. Amend § 21.12 by adding new paragraphs (c) and (d) to read as follows:

§ 21.12 General exceptions to permit requirements.

* * * * *

(c) Employees of Federal, State, and local wildlife agencies; employees of Federal, State, and local public health agencies; and laboratories under contract to such agencies may in the course of official business collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence of infectious disease. Nothing in this section authorizes the take of uninjured or healthy birds without prior authorization from the Service. Additionally, nothing in this section authorizes the taking, collection, or possession of migratory birds when circumstances indicate reasonable probability that death, injury, or disability was caused by factors other than infectious disease and/or natural toxins. These factors may include, but are not limited to, oil or chemical contamination, electrocution, shooting, or pesticides. If the cause of death of a bird is determined to be other than natural causes or disease, Service law enforcement officials must be contacted without delay.

(d) Licensed veterinarians are not required to obtain a Federal migratory bird permit to temporarily possess, stabilize or euthanize sick and injured migratory birds. However, veterinarians must transfer any such bird to a permitted rehabilitator as soon as is practicable following necessary treatment, unless the bird is euthanized. Veterinarians must notify the local Service Ecological Services Office immediately upon receiving a threatened or endangered migratory bird species. Contact information for Ecological Services offices can be located on the Internet at *http://offices.fws.gov.* Veterinarians must administer euthanasia in accordance with § 21.31(e)(3)(ii). Disposition of dead migratory birds must be in accordance with § 21.31(e)(3)(iv). Veterinarians must comply with the recordkeeping requirements in § 21.31(e)(5).

6. Amend part 21, subpart C, by adding a new § 21.31 to read as follows:

§ 21.31 Rehabilitation permits.

(a) *What is the permit requirement?* Except as provided in § 21.12, a rehabilitation permit is required to take, temporarily possess, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator.

(b) *What are the general permit provisions?*

(1) The permit authorizes you to:

(i) Take from the wild or receive from another person sick, injured, or orphaned migratory birds, and to possess them and provide medical care for them for up to 180 days;

(ii) Transport the birds to a suitable habitat for release, to another permitted rehabilitator's facilities, or to a veterinarian;

(iii) Conduct euthanization and/or necropsy (for threatened or endangered species, euthanization and necropsy require prior approval from your Regional Migratory Bird Permit Program Office);

(iv) Transfer or dispose of migratory birds; and

(v) Receive, possess for up to 24 hours, stabilize, and transfer types of migratory bird species not authorized by your permit, in cases of emergency.

(2) The permit does not authorize the use of migratory birds for educational purposes. Birds may not be displayed to the public unless you use video equipment or barriers that prevent the birds from both hearing and seeing the public. You may not use any equipment for this purpose that causes stress or harm, or impedes the rehabilitation of any bird.

(c) *How do I apply for a migratory bird rehabilitation permit?* You must submit your application to the appropriate Regional Director—Attention Migratory Bird Permit Program Office. You can find addresses for the appropriate Regional Directors in § 2.2 of subchapter A of this chapter. Your application must contain the information required under § 13.12(a) of this chapter, and the following information:

(1) A description of your experience and training in maintaining and rehabilitating migratory birds. Include a list of the species with which you have worked, noting any threatened and endangered species; the types of injuries you have treated; and the treatments provided.

(2) A list of types of species you intend to rehabilitate (e.g., passerines, raptors, etc.).

(3) A description of your rehabilitation facilities. Attach photographs and diagrams of your enclosures. Diagrams must include dimensions and a description of interior

and exterior construction materials, such as flooring and caging materials. Indicate the species or type of species to be housed in each.

(4) A letter of recommendation from a permitted rehabilitator who is familiar with your training and experience, including experience with threatened and endangered species. Also provide a letter from a permitted rehabilitator stating his or her willingness to provide you with assistance. If these are the same individual, a single letter will suffice.

(5) A letter from a licensed veterinarian acknowledging agreement to work with you by providing any necessary veterinary assistance. Any first-hand knowledge of your training or qualifications for rehabilitating migratory birds should be addressed in the letter.

(6) The names of persons (subpermittees) who will be assisting you, including anyone who will be regularly transporting birds to or from your facility. Anyone who will be performing permitted activities in your absence must be at least 18 years of age and listed on your permit as a subpermittee. You must include a description of the qualifications of anyone who will be performing permitted activities in your absence, including any experience with threatened or endangered species. If a subpermittee will be authorized to rehabilitate migratory birds at a site other than your facility, you need to provide the following information: name, address, date of birth, description of the individual's expertise in working with the type of species to be cared for, the type of care to be provided, and photographs and/or diagrams of the individual's facilities.

(7) A copy of your State rehabilitation permit or license, if one is required in your State.

(8) A check or money order made payable to the ''U.S. Fish and Wildlife Service'' in the amount of the application fee for permits issued under this section listed in § 13.11 of this chapter.

(d) *What criteria will the Service consider before issuing a permit?* (1) Upon receiving an application completed in accordance with paragraph (b) of this section, the Regional Director will decide whether to issue you a permit based on the general criteria of § 13.21 of this chapter, and the following factors:

(i) Whether you are at least 18 years of age with adequate experience rehabilitating migratory birds.

(ii) Whether your facilities are adequate to properly care for the type(s) of species of migratory birds for which you seek authorization to rehabilitate.

(iii) Whether you have an agreement with a qualified veterinarian to provide medical care for the birds you intend to rehabilitate.

(iv) Whether a State permit or license is required, and if so, whether you have the required permit or license.

(2) In issuing a permit, the Regional Director may place restrictions on the types of migratory bird species you are authorized to rehabilitate, based on your experience and facilities, as well as the specific requirements, traits, and conservation status of particular species.

(e) *What are the standard conditions for this permit?* In addition to the general permit conditions set forth in part 13 of this chapter, rehabilitation permits are subject to the following conditions:

(1) *Facilities.* To conduct the activities authorized by a rehabilitation permit, you must have appropriate facilities or a working relationship with a person or organization with such facilities. All facilities must be approved and identified on the face of your permit. In evaluating whether facilities are adequate, the Service will use as a guideline the current standards developed by the National Wildlife Rehabilitation Association and the International Wildlife Rehabilitation Council (Minimum Standards for Wildlife Rehabilitation).[1] The Regional Migratory Bird Permit Program Office may authorize variation from the standards where it is reasonable and necessary to accommodate a particular rehabilitator's circumstances. However, except as provided by paragraph (f)(2)(i) of this section, all facilities must adhere to the following criteria:

(i) Rehabilitation facilities for migratory birds must be secure and provide protection from predators, domestic animals, undue noise and human disturbance, sun, wind, and inclement weather.

(ii) Caging must be made of a material that will not entangle or cause injury to the type of birds that will be housed within.

(iii) Facilities must be large enough to allow easy access for caring for the species of bird housed in the facility and to allow each bird to fully extend its wings.

(iv) The floor must be well-drained and kept clean.

(v) You must provide adequate perches for birds under your care.

(vi) Birds must be housed only with compatible migratory bird species.

(2) *Subpermittees.* Except as provided by paragraphs (e)(2)(ii) and (f)(2)(ii) of this section, anyone who will be assisting you by performing permitted activities in your absence must either possess his or her own Federal rehabilitation permit or be authorized as a subpermittee on your permit. Subpermittees must be at least 18 years of age and possess sufficient experience to tend the species in their care. As the primary permittee, you are directly responsible for the actions of any subpermittees acting under your permit.

(i) Subpermittees authorized to care for migratory birds at a site other than your facility must have facilities adequate to house the species in their care. All such facilities must be approved and identified on the face of your permit.

(ii) Any individual who transports birds to or from your facility on a regular basis must either have his or her own permit, be listed on your permit as a subpermittee, or be named in a letter from you to your issuing Migratory Bird Permit Program Office.

(3) *Disposition of birds under your care.* You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office. Every precaution must be taken to avoid imprinting or habituating birds in your care to humans, and all imprinted birds must be transferred to the Service or a designee of the Service.

(i) You must release all recuperated birds to the wild in an appropriate season and habitat for the species, preferably near the point where the bird was taken from the wild. If the appropriate season for release is outside the 180-day timeframe, you must seek authorization from the Service to hold the bird until the appropriate season. For most species, you should work with local and State wildlife agencies to identify appropriate release sites. Before releasing a threatened or endangered migratory bird, you must coordinate with the nearest U.S. Fish and Wildlife Service Ecological Services Office. You can obtain contact information for this office from your issuing Migratory Bird Permit Program Office or from the Internet at *http://offices.fws.gov.*

(ii) Any bird that has sustained injuries requiring amputation of a leg, a foot, or a wing at the elbow (humero-ulnar joint) or above must be euthanized. You must euthanize any bird that, after medical treatment, is blind, cannot feed itself, perch upright,

[1] Copies may by obtained by contacting either the National Wildlife Rehabilitators Association: 14 North 7th Avenue, St. Cloud MN 56303–4766, or the International Wildlife Rehabilitation Council: 4437 Central Place, Suite B–4, Suisun, CA 94585–1633.

or ambulate without inflicting additional injuries to itself. You are required to obtain authorization from your issuing Migratory Bird Permit Program Office before euthanizing endangered and threatened migratory bird species. In some cases, the Service may designate a disposition other than euthanization for those birds. If Service personnel are not available, you may euthanize endangered and threatened migratory birds without Service authorization where prompt euthanization is warranted by humane consideration for the welfare of the bird.

(iii) Unreleasable live birds that are suitable for use in educational programs, foster parenting, research projects, or other permitted activities may be placed with persons permitted or otherwise authorized to possess migratory birds, with prior approval from your issuing Migratory Bird Permit Program Office.

(iv) You may donate dead birds and parts thereof, except threatened and endangered species and bald and golden eagles, to persons authorized by permit to possess migratory bird specimens or exempted from permit requirements under § 21.12.

(A) You must send all dead bald and golden eagles, and their parts and feathers, to: National Eagle Repository, Building 128, Rocky Mountain Arsenal, Commerce City, Colorado 80022.

(B) You must obtain approval from your issuing Migratory Bird Permit Program Office before disposing of or transferring any dead endangered or threatened migratory bird specimen, parts, or feathers.

(C) Unless specifically required to do otherwise by the Service, you must destroy all other dead specimens by burial or incineration.

(v) With authorization from your issuing Migratory Bird Permit Program Office, you may hold a non-releasable bird longer than 180 days for the purpose of fostering juveniles during their rehabilitation. You may also use birds you possess under an educational permit to foster juveniles.

(vi) You may possess no more than a reasonable number of feathers for the repair of damaged feathers of birds in your care.

(vii) You may draw blood and take other medical samples from the birds under your care for purposes of diagnosis and recovery of the individual bird, or for transfer to authorized facilities conducting research pertaining to a contagious disease or other public health hazard (e.g.,West Nile virus).

(viii) All birds held under this permit remain under the stewardship of the U.S. Fish and Wildlife Service and may be recalled at any time.

(4) *Notification to the U.S. Fish and Wildlife Service.* (i) When you acquire a threatened or endangered migratory bird species, or bald or golden eagle, whether live or dead, you are required to immediately notify your issuing Migratory Bird Permit Program Office.

(ii) You must immediately notify the local U.S. Fish and Wildlife Service Law Enforcement Office, and within 48 hours your issuing Migratory Bird Permit Program Office, if you have reason to believe a bird has been poisoned, electrocuted, shot, or otherwise subject to criminal activity. Contact information for local Service Law Enforcement offices can be located on the Internet at *http://offices.fws.gov.*

(iii) If the sickness, injury, or death of any bird is due or likely due to avian virus, or other contagious disease or public health hazard, you should notify your issuing Migratory Bird Program Office within 48 hours.

(5) *Recordkeeping.* You must maintain complete and accurate records of all migratory birds that you receive, including for each bird the date received, type of injury or illness, disposition, and date of disposition. You must retain these records for five (5) years following the end of the calendar year covered by the records.

(6) *Annual report.* You must submit a completed Form 3–202–4 by January 31 of each year for the preceding year to your issuing Migratory Bird Permit Program Office.

(7) Additional conditions may be stipulated on the face of the permit at the discretion of the Regional Director.

(8) The permittee assumes responsibility for damage or injury to any person or property occasioned through the possession or handling of migratory birds, and the U.S. Government shall be indemnified against claims for damage or injury in such cases.

(f) *How does this permit apply to oil and hazardous waste spills?* Prior to entering the location of an oil or hazardous material spill, you must notify the U.S. Fish and Wildlife Service Field Response Coordinator or other designated Service representative and obtain permission from the On-Scene Coordinator. All activities within the location of the spill are subject to the authority of the On-Scene Coordinator. The U.S. Fish and Wildlife Service is responsible for the disposition of all migratory birds, dead or alive.

(1) Permit provisions in oil or hazardous material spills.

(i) In addition to the rehabilitation permit provisions set forth in paragraph (b) of this section, when under the authority of the designated U.S. Fish and Wildlife Service representative, this permit further authorizes you to temporarily possess healthy, unaffected birds for the purpose of removing them from imminent danger.

(ii) This permit does not authorize salvage of dead migratory birds. When dead migratory birds are discovered, a Service law enforcement officer must be notified immediately in order to coordinate the handling and collection of evidence. Contact information for local Service Law Enforcement Offices can be located on the Internet at http://offices.fws.gov. The designated Service representative will have direct control and responsibility over all live migratory birds, and will coordinate the collection, storage, and handling of any dead migratory birds with the Service's Division of Law Enforcement.

(iii) You must notify your issuing Migratory Bird Permit Program Office of any migratory birds in your possession within 24 hours of removing such birds from the area.

(2) Conditions specific to oil and hazardous waste spills.

(i) *Facilities.* Facilities used at the scene of oil or hazardous waste spills may be temporary, mobile, and in some circumstances, provide less space and protection from noise and disturbance than facilities authorized under paragraph (e)(1)(i) of this section. Such facilities should conform as closely as possible with the facility specifications contained in the Service policy, Best Practices for Migratory Bird Care During Oil Spill Response.

(ii) *Subpermittees.* In cases of oil and hazardous waste spills, persons who assist with cleaning or treating migratory birds at the on-scene facility will not be required to have a rehabilitation permit or be a subpermittee; however, volunteers must be trained in rescue protocol for migratory birds affected by oil and hazardous waste spills. A permit (or subpermittee designation) is required to perform extended rehabilitation of such birds, after initial cleaning and treating, at a subsequent location.

(g) *Will I also need a permit from the State in which I live?* Nothing in this section prevents a State from making and enforcing laws or regulations consistent with this section that are more restrictive or give further protection to migratory birds. If your State requires a license or permit to rehabilitate migratory birds, you must obtain that license or permit and adhere

to its requirements, in addition to the terms of your Federal permit.

(h) *How long is a migratory bird rehabilitation permit valid?* Your rehabilitation permit will expire on the date designated on the face of the permit unless amended or revoked. No rehabilitation permit will have a term exceeding five (5) years.

Dated: November 13, 2001.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–30297 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 66, No. 235

Thursday, December 6, 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

Animal and Plant Health Inspection Service

[Docket No. 01–013–3]

Protection of Sunflowers From Red-Winged Blackbird Damage in North Dakota and South Dakota; Request for Public Involvement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of scoping document.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service's Wildlife Services program has developed a scoping document for an environmental impact statement being prepared to analyze the potential environmental effects of reducing blackbird damage to ripening sunflowers in North Dakota and South Dakota. This scoping document addresses the comments received and issues raised in response to our March 2001 and May 2001 notices on this subject. The information received in response to this notice, as well as the information received previously, will be considered during development of an environmental impact statement prepared in accordance with the National Environmental Policy Act.

DATES: We invite you to comment on the scoping document. We will consider all comments we receive that are postmarked, delivered, or e-mailed by January 7, 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. 01–013–3, 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. 01–013–3. 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. 01–013–3'' 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. Phil Mastrangelo, State Director, Wildlife Services, APHIS, USDA, 2110 Miriam Circle, Suite A, Bismarck, ND 58501–2502; phone (701) 250–4405.

SUPPLEMENTARY INFORMATION: Wildlife Services (WS) of the Animal and Plant Health Inspection Service (APHIS) provides technical and operational assistance to entities who request assistance to reduce damage caused by wildlife, in this case to sunflower producers. WS loans damage abatement equipment (e.g., propane cannons, pyrotechnics), conducts training workshops, provides informational leaflets on damage management and sources of damage abatement tools, and, in the case of blackbird damage to sunflowers, conducts roost management programs to disperse blackbirds from sunflower production areas.

In 2000, approximately 81 percent of the sunflower production in the United States occurred in North Dakota and South Dakota. In North Dakota, the acreage of sunflower increased from 12,500 acres in 1962 to 1.3 million acres in 2000, with a commercial value of $125 million. In South Dakota, sunflower acreage increased from 132,000 acres in 1977 to 719,000 acres in 2000, with a commercial value of $63 million. However, increased production of sunflowers has been hampered by damage associated with blackbirds feeding on the ripening crop.

Damage surveys conducted in sunflower production areas in North Dakota and South Dakota indicate that overall loss is generally 1 to 2 percent of the crop. If all producers received less than 2 percent damage, there would be little concern for damage caused by blackbirds. However, damage is not equally distributed, can be severe for some producers, and is fairly consistent from year-to-year within a locality. Research has been conducted throughout the northern Great Plains to estimate the amount of damage birds have caused to ripening sunflower crops. Historically, sunflower damage surveys have estimated blackbird damage to range from $4–7 million annually in North Dakota and South Dakota.

Sunflower growers and Government agencies have used both lethal and nonlethal techniques to reduce red-winged blackbird damage to ripening sunflowers. The goal of nonlethal methods is to decrease the availability or attractiveness of the crop to blackbirds or to disperse the birds so that damage is not concentrated in any given area. Examples of nonlethal methods include altering farming practices, using audio and visual frightening devices, growing bird-resistant sunflowers, increasing weed control in fields, and growing decoy crops. Additionally, research has shown that opening dense cattail stands, which are traditional roost sites for blackbirds, aids in dispersing blackbirds from nearby sunflower crops. To date, nonlethal blackbird damage management initiatives have been somewhat effective in reducing blackbird damage to unharvested sunflowers, but have not alleviated the problem for all sunflower growers.

Scoping Document

The scoping document made available by this notice explains why WS is preparing an environmental impact statement (EIS) to analyze the potential environmental effects of reducing blackbird damage to ripening sunflowers in North Dakota and South Dakota. This scoping document describes and defines the blackbird damage problem to sunflower crops grown in North Dakota and South Dakota. The goal of the WS blackbird

damage management program—to reduce the level of blackbird damage to sunflower crops in North Dakota and South Dakota to no more than 5 percent in individual sunflower fields—is also explained.

Included in the scoping document is a summary of the WS role in managing blackbird damage. This includes past research efforts by WS' National Wildlife Research Center (NWRC), an overview of proposed future research, and a summary of WS operational programs. Information regarding State and academic programs, and the efforts of sunflower producers for reducing blackbird damage, is also provided. The scoping document details the Federal and State laws that are applicable to the reduction of blackbird damage.

Based on WS' experience and comments received in response to our previous notices on the subject, which were published in the **Federal Register** on March 22, 2001 (66 FR 16028–16031, Docket No. 01–013–1), and May 21, 2001 (66 FR 27933–27934, Docket No. 01–013–2), WS proposes to analyze three alternatives for detailed evaluation in the EIS:

(1) *Continue the Current Operational Wildlife Services Program of Technical Assistance and Cattail Management in North Dakota and South Dakota, and Associated Research (No Action Alternative).* Under this alternative, WS' professional wildlife biologists would continue to respond to requests for assistance with blackbird damage to sunflower crops, using all the lethal and non-lethal techniques currently available. WS would continue to provide technical assistance to sunflower producers. The cattail management program would continue at its current level (70 percent maximum treatment per wetland, up to 6,000 acres annually). Current and future NWRC research activities regarding blackbird damage management to sunflower crops and associated blackbird biology would continue.

(2) *Integrated Adaptive Management Program.* Under this alternative, WS' professional wildlife biologists would continue to use, as appropriate, all available damage management techniques for reducing blackbird damage to sunflower crops. This could include chemical repellents and frightening devices. WS would continue to provide technical assistance to sunflower producers.

Cattail management would continue under this alternative. However, treatment of cattail wetlands would increase to 8,000 acres annually from the current level of 6,000 acres.

The WS operational program could also include spring baiting using the avian toxicant DRC–1339. Spring baiting with DRC–1339-treated rice could be conducted for 5 years beginning at the end of March and continuing through the third week of April each year. Up to 25 bait plots of 2 acres each would be treated in east-central South Dakota (possible counties include Brookings, Clark, Codington, Deuel, Hamlin, Kingsbury, Lake, Miner, and Moody Counties). Bait plots would be established near blackbird staging areas in harvested grain fields. Spring baiting is intended to reduce the population of red-winged blackbirds by up to 2 million each year to reduce fall damage to sunflowers. North Dakota State University researchers determined likely blackbird baiting sites based on studies of habitat preferences of spring migratory blackbirds.

Under this alternative, extensive program monitoring would be conducted by WS personnel, in cooperation with the NWRC and North Dakota State University, to determine the effectiveness of DRC–1339 spring baiting and cattail management to reduce sunflower damage. WS biologists would also evaluate and monitor the effects on populations of blackbirds and non-target species. Monitoring would include blackbird population surveys, sunflower damage assessments, and the study of habitat variables, migration timing and patterns, and related climate variations within selected plots in sunflower production areas. If monitoring results indicate that spring baiting does not reduce sunflower damage, the spring baiting program would be terminated.

(3) *Implement State, Private, and Sunflower Producer Damage Management Actions, with no Wildlife Services Programs.* Under this alternative, WS would not participate in or implement any wildlife damage assessments or programs for reducing blackbird damage to sunflower crops in North Dakota and South Dakota. No technical assistance, research, lethal/non-lethal programs, cattail management, or any other related actions would be provided by WS. Certain functions of the present WS program would most likely be conducted by individual sunflower producers. All requests made to WS for sunflower crop protection would be referred to the North Dakota and South Dakota Departments of Agriculture, other Federal or State agencies, private businesses, or organizations, as appropriate.

The scoping document explains why five suggested alternatives will not be evaluated in detail in the EIS. These include: (1) Create and implement crop damage insurance against blackbird depredation; (2) financial compensation for economic losses to sunflower crops caused by blackbirds; (3) eradicate blackbirds; (4) reintroduce cougars, coyotes, wolves, bobcats, and other predator species to reduce populations of depredating blackbirds in North Dakota and South Dakota; and (5) physical exclusion of blackbirds from sunflower fields with netting or other material.

The scoping document identifies issues proposed for detailed analysis in the EIS. These include: (1) The cumulative impact on populations of target blackbird and non-target species of plants and wildlife, including Federally and State-protected species, from the use of DRC–1339 and glyphosate; (2) effects on biodiversity, including effects of glyphosate on terrestrial and wetland biodiversity, effects on terrestrial biodiversity from reducing populations of blackbirds, including impacts on insect populations, and effects on terrestrial biodiversity from reducing populations of terrestrial non-target plants and animals; (3) degree of humaneness of lethal methods for reducing blackbird populations; (4) cost-effectiveness of Federal actions for reducing economic impacts of blackbird depredation on sunflower crops; (5) potential for and impacts of exotic and nuisance plant species to invade wetlands after treatment with glyphosate; and (6) impacts of non-herbicidal components of glyphosate, such as surfactants, on insect populations.

The scoping document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** We ask you to please read the scoping document and let us know, at a minimum:

- What are your concerns regarding the current program and the proposed changes (issues)?
- What are your concerns regarding environmental impacts that you want us to study in the EIS (issues)?
- How does this program affect you and how do you feel about protecting sunflowers from blackbird damage?
- What other ways of reducing damage to sunflower crops in North Dakota and South Dakota (alternatives) do you want us to consider?
- What ways of reducing environmental impacts (mitigation measures) do you want us to consider?
- What way would you prefer that we reduce blackbird damage to sunflower crops (preferred alternative)?

• What methods would you like us to use to evaluate environmental impacts?

Preparation of the EIS

Following completion of the scoping process, we will prepare a draft EIS for the program to protect sunflowers from blackbird damage. A notice announcing that the draft EIS is available for review will then be published in the **Federal Register**. The notice will also request comments concerning the draft EIS.

Done in Washington, DC, this 30th day of November, 2001.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–30258 Filed 12–5–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

USDA Forest Service and State of Florida Land Exchange, National Forests in Florida, Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Pasco, Santa Rosa, and Sumter Counties, FL

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed land exchange between the State of Florida and the Forest Service in Baker, Citrus, Franklin, Hernando, Lake, Liberty, Okaloosa, Osceola, Pasco, Santa Rosa, and Sumter counties, Florida. The Forest Service invites written comments and suggestions on the scope of the environmental analysis for the EIS from Federal, State, and local agencies, federally recognized Tribes, and other individuals or organizations that may be interested in or affected by the proposed action.

DATES: Comments should be submitted by January 18, 2002 at the address listed below. A draft EIS is expected to be completed in July 2002. The final EIS is scheduled to be completed in October 2002.

ADDRESSES: To ensure that the full range of issued related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. You may request to be placed on the project mailing list or you may direct questions, comments and suggestions to Mr. Gary Hegg, NEPA Coordinator, Apalachicola National Forest, 57 Taff Drive, Crawfordville, Florida 32327, telephone (850) 926–3561.

FOR FURTHER INFORMATION CONTACT: Mrs. Chris Zajicek, Lands Program Manager, USDA Forest Service, 325 John Knox Road Suite F–100, Tallahassee, Florida 32303, telephone (850) 942–9328.

SUPPLEMENTARY INFORMATION: The Forest Service is proposing a value for value exchange of federal land and mineral rights for state lands. The federal lands are from three locations, the Choctawhatchee (357±acres), Apalachicola (4,053±acres), and the Ocala National Forests (237±acres). The federal mineral rights are from two locations, lands under the Blackwater (182,300±acres) and Withlacoochee State Forests (114,000±acres). The Lands that the State would exchange are in two locations, Pinhook Swamp (33,700±acres) and Seminole State Forest Lands (214±acres). Newsletters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to organizations and citizens who express interest in this proposal. Preliminary issues include the different levels of protection between state and federal ownership regarding cultural resources and Tribal consultation rights and protection provided for Proposed, Endangered, Threatened and Sensitive (PETS) species. Possible other alternatives under consideration include: Taking no action, purchasing the land to be acquired, an alternative that does not include the Tate's Hell Tract, and an alternative where only the mineral rights are exchanged for an equal value of land in the Pinhook Swamp. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 US. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful it comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 28, 2001.

Marsha Kearney,

Forest Supervisor, National Forests in Florida.

[FR Doc. 01–30237 Filed 12–5–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Master Development Plan For Pelican Butte Ski Area, Winema National Forest, Klamath County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On October 18, 1996, a Notice of Intent (NOI) to prepare an environmental impact statement for the Master Development Plan For Pelican Butte Ski Area, was published in the **Federal Register** (61 FR 54410). The 1996 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Charles Graham, Forest Supervisor, Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601, telephone 541–883–6736.

Dated: November 29, 2001.

Jack B. Sheehan,

Deputy Forest Supervisor.

[FR Doc. 01–30235 Filed 12–5–01; 8:45 am]

BILLING CODE 3410–11–M

AMTRAK REFORM COUNCIL

Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of special public business meeting in Washington, DC.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997 (Reform Act), the Amtrak Reform Council (Council) gives notice of a special public meeting of the Council. On Friday, December 14, 2001, the Council will hold a Business Meeting from 9:30 a.m.–4 p.m. Eastern Standard Time (EST) during which time the Council members will discuss the various options for restructuring intercity rail passenger service. The Council's action plan must be submitted to the Congress on February 7, 2002.

On Friday, November 9th, the Amtrak Reform Council approved a resolution finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002 as required by the Amtrak Reform and Accountability Act of 1997. The Council's Finding starts a 90-day clock in which the Council must submit an action plan for a restructured and rationalized national rail passenger system to Congress. During this same time period, Amtrak must submit a plan to Congress for liquidation.

DATES: The Business Meeting will be held on Friday, December 14, 2001, from 9:30 a.m.–4 p.m. EST. The event is open to the public.

ADDRESSES: The Business Meeting will take place in the Monet Suite in the Loews L'Enfant Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024. The nearest Metro stop is L'Enfant. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM-ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. For information regarding ARC's Finding Resolution, the ARC's Annual Reports, information about ARC Council Members and staff, and much more, you can also visit the Council's Web site at *www.amtrakreformcouncil.gov.*

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (Reform Act), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the Reform Act provides: that the Council is to monitor cost savings from work rules established under new agreements between Amtrak and its labor unions; that the Council submit an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after a specified period, the Council has the authority to determine whether Amtrak can meet certain financial goals specified under the Reform Act and, if it finds that Amtrak cannot, to notify the President and the Congress.

The Reform Act prescribes that the Council is to consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and the leadership of the Congress. Members serve a five-year term.

Issued in Washington, DC, December 3, 2001.

Thomas A. Till,

Executive Director.

[FR Doc. 01–30265 Filed 12–5–01; 8:45 am]

BILLING CODE 4910–06–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

Date and Time: December 11, 2001; 11 a.m.–4 p.m.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 3, 2001.

Carol Booker,

Legal Counsel.

[FR Doc. 01–30346 Filed 12–4–01; 11:07 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: U.S. Census Bureau.

Title: Government Finance Forms.

Form Number(s): F–5, F–11, F–12, F–13, F–21, F–22, F–25, F–28, F–29, F–32, F–42.

Agency Approval Number: 0607–0585.

Type of Request: Revision of a currently approved collection.

Burden: 115,076 hours.

Number of Respondents: 47,981.

Avg Hours Per Response: 2 hours and 23 minutes.

Needs and Uses: Title 13, section 161, of the United States Code requires the Secretary of Commerce to conduct a census of governments every fifth year. Section 182 allows the Secretary to conduct annual surveys in other years. The Census Bureau requests OMB clearance of the questionnaires needed to conduct the 2002 Census of Governments, Finance Phase and the 2003 Annual Survey of State and Local Government Finance. There are eleven survey forms used to collect data on government finances. Since there are many different types and sizes of governments, each form is tailored to the unique characteristics of the type and size of government or government agency to be surveyed. In both the census and annual surveys, equivalent data are collected, except for the F–11 and F–12 retirement forms. For these forms, in the census year, an additional organizational and system coverage section is included. There are no other changes to these forms, as currently cleared.

The Census Bureau incorporates the data collected on these forms into its governmental finance program. This program has made possible the dissemination of comprehensive and comparable governmental finance statistics since 1902. The data are released in reports which contain

benchmark statistics on public revenue, expenditure, debt, and assets. They are widely used by federal, state, and local legislators, policy-makers, administrators, analysts, economists, and researchers to follow the changing characteristics of the government sector of the economy.

Affected Public: State, local or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., sections 161 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30294 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: U.S. Census Bureau.

Title: Boundary and Annexation Survey (BAS).

Form Number(s): BAS 1, BAS 1A, BAS 2, BAS 2A, BAS 2CUO, BAS 3, BAS 3A, BAS 4, BAS 5, BAS 5A, 8 letters, 2 postcards, 12 inserts.

Agency Approval Number: 0607–0151.

Type of Request: Revision of an existing collection.

Burden: 40,986 hours.

Number of Respondents: 13,662.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Census Bureau requests extension of the OMB clearance for the Boundary and Annexation Survey (BAS). The Census Bureau conducts the BAS annually to collect information on the creation of newly incorporated municipalities, minor civil divisions (MCDs), counties, federally recognized American Indian areas (AIAs) which include reservations and/or off-reservation trust lands, and Alaska Native Regional Corporations (ANRCs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, MCDs, AIAs, and ANRCs. The BAS information is used to provide an appropriate record for reporting the results of the decennial and economic censuses and the Census 2000 Long Form Transitional Database, to support the annual population estimates program, to update the municipal, MCD, county, AIA, and ANRC inventory for the Federal Information Processing Standards (FIPS) program managed by the U.S. Geological Survey (USGS) for the National Institute of Standards and Technology, and to update the Geographic Names Information System (GNIS) maintained by the USGS.

Affected Public: State, local or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 6.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30295 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 011120280–1280–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2001 Annual Surveys in the Manufacturing Area. The 2001 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Manufacturing and Construction Division, on (301) 457–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), sections 61, 81, 182, 224, and 225. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys.

SURVEY TITLE	
MA313F	Yarn Production.
MA313K	Knit Fabric Production.
MA314Q	Carpets and Rugs.
MA315D	Gloves and Mittens.
MA316A	Footwear Production.
MA321T	Lumber Production and Mill Stocks.
MA325F	Paint and Allied Products.
MA325G	Pharmaceutical Preparations, except Biologicals.
MA327C	Refractories.
MA327E	Consumer, Scientific, Technical, and Industrial Glassware.
MA331A	Iron and Steel Castings.
MA331B	Steel Mill Products.
MA331E	Nonferrous Castings.
MA332Q	Antifriction Bearings.
MA333A	Farm Machinery and Lawn and Garden Equipment.
MA333D	Construction Machinery.
MA333F	Mining Machinery and Mineral Processing Equipment.
MA333L	Internal Combustion Engines.
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment.
MA333P	Pumps and Compressors.
MA334B	Selected Instruments and Related Products.
MA334M	Consumer Electronics.
MA334P	Communication Equipment.
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components.
MA334R	Computers and Office and Accounting Machines.
MA334S	Electromedical and Irradiation Equipment.
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls.
MA335E	Electric Housewares and Fans.
MA335F	Major Household Appliances.
MA335H	Motors and Generators.
MA335J ..	Insulated Wire and Cable.
MA335K	Wiring Devices and Supplies.

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

SURVEY TITLE	
M311H ...	Animal and Vegetable Fats and Oils (Stocks).
M311J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	Fats and Oils (Renderers).
M311M ...	Animal and Vegetables Fats and Oils (Consumption and Stocks).
M311N ...	Animal and Vegetables Fats and Oils (Production, Consumption, and Stock).
M313P ...	Consumption on the Cotton System.
M327G ...	Glass Containers.

SURVEY TITLE—Continued	
M331J	Inventories of Steel Producing Mills.
M336G ...	Civil Aircraft and Aircraft Engines.
M336L	Truck Trailers.
MQ311A	Flour Milling Products.
MQ313D	Consumption on the Woolen System and Worsted Combing.
MQ313T	Broadwoven Fabrics (Gray).
MQ314X	Bed and Bath Furnishings.
MQ315A	Apparel.
MQ325A	Inorganic Chemicals.
MQ325B	Fertilizer Materials.
MQ325C	Industrial Gases.
MQ327D	Clay Construction Products.
MQ332E	Plumbing Fixtures.
MQ333W	Metalworking Machinery.
MQ335C	Fluorescent Lamp Ballasts

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's Economic Censuses. These items (total company sales, total company employment, and total expenditures and Federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13, U.S.C. Responses to all other data collected for the NSF are voluntary.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, the OMB approved the 2001 Annual Surveys under the following OMB Control Numbers: Current Industrial Reports—0607–0206, 0607–0392, 0607–0393, 0607–0395, 0607–0476, and 0607–0776; Annual Surveys of Manufactures—0607–0449; Survey of Industrial Research and Development—3145–0027; and Survey of Plant Capacity Utilization—0607–0175. We will provide copies of the form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: November 27, 2001.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 01–30256 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Security Assessment of the U.S. Maritime Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, (202) 482–0637, Bureau of

Export Administration (BXA), Department of Commerce, Room 6877, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

Commerce/BXA, in coordination with the Department of the Navy, Carderock Division, and the Department of Transportation, Maritime Administration is conducting a survey of the U.S. maritime industry in order to assess the health and competitiveness as well as the technology requirements of the forms that comprise this critical sector.

II. Method of Collection

The information will be collected using a non-recurring, mandatory survey. It will be collected in written form.

III. Data

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; competitiveness issues and technology requirements.

OMB Number: 0694–0113.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: The vendor, supplier and manufacturer base of the U.S. Maritime industry.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 4.0 hours.

Estimated Total Annual Burden Hours: 8,000 hours.

Estimated Total Annual Cost: No equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 3, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30296 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2001]

Foreign-Trade Zone 50, Long Beach, CA, Proposed Foreign-Trade Subzone, Ultramar Diamond Shamrock Corporation (Oil Refinery Complex), Los Angeles, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting special-purpose subzone status for the oil refinery complex of Ultramar Diamond Shamrock Corporation (Ultramar), located in Los Angeles, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 27, 2001.

The Ultramar refinery complex (120,000 BPD, 54 tanks with 3.1 million barrel capacity on 5.9 million square feet) is located at 2402 East Anaheim Street, Wilmington area of Los Angeles (Los Angeles County), California. The refinery is within the Long Beach port of entry.

The ''Wilmington'' refinery (435 full-time and 133 contract employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, naphthas and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include propane, butane, petroleum coke and sulfur. Some 35 percent of the crude oil and natural gas condensate (54 percent of inputs) is sourced abroad. The company is also requesting to import certain intermediate inputs (naphthas and gas oils) under FTZ procedures. Currently 35 percent of the refinery's intermediate inputs are foreign-sourced.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign inputs (crude oil, natural gas condensate, gas oil, naphtha) in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, One World Trade Center, Suite 1670, Long Beach, CA 90831.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 29, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–30289 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of Sixth New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on brake rotors from the People's

Republic of China. In accordance with 19 CFR 351.214(d), we are initiating a review for Longkou TLC Machinery Co., Ltd.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766 and (202) 482–1280, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to 19 CFR Part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a timely request from Longkou TLC Machinery Co., Ltd. (''LKTLC''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''), which has an October semiannual anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), the company identified above has certified that it did not export brake rotors to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. The company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), LKTLC submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review for LKTLC.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846:	
Longkou TLC Machinery Co., Ltd.	04/01/01–09/30/01

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company. This action is in accordance with 19 CFR 351.214(e).

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 30, 2001.

Richard Moreland,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 01–30284 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Iron Construction Castings From Canada: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur or Karine Gziryan, 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) 482–5346, (202) 482–4081, 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 April 30, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on iron construction castings from Canada, covering the period March 1, 2000 through February, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews* 66 FR 21310. 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 until no later than March 31, 2002. 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 29, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 01–30283 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Japan.

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils from Japan. This review covers the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or James C. Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0409, or 202–482–0159, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), requires the Department of Commerce (''Department'') to issue the final results of an antidumping duty administrative review within 120 days of the date on which the preliminary results are published. However, if the Department concludes that it is not practicable to complete the review within the time period, the Department may extend the 120-day period to 180 days.

Background

On September 6, 2000, the Department published a notice of initiation of the administrative review of stainless steel sheet and strip in coils from Japan, covering the period January 4, 1999 through June 30, 2000. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000). The preliminary results of this administrative review were published in the **Federal Register** on August 8, 2001. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan,* 66 FR 41543 (August 8, 2001) (''Preliminary Results''). The current due date for the final results is December 6, 2001.

Extension of Time Limits for the Final Results

Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales and complicated cost accounting issues, it is not practicable to complete this review within the original time period. Therefore, the Department has postponed the deadline for issuing the final results until February 4, 2002, which is 180 days after publication of the Preliminary Results in this administrative review.

Dated: November 30, 2001.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–30287 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 6, 2001.

SUMMARY: The Department of Commerce is publishing amended final results of the antidumping duty administrative review on certain steel concrete reinforcing bars from Turkey.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Amendment to Final Results

In accordance with section 751(a) of the Act, on November 7, 2001, the Department published the final results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review*, 66 FR 56274 (Nov. 7, 2001). On November 13, 2001, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from a respondent, the Ekinciler Group (Ekinciler), that the Department had made a ministerial error in its final results. We did not receive comments from Colakoglu Metalurji A.S. (Colakoglu), Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively ''Diler''), or ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS), the other three respondents in this review. After analyzing Ekinciler's submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made because we did not publish the correct recalculated margin for Ekinciler in the **Federal Register**.

On November 13, 2001, we also received ministerial error allegations from AmeriSteel Corporation, the petitioner in this review. After analyzing the petitioner's submission, we have also determined, in accordance with 19 CFR 351.224, that a second ministerial error was made in our final margin calculation for Ekinciler. Specifically, we find that we failed to properly sum Ekinciler's adjusted financing expenses as shown in Attachment 2 of the October 31, 2001, memorandum from Elizabeth Eastwood to the file entitled ''Calculations Performed for the Ekinciler Group (Ekinciler) for the Final Results in the 1999–2000 Antidumping Duty Administrative Review on Steel Concrete Reinforcing Bars from Turkey.'' Correcting this mistake resulted in a revised interest expense ratio for Ekinciler, and thus a revised margin.

For a detailed discussion of the ministerial errors noted above, as well as the Department's analysis, see the memorandum to Richard W. Moreland from the Team, dated November 29, 2001.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 1999–2000 antidumping duty administrative review of rebar from Turkey. The revised weight-averaged dumping margins are as follows:

Exporter/ manufacturer	Original final margin percent-age	Revised final margin percent-age
Colakoglu Metalurji A.S.	9.51	.....
Ekinciler Holding A.S./ Ekinciler Demir Celik A.S.	6.83	8.41
Diler Demir Celik Endustrisi ve ticaret A.S./Yazici Demir Celik Sanayi ve ticaret A.S./Diler Dis Ticaret A.S.	0.00	.....
ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.	0.00	.....

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 29, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30285 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Structural Steel Beams From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results in the antidumping duty new shipper review of structural steel beams from Japan.

SUMMARY: In response to a request from Yamato Kogyo Co., Ltd. (''Yamato Kogyo''), the Department of Commerce (''Department'') is conducting an antidumping duty new shipper review of the antidumping duty order on structural steel beams from Japan. This new shipper review covers imports of subject merchandise from Yamato Kogyo. The period of review is February 11, 2000 through November 30, 2000.

The Department preliminarily determines that Yamato Kogyo has not made sales of structural steel beams from Japan at below normal value during the period of review. If these preliminary results are adopted in our final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate entries during the period of review without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. *See* ''Preliminary Results of the Review'' section, *infra.*

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0409 or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000). *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296 (May 19, 1997) (*''AD/CVD Final Rule''*).

Background

On June 19, 2000, the Department published in the **Federal Register** a notice of the antidumping duty order on structural steel beams from Japan. *See Structural Steel Beams from Japan: Notice of Antidumping Duty Order,* 65 FR 37960 (June 19, 2000). On December 27, 2000, Yamato Kogyo, a producer and exporter of subject merchandise during the period of review (''POR''), requested that the Department conduct an antidumping duty new shipper review of the antidumping duty order. On January 24, 2001, the Department requested that Yamato Kogyo provide: (1) Certification that it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation (''POI''); (2) a list of all of its affiliates during the POI; and (3) clarification on whether there were shipments of subject merchandise during the review period subsequent to the shipment reported. See Letter from James C. Doyle, Program Manager to Thomas Rogers, Capital Trade Incorporated (January 24, 2001). The Department also conducted an automated customs query on January 24, 2001, and found no shipments by Yamato Kogyo during the POI. See Memorandum to the File from Juanita H. Chen (January 25, 2001). On January 29, 2001, Yamato Kogyo submitted the requested certification, listing and clarification. See Letter from Thomas Rogers to Secretary Evans (January 29, 2001). On January 31, 2001, the Department initiated a new shipper review of the antidumping duty order on structural steel beams from Japan. *See Initiation of New Shipper Antidumping Duty Review: Structural Steel Beams From Japan,* 66 FR 10668 (February 16, 2001).

On February 16, 2001, the Department issued its antidumping duty questionnaire. Subsequently, the Department corrected the period of review from the requested period of June 1, 2000 through November 30, 2000, to the current period of February 11, 2000 through November 30, 2000. *See* Memorandum to the File from Juanita H. Chen (February 22, 2001). On February 23, 2001, the Department granted Yamato Kogyo's request to limit its reporting period of home market sales to the three months preceding and two months following the months of the first and last U.S. sales in the POR, noting that such reporting is at Yamato Kogyo's own risk. See Memorandum to the file from Juanita H. Chen (February 23, 2001).

On March 21, 2001, the Department received Yamato Kogyo's Section A response to the questionnaire (''Section A response''). On April 13, 2001, the Department received Yamato Kogyo's Sections B and C responses to the questionnaire (''Sections B/C response''). On August 20, 2001, the Department issued a Sections A–C supplemental questionnaire. On September 18, 2001, the Department received Yamato Kogyo's Sections A–C supplemental response (''Supplemental Response''), along with revised data files.

Under section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of a new shipper review if it determines that the case is extraordinarily complicated. On June 12, 2001, the Department fully extended the time limit for the preliminary results of this new shipper review by 120 days until November 27, 2001. *See Notice of Extension of Time for the Preliminary Results of the Antidumping Duty New Shipper Review: Structural Steel Beams from Japan,* 66 FR 32790 (June 18, 2001).

The Department is conducting this new shipper review in accordance with section 751 of the Act.

Period of Review

The POR is February 11, 2000 through November 30, 2000.

Verification

Pursuant to section 782(i)(3) of the Act, the Department verified the information provided by Yamato Kogyo for use in our preliminary results. We used standard verification procedures, including on-site inspection of Yamato Kogyo's facilities, as well as of relevant sales and financial records. From October 3, 2001 through October 5, 2001, we conducted verification of sales information submitted by Yamato Kogyo. Our verification results are outlined in the public version of the verification report and are on file in the central records unit located in room B–099 of the main Department of Commerce Building, 1401 Constitution Avenue, NW., Washington, DC. See Report on the Sales Verification of Yamato Kogyo Co. Ltd. (November 14, 2001) (''Verification Report'').

Scope of the Review

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. We have applied facts available for the reported payment date pursuant to section 776(a) of the Act because Yamato Kogyo did not report payment date, as requested by the Department. When asked for an explanation, it stated that it ''cannot readily {report} the specific payment date for each transaction'' and instead reported the payment due date based on the payment terms. *See* Sections B/C response at B–14. At verification, we noted the actual payment date appears on the receipt of payment. *See* Verification Report at 12. These receipts of payments show that payment on the invoice is made well in advance of the actual due date. Accordingly, we have used facts available for payment date, in order to calculate a more accurate credit expense by taking the simple average of the number of days between the shipment date and actual payment date, from those home market sales reviewed at verification for which actual payment date information is available. Additionally, for those home market sales for which we have actual payment date information, we have used the actual payment date to calculate the credit expense.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all structural steel beam products covered by the ''Scope of the Review'' section of this notice, supra, which were produced and sold by Yamato Kogyo in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of structural steel beam products. We have relied on four characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: hot/cold formed, shape/size, strength/grade, and coating (listed in order of preference).

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For purposes of this review, Yamato Kogyo has classified its sale(s) as EP sales. *See* Sections B/C response, at C–11. Yamato Kogyo identified one channel of distribution (sales to distributors in the U.S. market) for its U.S. sale(s) during the POR. *Id.* at C–13. Based on Yamato Kogyo's description of its U.S. sales process, that it sells the merchandise directly to unaffiliated distributors in the U.S. market, and did not sell in the U.S. through an affiliated U.S. importer, we preliminarily determine that Yamato Kogyo's sale(s) were EP sales. *See* Section A response, at A–8. We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices for export to distributors in the U.S. market. We made deductions for foreign inland freight, foreign brokerage and handling, foreign inland and marine insurance, and credit expenses in accordance with section 772(c) of the Act.

Normal Value

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Yamato Kogyo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Yamato Kogyo's aggregate volume of home market sales of the foreign like

product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers and to those affiliated customer sales which passed the arm's length test, as discussed, *infra,* made in the usual commercial quantities and in the ordinary course of trade. We made adjustments, where applicable, for movement expenses (*i.e.,* inland freight, warehousing expense, and inland insurance) in accordance with section 773(a)(6)(B) of the Act. We recalculated credit expenses, where appropriate, using actual payment dates or the average of actual payment dates reported. *See* Facts Available section of this notice, *supra;* Verification Report, at 12; Analysis Memorandum for Yamato Kogyo Co., Ltd. (November 27, 2001) at 3. Additionally, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Arm's Length Sales

Yamato Kogyo reported that it made home market sales of subject merchandise to affiliates, and also reported that it did not make sales of subject merchandise to affiliated parties for consumption. *See* Section A response, at A–3; *see also* Yamato Kogyo's Supplemental Response, at 11–12.

If any sales to affiliated customers in the home market are not made at arm's length prices, we exclude them from our analysis because we consider them to be outside the ordinary course of trade. To test whether sales were made at arm's length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determine that sales made to the affiliated party were at arms's length. *See* 19 CFR 351.403(c). In instances where no price ratio can be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we are unable to determine that these sales were made at arm's length prices and, therefore, exclude them from our analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). In our home market NV calculation, we have included Yamato Kogyo's sales to its affiliated customers because those sales pass the Department's arm's length test.

Date of Sale

Yamato Kogyo stated that it reported its home market sales based on the shipment date of such sales. *See* Verification Report at Exhibit 1. Yamato Kogyo explained that ''the terms of the sale may change up to the date of shipment.'' *See* Sections B/C response, at B–13. Yamato Kogyo stated that, for the U.S. market, it issues the invoice when it ships the merchandise, and for the home market, it issues the invoice either: (1) the day of shipment, when the merchandise is loaded onto the barge (for sales shipped by barge); or (2) the day following shipment, when the merchandise is received by the customer (for sales shipped by truck). *See* Section A response, at 13. Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. The preamble to these regulations provides an explanation of this policy, as well as examples of when the Department may choose to base the date of sale on a date other than the date of invoice. *See AD/CVD Final Rule,* 62 FR at 27348–49. From Yamato Kogyo's response, it appears that the material terms of sale are established by the date of shipment. Accordingly, for these preliminary results, in accordance with 19 CFR 351.401(i), we based date of sale on the shipment date.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP transactions. As noted in the ''Export Price/Constructed Export Price'' section, *supra,* we preliminarily determine that Yamato Kogyo's U.S. sale(s) were EP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the LOT is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the present review, Yamato Kogyo stated that it is not claiming a LOT adjustment. However, to determine whether an adjustment is nevertheless necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems and selling functions in both the United States and Japanese markets.

For the LOT in the home market, Yamato Kogyo stated that all sales were shipped directly to the final customer, either to trading companies or general contractors, and for the LOT in the U.S. market, stated that all sales were made to distributors. Yamato Kogyo reported two channels of distribution in the home market: (1) sales to trading companies; and (2) direct sales to general contractors. Yamato Kogyo reported one channel of distribution in the U.S. market: sales to unaffiliated distributors.

For sales in the home market, Yamato Kogyo asserts the sales are ''effectively'' through a single sales channel, *i.e.* from Yamato Kogyo to the customer. For sales to trading companies in the home market, Yamato Kogyo reported that the trading company issues the purchase order and makes payment, however Yamato Kogyo makes shipments directly to the trading company's customer (either a distributor or a general contractor/construction company). For sales to general contractors in the home market, Yamato Kogyo deals directly with the general contractor. For sales shipped by barge, Yamato Kogyo issues the invoice when the merchandise is loaded, and for sales shipped by truck, Yamato Kogyo issues the invoice the day the merchandise is received by the customer (usually the day following shipment). In some cases, Yamato Shoji issues the invoice to the customer. Yamato Kogyo (and in some cases, Yamato Shoji) makes the freight and delivery arrangements, provides technical information, and performs sales promotion activities such as sales calls. Based on our review of the selling functions performed in the channels of distribution in the home market, there do not appear to be any substantial differences in selling activity when the customer is a trading company versus a general contractor. Accordingly, we

preliminarily determine that there is one LOT in the home market.

For sales to the U.S. market, Yamato Kogyo sold and shipped directly to an unaffiliated distributor. Yamato Kogyo issues the invoice when it ships the merchandise. For sales to the U.S. market, Yamato Kogyo makes the freight arrangements but stated that it performs little other selling activities or services. We preliminarily determine there is one LOT in the U.S. market.

Based on our analysis of the selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily determine that Yamato Kogyo performs significantly more selling functions in the home market than for the U.S. market; thus, these sales are made at different LOTs. However, because there is only one LOT in the home market, we cannot determine if there is a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, and do not have the means to calculate a LOT adjustment. Accordingly, we have not made a LOT adjustment.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period February 11, 2000 through November 30, 2000:

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Yamato Kogyo, Co. Ltd	0.00

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments on these preliminary results. Case briefs must be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within 30 days of the date of publication of this notice, an interested party may request a public hearing on arguments to be raised in the case and rebuttal briefs. *See* 19 CFR 351.310(c). Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any case or rebuttal brief, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We calculated importer-specific duty assessment rates on a unit value per metric ton basis by summing the dumping margins on U.S. sales, and then dividing this sum by the total metric tons of all U.S. sales examined. If these preliminary results are adopted in our final results, we will instruct Customs not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to Customs.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this new shipper review (except that no deposit will be required if the rate is zero or *de minimis,* i.e., less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the original LTFV investigation, the cash deposit rate will continue to be the ''all others'' rate of 37.13 percent established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 27, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30286 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Antidumping Duty Order: Welded Large Diameter Line Pipe From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: John Drury or Helen Kramer at (202) 482–0195 and (202) 482–0405, respectively; AD/CVD, Enforcement, Office 8, Group III, Import Administration, Room 7866, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 2001).

Scope of Investigation

The product covered by this investigation is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stencilled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30. 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that welded large diameter line pipe from Japan is being sold at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe from Japan,* 66 FR 47172 (September 11, 2001).

On October 25, 2001, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of less-than-fair-value imports of welded large diameter line pipe from Japan.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of welded large diameter line pipe from Japan. These antidumping duties will be assessed on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after June 27, 2001, the date of publication of the preliminary determination in the **Federal Register** (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Welded Large Diameter Line Pipe From Japan,* 66 FR 34151). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers normally would deposit estimated duties, cash deposits based on the rates listed below. The ''All Others'' rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Manufacturer/Exporter	Margin (percent)
Nippon Steel Corporation (Nippon)	30.80
Kawasaki Steel Corporation (Kawasaki)	30.80
All Others	30.80

This notice constitutes the antidumping duty order with respect to welded large diameter line pipe from Japan. Interested parties may contact the Department's Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 30, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–30288 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 000929280–1201–01]

RIN 0693–ZA42

Announcing Approval of Federal Information Processing Standard (FIPS) 197, Advanced Encryption Standard (AES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce approves FIPS 197, Advanced Encryption Standard (AES), and makes it compulsory and binding on Federal agencies for the protection of sensitive, unclassified information. A new robust encryption algorithm was needed to replace the aging Data Encryption Standard (FIPS 46–3), which had been developed in the 1970s. In September 1997, NIST issued a **Federal Register** notice soliciting an unclassified, publicly disclosed encryption algorithm that would be available royalty-free worldwide. Following the submission of 15 candidate algorithms and three publicly held conferences to discuss and analyze the candidates, the field was narrowed to five candidates. NIST continued to study all available information and analyses about the candidate algorithms, and selected one of the algorithms, the Rijndael algorithm, to propose for the AES.

EFFECTIVE DATE: This standard is effective May 26, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 10 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930.

A copy of FIPS 197 is available electronically from the NIST web site at: *<http://csrc.nist.gov/encryption/aes/index.html/>*.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (Volume 66, Number 40, pp. 12762–3) on February 28, 2001, announcing the proposed FIPS for Advanced Encryption Standard for public review and comment. The **Federal Register** notice solicited comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. In addition to be published in the **Federal Register**, the notice was posted on the NIST Web pages; information was provided about the submission of electronic comments. Comments and responses were received from 21 private sector organizations, individuals, and groups of individuals, and from one federal government organization. None of the comments opposed the adoption of the AES as a Federal Information Processing Standard. Comments supported the selection of the algorithm and commended the clear, well-written presentation of the standard. Some comments offered editorial suggestions, pointed out perceived inconsistencies in the text, and requested clarifications. All of the editorial recommendations were carefully reviewed, and changes were made to the standard where appropriate.

Following is an analysis of the technical and related comments received.

Comment: The FIPS for AES should include support for additional block and key sizes. This would take advantage of the AES algorithm's built-in flexibility, making it better suited for use in a hashing mode and with communications applications that require minimal overhead (padding).

Response: NIST recognizes that one of the AES algorithm's strengths is its inherent support for additional block and key sizes. However, other block and key sizes have not been subjected to the same public analyses as those sizes that are provided for in the recommended FIPS. As a result, NIST believes that it would not be appropriate to include the additional sizes at this time. The block and key sizes are specified as parameters in the recommended FIPS, and could be modified to include other block and key sizes in the future if needed. The recommended standard explains that the use of parameters in the specification is intended to encourage AES implementers to build their applications and systems with future flexibility and adaptability in mind. NIST will monitor future developments, and will consider adding more parameters to the specification if needed in the future.

Comment: For added security, and to meet the needs for extremely long-term security, NIST should increase the number of rounds that are specified by the AES algorithm (i.e., the amount of processing used for encryption and decryption). Since new techniques to break the algorithm may evolve, the margin of security offered by the algorithm should be increased.

Response: Prior to its evaluation of the five finalist candidate algorithms, NIST's AES selection team discussed the issue of whether the number of rounds should be changed for one or more of the algorithms; the selection team decided to consider only the algorithms as initially submitted. Changing the number of prescribed rounds would change the way that the algorithm was defined (e.g., its key schedule), and the process of proposing, reviewing, and evaluating an algorithm would have to start over from the beginning. If the number of rounds were changed, many of the security and performance analyses that had already been performed on the candidate algorithms would no longer be useful.

Furthermore, throughout the development and review of the recommended FIPS, there was little agreement on which key sizes should have more rounds, and less agreement on how many rounds to add. Some who commented on the Draft FIPS proposed adding just two rounds, while another comment suggested adding 114 rounds.

NIST is not aware of advances in cryptographic techniques that would threaten the security provided by the recommended FIPS, but will continue to follow developments, to reevaluate the standard, and to consider changes or additions that might be needed. As with its other cryptographic standards, NIST will review the recommended FIPS every five years to consider whether the standard should be reaffirmed, amended, or withdrawn.

Comment: Since the AES algorithm allows three different key sizes, NIST should provide guidance to users regarding how and for what purpose(s) the different keys should be used.

Response: NIST is currently developing a guideline that will address numerous key management issues, including considerations for selecting from among multiple key sizes. Details on the content and development of that guideline are available on NIST's web pages http://csrc.nist.gov/encryption/kms/white-paper.pdf.

Comment: Statements in the FIPS are unclear and ambiguous regarding validation requirements for AES implementations. Additionally, many of these statements refer to FIPS 140–2, which has not been approved and which has a transition period when both FIPS 140–1 and FIPS 140–2 are in effect.

Response: FIPS 140–2 was approved in May 2001, and became effective on November 25, 2001. However, references to FIPS 140–2 have been removed in order to limit any misunderstandings.

Following approval of this recommended FIPS, vendors may request that their AES implementation be tested and validated either for conference to the AES specification or in conjunction with a cryptographic module validation test (i.e., validation testing for FIPS 140–2). The process is the same for all testing of implementations of FIPS-approved algorithms under the Cryptographic Module Validation Program.

Comment: Comments indicated concern about the padding to be used when the length of the data to be encrypted was not an even multiple of the block size. Other comments proposed more optimal specifications of the algorithm.

Response: NIST considers padding and optimization to be outside the scope of this standard. Padding will be addressed in a standard or recommendation to be developed on the modes of operation for the AES, and in the applications and protocols that use the AES.

It is expected that many optimization of the AES will be developed over time. NIST plans to post information that it receives on optimization issues on its web pages with the permission of the submitter.

Comment: One comment recommended the selections of a different algorithm, one that had not been submitted during the AES development process.

Response: NIST conducted an open process to solicit and evaluate algorithms for consideration for the AES. All candidate algorithms have been thoroughly reviewed and analyzed by the international cryptographic community.

Authority: Under section 5131 of the Information Technology Management Reform

Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems.

Executive Order 12866: This notice has been determined not to be significant for the purposes of E. O. 12866.

Dated: November 28, 2001.

Karen H. Brown,

Acting Director, National Institute of Standards and Technology.

[FR Doc. 01–30232 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120301A]

Proposed Information Collection; Comment Request; Economic Data Collection for the Atlantic Wreckfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jim Waters, Department of Commerce, NOAA, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516–9722, (252–7288710).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect to conduct a one-time census to collect economic, sociocultural, and demographic data about commercial fishing for wreckfish (*Polyprion americanus*) along the U.S. south Atlantic coast. The wreckfish fishery has been managed with individual transferable quotas (ITQs) since 1992. Few shareholders currently fish for wreckfish, yet they have not sold or leased their shares. This project will address why shareholders chose not to participate in the wreckfish fishery, where and for what species they did fish, and why they did not sell or lease their unused quota to generate revenue even though they did not fish for wreckfish. Equally important is to determine if the process of developing an ITQ system contributed to the rapid increase in fishing effort in the early 1990s. The results of this inquiry could offer important lessons for economists, fishery managers and others researching the appropriateness of applying ITQ systems in other fisheries in the southeast.

II. Method of Collection

Data will be collected through personal interviews with approximately 50 past and current shareholders in the ITQ management system for the wreckfish fishery. Interviews will include open-ended questions so that respondents can put into their own words their thoughts, interpretations and experiences with the fishery and the ITQ management program. All interviews will be tape-recorded and transcribed. Results of the study will be made available both through publications and on a National Marine Fisheries Community Impacts web page. Participation in the study will be voluntary.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 29, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30291 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120301C]

Proposed Information Collection; Comment Request; Highly Migratory Species Logbooks

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jill Stevenson at the National Marine Fisheries Service (NMFS) Highly Migratory Species Division, 1315 East-West Highway, Silver Spring, MD 20910, or by email at *jill.stevenson@noaa.gov*or phone at 301–713–2347.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, and bluefin tuna in relation to the quotas, thereby ensuring that the United States complies with its international obligations. The information supplied through vessel logbooks also provides the catch and effort data necessary to assess the status of highly migratory species and to evaluate bycatch in each fishery. Stock assessments are conducted and presented to the International Commission for the Conservation of Atlantic Tunas (ICCAT) periodically and provide, in part, the basis for ICCAT management recommendations which become binding on member nations. Supplementary information on fishing costs and earnings has been collected via this vessel logbook program on a voluntary basis. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities. Given the need for more representative data and more complete analyses, NMFS proposes to make the cost/earnings summary a mandatory requirement of this program.

II. Method of Collection

Vessel owners who are issued a vessel permit in the swordfish or shark fisheries are required to complete vessel logbooks for all trips targeting Atlantic highly migratory species(HMS). In addition, selected tuna vessels (10 percent of permitted fleet) will be required to complete logbooks. Under this revised collection, the cost/earnings summary of the logbook would be required for selected vessels for all trips targeting HMS.

III. Data

OMB Number: 0648–0371.

Form Number: NOAA Form 88–191.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (fishing vessel owners).

Estimated Number of Respondents: 5,840.

Estimated Time Per Response: 10 minutes for cost/earnings summaries attached to logbook reports, 12 minutes for logbook catch reports, 2 minutes for negative logbook catch reports.

Estimated Total Annual Burden Hours: 25,383.

Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 29, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30292 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120301D]

Proposed Information Collection; Comment Request; Vessel-Marking Requirements in Antarctic Waters

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin Tuttle, F/ST3, Room 12643, SSMC–3, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2282, ext. 199).

SUPPLEMENTARY INFORMATION:

I. Abstract

U.S. vessels participating in Antarctic fisheries must display the vessel's official identification number or international radio call sign in three locations on the vessel. The requirement aids in the enforcement of fishery regulations.

II. Method of Collection

The information is displayed in three locations on the vessel.

III. Data

OMB Number: 0648–0368.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals.

Estimated Number of Respondents: 3.

Estimated Time Per Response: 45 minutes.

Estimated Total Annual Burden Hours: 2.

Estimated Total Annual Cost to Public: $90.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 29, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–30293 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number 981203295–1272–06; CFDA: 11.552]

RIN 0660–ZA06

Technology Opportunities Program

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of solicitation of grant applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice describing the conditions under which applications will be received by the Technology Opportunities Program (TOP) and how NTIA will select applications for funding, subject to the availability of Fiscal Year 2002 funds.

The Bush Administration believes that new technologies and the deployment of high-speed networks are crucial to promoting America's economic growth and our nation's social well-being. The TOP program can play an important role in extending those priorities to underserved communities, through matching grants to state, local, and tribal governments and non-profit entities that demonstrate innovative uses of digital network technologies. TOP projects address specific challenges and realize opportunities for change in such areas as lifelong learning, community and economic development, government and public services, safety, health, culture, and the arts.

DATES: Complete applications for the Fiscal Year 2002 TOP grant program must be mailed or hand-carried to the address indicated below and received by NTIA no later than 8:00 P.M. EST, March 21, 2002. NTIA anticipates the processing and selection of applications for funding will require 6 months. NTIA expects to announce FY 2002 awards prior to September 30, 2002.

ADDRESSES: Completed applications must be mailed, shipped, or sent overnight express to:

Technology Opportunities Program
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
HCHB, Room 4092
Washington, DC 20230

or hand-delivered to:

Technology Opportunities Program
National Telecommunications and Information Administration
U.S. Department of Commerce
HCHB, Room 1874
1401 Constitution Avenue, NW
Washington, DC 20230

Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and Constitution Avenues.

Materials needed to complete an application can be obtained electronically via TOP's Web site at *http://www.ntia.doc.gov/top* or by contacting the TOP office at 202–482–2048.

FOR FURTHER INFORMATION CONTACT: Stephen J. Downs, Director of the Technology Opportunities Program. Telephone: 202–482–2048; fax: 202–501–5136; e-mail: *top@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: NTIA issues this Notice subject to the appropriations made available under continuing resolution (Public Law 107–70). NTIA anticipates making grant awards provided that funding for TOP is continued beyond December 7, 2001, the expiration date of the current continuing resolution.

Eligible Organizations

All non-profit entities (including, but not limited to, faith-based organizations, national organizations and associations, non-profit community-based organizations, non-profit health care providers, schools, libraries, museums, colleges, universities, public safety providers) and state, local, and tribal governments are eligible to apply.

Although individuals and for-profit organizations are not eligible to apply, they are encouraged to participate as project partners.

Funding Availability

Issuance of grants is subject to the availability of FY 2002 funds. Based on the status of relevant appropriations legislation, NTIA expects to have approximately $12.5 million available for new grants. Further notice will be made in the **Federal Register** and the TOP web site of the final status of funding for this program at the appropriate time.

Based on past experience, NTIA expects this year's grant round to be very competitive. In Fiscal Year 2001, NTIA received over 660 applications collectively requesting more than $367 million in federal funds. From these applications, the Department of Commerce announced 74 awards totaling $42.8 million in federal funds.

Award Amount

An applicant may request up to a total of $750,000 in funds from NTIA. TOP expects the federal amounts awarded to range from $200,000 to $750,000, with an average of approximately $500,000. The amount awarded covers the duration of the project.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of cash or in-kind contributions. NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent. Grant funds under this program are usually released in direct proportion to local matching funds utilized and documented as having been expended.

Generally, federal funds may not be used as matching funds, except as provided by federal statute. If you plan to use funds from a federal agency as matching funds, you should contact the federal agency that administers the funds in question and obtain documentation from that agency's Office of General Counsel to support the use of federal funds for matching purposes.

Completeness of Application

TOP will initially review all applications to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications'Fiscal Year 2002. Details on how to access the Guidelines for Preparing Applications'Fiscal Year 2002, are available in the section ''Other Information'' in this Notice. Each of the required elements must be present and clearly identified. Failure to do so may result in rejection of the application. For details on how to obtain materials needed to complete an application, see ''Addresses'' in this Notice.

Application Deadline

As noted above, complete applications for the Fiscal Year 2002 TOP grant program must be received by NTIA no later than 8 P.M. EST, March 21, 2002. A postmark date is not sufficient. Applications which have been provided to a delivery service on or before March 20, 2002, with ''delivery guaranteed'' before 8:00 P.M. on March 21, 2002, 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 above guaranteed prior to the closing date and time. Applications will not be accepted via facsimile machine transmission or electronic mail.

NTIA anticipates that it will take approximately six months to complete the review of applications and make final funding decisions.

Program Funding Priorities

Through TOP, NTIA provides underserved communities with opportunities to explore the possibilities that emerging digital network technologies offer to solve critical challenges in such areas as lifelong learning, community and economic development, government and public services, safety, health, culture, and the arts.[1]

TOP projects demonstrate creative uses of digital network technologies to address pressing needs in the public and non-profit sectors. Therefore, TOP expects each applicant to present a clear vision and a workable plan to apply digital network technologies to address specific challenges in their communities. Rather than simply requesting funds to build capacity or upgrade existing equipment, each application should describe a project that pinpoints specific problems, proposes creative solutions, and postulates measurable outcomes.

As a national program, TOP emphasizes innovation, learning, and diffusion of new ideas and practical knowledge. Each TOP-supported project must be innovative in the sense that it represents a departure from how other communities and groups across the country are using digital network technologies to overcome obstacles. Each TOP project should yield new insights into how best to use these technologies and offer opportunities to learn what works well and what does not. Because these grants will serve as national models for other communities, NTIA expects each project to include provisions for thorough evaluations that will provide valid and reliable data as well as valuable lessons learned to be shared with others interested in the project.

All funded projects must be interactive in that they allow end users to share information with each other or gain access to information on an on-demand basis, as opposed to a one-way or broadcast basis.[2] TOP-supported projects must also involve communication and new partnerships among multiple unaffiliated organizations or enable direct, interactive communication between an organization and the public it serves.

For the FY 2002 grant competition, TOP is interested in projects that involve:

- Broadband technologies that bring very high-speed communications directly to end users;
- Mobile wireless communication technologies that offer end users greater flexibility in how, where, and when they access information;
- Empowering end users to move beyond passive information consumption to become valued contributors to the development, use, and expansion of shared information resources;[3] and
- Emerging data sharing techniques that facilitate the seamless and secure exchange of information across organizational boundaries.

In previous fiscal years, NTIA supported planning projects. The emphasis for Fiscal Year 2002 is on projects that deploy, use, and evaluate digital network technologies. NTIA will, however, support projects that incorporate some planning activities as part of the proposed project.

Limitations on Project Scope

Each TOP project is expected to include a range of activities that support project development, implementation, and evaluation. However, TOP will not support projects whose primary purpose is to develop network infrastructure, to create hardware or software, to provide training on the use of the network technologies, or to build voice-based systems. Details on these restrictions are discussed below.

(1) Infrastructure Development Projects. Every TOP applicant is expected to create a project that describes and provides funding for specific applications of digital network technologies to address important community challenges. Therefore, TOP will not support projects whose primary purpose is to create telecommunications or network infrastructure without significant dedication of resources to specific applications of that infrastructure.

(2) Hardware or Software Development Projects. Some projects may require limited software development or the customization or modification of existing software or hardware in order to meet particular end-user requirements or to enable the exchange of information across networks. However, the creation of a software or hardware product cannot be a project's primary purpose.

(3) Training Projects. While TOP does consider training to be an essential aspect of most projects, TOP will not support projects whose primary purpose is to provide training in the use of software applications, Internet use, or other use of network technologies.

(4) Voice-based Systems. Two-way, interactive voice networks are an important element of the existing network systems. Voice as a means for conveying information and voice input tools play critical roles in ensuring people with disabilities have access to network technology. However, TOP will not support projects whose primary purpose is to either build or install voice-based communication networks such as call centers, two-way radio networks, enhanced-911 and 311 systems, or 800 MHZ radio systems.

Review Criteria

Reviewers will analyze and rate each application using the following criteria. The relative weights of each criterion are identified in parentheses.

1. Project Purpose (20%)

Each application should describe a clearly defined project that focuses on underserved communities. In this criterion, reviewers will judge each application on (1) the overall design of the project and (2) the degree to which it provides opportunities for underserved communities.

In assessing the project design, reviewers will examine the degree to which the applicant clearly: (1) Defines the problem(s) within the community to be served and describes its severity; (2) proposes creative and practical means of addressing the community's problem(s) through specific applications of digital network technologies; and (3) identifies anticipated outcomes and that are both realistic and measurable. Reviewers will also assess the degree to which an applicant convincingly links the three major elements—problem(s), solution(s), and outcome(s).

Reviewers will assess the degree to which the project targets underserved communities and populations, and the degree to which the proposed project

[1] "Underserved" refers to various groups of people and geographic communities that face technological, economic, physical, linguistic, or cultural barriers that limit access to the benefits of digital network technologies.

[2] An "end user" is an individual who directly utilizes the network technology.

[3] For example, once isolated communities now use Internet technology to collect and express their histories; children have become agents of community change as they have used network technology to collect information, provide analysis, and contribute to the public policy dialogue in their communities; and citizens are exploring the creation of databases which enrich the resources made available by local and state governments.

will address the circumstances and challenges (such as poverty, low literacy, disabilities, high unemployment, low educational achievement, high crime rate, poor health status, etc.) they face.

2. Innovation (20%)

Reviewers will assess innovation by examining both the technology to be used and the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. TOP defines innovation broadly. For example, projects that involve imaginative partnerships, the introduction of new business processes designed to offer more effective services, untested strategies for overcoming access barriers, or new techniques that transform inter-organizational relationships can all be considered innovative. TOP encourages applicants to experiment with leading edge technologies. It is, however, the creativity behind the application of the technology to meet community needs that ultimately determines the level of innovation.

Using their experience in their respective fields, reviewers will examine each project in a national context and evaluate how an application compares with, complements, and improves on what is known about using digital network technology as a solution to problems in its particular field.

3. Diffusion Potential (20%)

The innovations and approaches to be demonstrated in any proposed project should contain the potential to be diffused broadly throughout the country. NTIA expects that each awarded project will serve as a model for other communities to follow.

To assess this potential for diffusion, reviewers will consider five factors:

(1) The degree to which the problem identified by the applicant is common to many communities;

(2) The relative advantage of the project's innovations over established approaches to addressing the specified problems;

(3) The ease of replication and adaptation, based on considerations such as cost and complexity;

(4) The applicant's plans and budget resources dedicated to disseminate actively the knowledge gained from the project's successes and failures; and

(5) The capability and experience of an applicant or their partner organizations to reach communities across the country and disseminate their findings.

4. Project Feasibility (15%)

In assessing the feasibility of each application, reviewers will focus on six issues: the technical approach, the qualifications of the project staff, the proposed budget, the implementation schedule, plans for protecting privacy, and the applicant's plan for sustaining the project beyond the grant period.

(1) In assessing the technical approach, reviewers will examine the degree to which the proposed system would work and operate with other systems; technological alternatives that have been considered; designs for system maintenance and periodic upgrades; and plans for project expansion. Applicants are expected to make use of existing infrastructure and commercially available telecommunications services, unless extraordinary circumstances require the construction of new network facilities.

(2) In assessing the qualifications of the project team, reviewers will assess the applicant and its partners to determine if they have the resources, expertise, and experience necessary to undertake, evaluate, and complete the project and disseminate results within the proposed period.

(3) Reviewers will analyze the budget in terms of clarity and cost-effectiveness. The proposed budget should be appropriate to the tasks proposed and sufficiently detailed so that reviewers can easily understand the relationship of items in the budget to the project narrative.

(4) Reviewers also will assess the degree to which the implementation process is comprehensive, reasonable, and can be completed in the proposed time frame.

(5) Reviewers will evaluate the applicant's plans to safeguard the privacy of the project's end users and others affected by the project.

(6) Finally, reviewers will examine the applicant's strategies to sustain the project after the completion of the grant.

5. Community Involvement (15%)

Each application will be rated on the overall level and breadth of community involvement in the development and implementation of the proposed project. Reviewers will:

(1) Analyze the applicant's partnerships to ensure that they include linkages among unaffiliated organizations (from the public, non-profit, or private sectors) as an ongoing and integral part of project planning and implementation. TOP considers partners to be organizations that supply cash or in-kind resources and/or play an active role in the planning and implementation of the project;

(2) Examine the steps the applicant has taken to include and sustain the involvement of a variety of community stakeholders. Reviewers will look for evidence of demand, from the community, the end users, and the potential beneficiaries, for the services proposed by the project; and

(3) Consider the degree of attention paid to the needs, skills, working conditions, and living environments of the targeted end users. Reviewers will consider the extent to which applicants involve representatives from a broad range of potential users in both the design and implementation of the project and consider the varying degrees of abilities of all end users, including individuals with disabilities. Reviewers will also assess the degree to which the project addresses barriers which limit a community's or a group's access to digital network technologies. Finally, reviewers will assess the applicant's plans for training end users and upgrading their skills.

6. Evaluation (10%)

Each application will be rated on its proposed plans for evaluating the project. Reviewers will assess the extent to which the applicant's research or evaluation design: (1) Provides for continuous feedback for project planning, implementation, review and revision; (2) addresses the problems, solutions, and anticipated outcomes described in the project purpose and yields valid and reliable findings; (3) captures lessons learned and sufficient descriptive data so that others may easily adapt and replicate the project; and (4) meets TOP's requirements for an independent evaluation as described in the ''Reporting Requirements'' section of Notice.

In assessing evaluation, reviewers will examine:

(1) The research design and methodology;

(2) Evaluation questions, data collection, and data analysis plans;

(3) The qualifications of any staff or external evaluators working on the evaluation; and

(4) The allocation of resources for implementing the evaluation and reporting project findings.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 CFR part 74. If included in the approved project budget, TOP will allow costs for personnel; fringe benefits; computer

hardware, software, and other end-user equipment; telecommunication services and related equipment; consultants, evaluators, and other contractual items; travel; rental of office equipment, furniture, and space; and supplies. All costs must be reasonable and directly related to the project.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency.

Ineligible Costs

Costs associated with the construction or major renovation of buildings are not eligible. While costs for the construction of new network facilities are eligible, applicants are expected to make use of existing infrastructure and commercially available telecommunications services. Only under extraordinary circumstances will the construction of new network facilities be approved.

Costs for professional services are also ineligible. TOP defines professional services as activities delivered over a network that would otherwise be provided in a face-to-face setting such as teaching students, counseling clients, providing direct patient care, or interpreting services, etc. For example, if the project proposes to create a telemedicine network, the costs of setting up, maintaining, and evaluating the use of the network are eligible, but payment for the time or services of physicians or other health professionals providing care over the network is not an eligible cost.

Note that costs that are ineligible for TOP support may not be included as part of the applicant's matching fund contribution.

In addition, the restrictions on the use of grant funds defined in the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–553 are still applicable. The act placed restrictions on eligible costs for applicants that are recipients of Universal Service Fund discounts and applicants receiving assistance from the Department of Justice's Regional Information Sharing Systems Program as part of the project costs. The statute provided:

> That notwithstanding any other provision of law, no entity that receives telecommunications services at preferential rates under section 254(h) of the Act (47 U.S.C. 254(h)) or receives assistance under the regional information sharing systems grant program of the Department of Justice under part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) may use funds under a grant under this heading to cover any costs of the entity that would otherwise be covered by such preferential rates or such assistance, as the case may be.

Accordingly, recipients of the above-described preferential rates or assistance are prohibited from including any costs that would be covered by such preferential rates or assistance in their proposed TOP grant budget. More details on this restriction can be found in the Guidelines for Preparing Applications—Fiscal Year 2002.

NTIA will clarify this restriction through a Notice of Availability of Funds which will be released in the **Federal Register** and TOP's web site once a FY 2002 appropriations bill is signed into law.

Award Period

Successful applicants will have up to 36 months to complete their projects. While the completion time will vary depending on the complexity of the project, NTIA has found that most grant recipients require at least two years to complete and evaluate fully their projects. Accordingly, NTIA encourages applicants to propose projects that last two to three years.

Selection Process

The selection process will last approximately six months and involves four stages outlined below:

(1) During the first stage, each eligible application will be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panel members will evaluate applications according to the review criteria provided in this Notice and provide the ratings to the program staff. As discussed below, these ratings constitute one of the selection factors to be used by the TOP Director when preparing the slate of recommended grant awards.

(2) Upon completion of the external review process, program staff will analyze applications considered for award that will be based on the degree to which a proposed project meets the program's funding scope as described in the section entitled ''Limitations on Project Scope;'' the eligibility of costs and matching funds included in an application's budget; and the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs.[4]

The TOP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA) Associate Administrator for review and approval of the recommended slate.[5] The Director's recommendations and the Associate Administrator's review and approval will take into account the following selection factors:

1. The evaluations of the outside reviewers;
2. The analysis of program staff;
3. The degree to which the proposed grants meet the program's priorities as described in the section entitled ''Program Funding Priorities;''
4. The geographic distribution of the proposed grant awards;
5. The variety of technologies and diversity of uses of the technologies employed by the proposed grant awards;
6. The provision of access to and use of digital network technologies by rural communities and other underserved groups;
7. Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and,
8. The availability of funds.

(3) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described above and the program's stated purposes as set forth in the section entitled ''Program Funding Priorities.''

(4) After applications have been selected in this manner, negotiations will take place between TOP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TOP proposes to fund, and if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TOP award. Final selections made by the Administrator will be based upon the recommendations by the Director and

[4] See discussion of ''Eligible Costs'' and ''Matching Funds Requirements'' in this Notice.

Information on previously funded grants is available from the TOP. In the section ''Other Information'' of this Notice, details are available on how to access this information.

[5] The Office of Telecommunication and Information Applications is the division of the National Telecommunications and Information Administration that supervises NTIA's grant awards programs.

the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Funding Priorities,'' upon the conclusion of negotiations.

Use of Program Income

Applicants are advised that any program income generated by a proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to TOP, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award. In addition, federal policy prohibits any recipient or subrecipient receiving federal funds from the use of equipment acquired with these funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services. This prohibition does not apply to services provided to outside organizations at no cost.

Policy on Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published in the **Federal Register** at 60 FR 66491, Dec. 22, 1995.

Reporting Requirements

To ensure compliance with federal regulations and collect systemic evaluation data on each project, successful TOP applicants have a number of basic reporting requirements once they are awarded a grant. At project outset, TOP grantees provide detailed baseline information on the project objectives, goals, partners, and populations served. Each quarter, grantees provide financial reports and updates on project activities. At project completion, TOP grantees must also provide a closeout report.

Finally, because evaluation results play such a critical role in helping other organizations learn about what works well and what does not, each TOP-supported project will provide NTIA a final evaluation report. To ensure the validity of the findings, the final evaluation report must be completed by an independent evaluator or team of evaluators who are not in a direct reporting relationship with the applicant.[6] TOP will make copies of the final evaluation report available to the public.

Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this Notice. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this Notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in the **ADDRESSES** section above. NTIA will not consider a request to waive the application deadline for an application until the application has been received.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Other Information

Electronic Information. Information about NTIA and TOP, including this document and the Guidelines for Preparing Applications—Fiscal Year 2002, can be retrieved electronically via the Internet using the World Wide Web at *http://www.ntia.doc.gov/top.* This document can be provided in alternate formats, including braille. If you need assistance please contact TOP at 202–482–2048 or *top@ntia.doc.gov.*

In order to facilitate the diffusion of ideas generated by the grant round and opportunities for other potential funders to identify promising projects, TOP will provide a copy of each application's executive summary and contact information on its home page.

For FY 2002, applicants to the TOP will also be able to utilize the Internet to prepare their Standard Forms 424 and 424A and an executive summary. Through TOP's web site at *http://www.ntia.doc.gov/top,* applicants can access helpful guides and online tools with self calculating totals and pre-filled forms that will reduce the time it takes to prepare the application forms. These tools are optional and not required to prepare an application.

Please note that applicants must submit all application materials (even those forms prepared online) in hard copy with appropriate signatures as specified in the Application Deadline section of this Notice.

Submission Requirements. TOP requests one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. For information on contacting state SPOC offices, refer to the Guidelines for Preparing Applications—Fiscal Year 2002.

Disposition of Unsuccessful Applications. Applications accepted for review for the Fiscal Year 2002 grant round will be stored at the Department of Commerce until the start of the next grant competition or one year, whichever period is longer. At the end of that period, the applications will be destroyed.

Sensitive Information. Because of the high level of public interest in projects supported by TOP, the program anticipates receiving requests for copies of successful applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. To assist NTIA in making disclosure determinations, applicants may identify sensitive information and label it ''confidential.''

Human Subject Research Protections. The Department of Commerce, through Part 27 of Title 15 of the Code of Federal Regulations, requires that all applications awarded under the TOP ensure protections for any human subjects involved in research.

For each application that involves human subject research, applicants should clearly indicate in the evaluation section of the application that:

(1) The project involves human subjects research, but the research will likely be eligible for an exemption from Institutional Review Board approval, or

(2) The project involves human subjects research, and you either have or will seek approval of the research from an Institutional Review Board.

[6] In large institutions, such as universities, colleges, and foundations, an independent evaluator can include a representative from departments not associated with the applicant. In addition, TOP's requirement for having a grantee have an independent evaluator develop the final evaluation report does not preclude an applicant from conducing the evaluation in conjunction with an independent evaluator.

If an application is considered for funding, the grant applicant will be asked to submit appropriate documentation of IRB approval or exemption status to the Federal Program Officer for approval by Department officials. More details on human subject research protections are available through the TOP's Web site at *http://www.ntia.doc.gov/top* and the Guidelines for Preparing Applications—Fiscal Year 2002.

Grant Requirements. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation.

Other Requirements. It has been determined that this Notice is not significant for purposes of Executive Order 12866.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices 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. 601 *et seq.*

It has been determined that this Notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

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 Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Nancy J. Victory,

Assistant Secretary for Communications and Information.

[FR Doc. 01–30172 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public User ID Badging

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 4, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Hollan, Manager, Public Search Facilities, USPTO, Room 2C04, 2021 South Clark Place, Arlington, VA 22202; by telephone at (703) 306–2608; or by electronic mail at *chollan@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to provide patent and trademark collections for the public to search and retrieve information. The Public Search Facilities are maintained for public use with paper and automated search files and trained staff to assist searchers. The Public Search Facilities are available to everyone.

In order to maintain and control the patent and trademark collections so that the information is available to the public, the USPTO issues Public User ID badges to users who wish to use the Public Search Facilities. For many years, the USPTO issued paper User IDs, but the USPTO now uses an electronic badging database for the issuance of plastic ID badges.

The plastic ID badge shows a color photograph of the user, a bar-coded user number, and an expiration date. The badging system allows the USPTO to electronically store the information, which can be updated periodically. The ID system is designed to enable the USPTO to (a) identify users of patent and trademark documents, (b) confine user access to public areas, (c) locate and control access to patent and trademark documents, and (d) identify users of USPTO services.

The Public User ID badge enables the USPTO to accurately track use of the documents and to identify anyone misusing the search facilities. The USPTO uses the ID badges to identify, counsel, and sanction users who destroy, misfile, or remove documents from its collections, or who mishandle its equipment. The Public User ID also grants the public limited access to the non-public parts of the USPTO, such as the Examiner areas. To access these areas, users are required to wear a visible USPTO employee ID, a contractor ID, or a Public User ID. (The Public User ID badges enable the USPTO to immediately confirm a user's identity via an on-the-spot comparison with the color photograph on the badge.)

For its ID system, the USPTO collects the following mandatory identifying information: name and mailing address (as verified on a picture ID such as a driver's license), signature, and a digital photograph of the user that is taken by USPTO staff. Optional information includes telephone number and USPTO Attorney Registration Number, if any.

II. Method of Collection

The application for the Public User ID is completed on site and handed to a staff member to enter into the system and issue the badge.

III. Data

OMB Number: 0651–0041.

Form Number(s): PTO–2030.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 9,084 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately five minutes (.08 hours) to gather the necessary information, prepare the form, and submit the completed application for a Public User ID or to renew the Public User ID Badge, and approximately ten minutes (.17 hours) to supply any optional information to the staff, have the photograph taken, and be issued the Public User ID Badge.

Estimated Total Annual Respondent Burden Hours: 1,054 hours per year.

Estimated Total Annual Respondent Cost Burden: $109,616 per year. The USPTO estimates that of those users requesting Public User IDs, approximately 1/3 of the users will be attorneys and 2/3 will be paraprofessionals. Using the professional hourly rate of $252 per hour for associate attorneys in private firms and the paraprofessional hourly rate of $30 per hour, the average hourly rate for all respondents to this collection will be $104 per hour.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Application for Public User ID	5	3,642	291
Issue Public User ID Badge	10	3,642	619
Renew Public User ID Badge	5	1,800	144
Total		9,084	1,054

Estimated Total Annual Nonhour Respondent Cost Burden: $0. (There are no capital start-up or maintenance costs or filing fees associated with this information collection.)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 26, 2001.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 01–30212 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Announcing a Public Workshop on Digital Entertainment and Rights Management

AGENCY: Technology Administration, Commerce.

ACTION: Notice of a public workshop.

SUMMARY: The United States Department of Commerce Technology Administration (TA) announces a public workshop on digital entertainment and its availability to consumers. The workshop will help gather data on such issues as the strengths, weaknesses and availability of current and imminent technological solutions to protect digital content, barriers that are inhibiting movies, music and games from coming online and the capability of networks to handle digital content such as video-on-demand to the home. Limited seating will be available to members of the general public. It is recommended that persons wishing to become general public attendees call in advance to reserve seating, on a first come, first served basis.

DATES: This workshop will be held on December 17, 2001, from 9 a.m.–4 p.m.

ADDRESSES: The workshop will be held at the Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. Entrance on 14th St. between Pennsylvania and Constitution Aves., NW.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from Chris Israel, Deputy Assistant Secretary for Technology Policy, Technology Administration, (202) 482–5687.

SUPPLEMENTARY INFORMATION: Pursuant to its statutory authority found at 15 U.S.C. 3704(c), the Technology Administration is authorized, among other things, to do the following:

- Conduct technology policy analyses to improve United States industrial productivity, technology, and innovation, and cooperate with United States industry in the improvement of its productivity, technology, and ability to compete successfully in world markets;
- Determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;
- Determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological developments in particular industrial sectors worldwide;
- Identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;
- Assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and social demands for goods and services and to promote productivity and economic growth;
- Propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;
- Serve as a focal point for discussions among United States companies on topics of interest to industry and labor, including discussions regarding manufacturing and discussions regarding emerging technologies; and,
- Consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin.

With these responsibilities in mind, the Technology Administration is planning on holding a full-day, moderated series of informal discussions with relevant stakeholders to gather information on the availability of digital entertainment and status of copyright protection and rights management tools. The discussions will help gather data on such issues as the strengths, weaknesses and availability of technological solutions, as well as network capability.

Authority: This work effort is being initiated pursuant to TA's statutory responsibilities, codified at section 3704 of Title 15 of the United States Code.

Dated: November 30, 2001.

Phillip J. Bond,

Undersecretary of Commerce for Technology.

[FR Doc. 01–30221 Filed 12–5–01; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0002]

MTS Products, Inc., a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with MTS Products, Inc., a corporation containing a civil penalty of $75,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 21, 2001.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 3, 2001.

Todd A. Stevenson,

Acting Secretary.

[CPSC Docket No. 02–C0002]

In the Matter of MTS PRODUCTS, INC., a corporation.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between MTS Products, Inc. (hereinafter, ''MTS'' or ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (hereinafter, ''staff''), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or a determination of issues of law and fact.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent federal regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. Respondent MTS Products, Inc. is a corporation organized and existing under the laws of the State of California. Its office is located at 190401 Business Center Drive, Northridge, CA 91324. Respondent is a manufacturer and wholesaler of general merchandise including juvenile products.

II. Allegations of the Staff

4. In March 1996, MTS manufactured and distributed in commerce 18,200 J. Mason Infant Carriers (hereinafter, ''Infact Carrier''), Model Number 12502, ''Squiggles,'' Model Number 12505, ''Aurora Dreams,'' and Model No. 12506, ''Aurora Dreams With Canopy'' MTS is, therefore, a ''manufacturer'' of a ''consumer product'' ''distributed in commerce'' as those terms are defined in sections 3(a)(1), (4), and (11) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1), (4), and (11).

5. Between June 6, 1996 and February 24, 1997, MTS received seven reports of the Infant Carrier's carrying handle breaking during use, allowing babies to fall to the ground or the floor. Several babies sustained bruises, cuts, and abrasions to the face. MTS did not report this information to the Commission.

6. MTS had sufficient information to conclude that the Infant Carriers contained a defect which could create a substantial product hazard, but failed to report such information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). A failure to report under section 15(b) is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4). By knowingly failing to report, MTS subjected itself to civil penalties under section 20 of the COSA, 15 U.S.C. 2069.

III. Response of MTS

7. Respondent denies the staff's allegations set forth in paragraphs 4 through 6 above.

8. Respondent denies that the Infant Carrier contains a defect which could create a substantial product hazard under section 15(a) of the CPSA, 15 U.S.C. 2064(a).

9. Respondent denies that it knowingly violated the reporting requirement of section 15(b) of the CPSA, 15 U.S.C. 2064(b) pursuant to section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

10. Respondent contends that its contractor had used re-grind plastic material to complete a production run one day in March 1996. This material was not in accordance with Respondent's specifications for its Infant Carriers. It appears that a minimum of 100 Infant Carriers may have been affected. Because Respondent did not date code its Infant Carriers, Respondent recalled all Infant Carriers manufactured in March 1996. The total number of Infant Carriers recalled was 18,200.

IV. Agreement of the Parties

11. The Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

12. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the CPSA's Reporting Requirement.

13. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(f). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register**.

14. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA, as alleged, (4) to a statement of findings of facts or conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

15. In settlement of the staff's allegations, Respondent agrees to pay a $75,000.00 civil penalty as set forth in the incorporated Order.

16. The Commission may publicize the terms of the Settlement Agreement and Order.

17. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

18. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

19. The provisions of this Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Respondents MTS Products, Inc.

Dated: December 18, 2000.

Paula Willis Mueller,

Vice President, General Merchandise Manager, MTS Products, Inc., 19401 Business Center Drive, Northridge, CA 91324.

Commission Staff.

Alan H. Schoem,
Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, DC 20207–0001.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: December 21, 2000.

Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent MTS Products, Inc. (hereinafter, ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (''Commission''); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, IT IS

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Respondent MTS Products, Inc. shall pay to the United States Treasury a civil penalty in the amount of seventy-five thousand and 00/100 dollars ($75,000.00) in two (2) installments each. The first payment of thirty-seven thousand five hundred and 00/100 dollars ($37,500.00) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, ''anniversary date''). The second payment of thirty-seven thousand five hundred and 00/100 dollars ($37,500.00) shall be paid within one (1) year of the anniversary date. Upon the failure of Respondent MTS Products, Inc. to make a payment or upon the making of a late payment by Respondent MTS Products, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 3rd day of December, 2001.

By Order of the Commission,

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–30307 Filed 12–5–01; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT15379 entitled ''Applications of Petroleum Technologies on Native American and Alaskan Native Corporation Properties for the Benefit of the Entire Tribe/Native Corporation.'' The DOE/NETL is seeking applications on behalf of the National Petroleum Technology Office, for support of projects consistent with applied research for development, exploration, processing and environmental solutions for oil production problems on Native American and Alaskan Native Corporation lands, thereby commonly benefitting the Tribe or Corporation. This program is directed toward creating cooperative efforts between the Tribes or Corporations and the oil industry.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about December 10, 2001.

FOR FURTHER INFORMATION CONTACT: Juliana L. Murray, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: murray@netl.doe.gov, Telephone Number: 412–386–4872.

SUPPLEMENTARY INFORMATION: The DOE supports modern petroleum technologies on Native American and Alaskan Native Corporation lands which are both economically and environmentally viable. For a number of reasons, many areas on Native American and Alaskan Native Corporation lands are under explored and consequently have underdeveloped oil reserves. This program is directed toward creating cooperative efforts between the Tribes or Corporations and the oil industry.

The four areas of interest for the technical topics of this solicitation are:

(1) Development Program

The Development program is directed toward technologies to improve the development of a known oil field on Native American and Alaskan Native Corporation lands. Proposed efforts must be economically and environmentally viable as well as an improvement in the development of an oil field. The types of technologies to be considered are not limited to, but may include, reservoir characterization, completion or stimulation, secondary or tertiary oil recovery, artificial lift, well workovers, well drilling, field studies and production management;

(2) Exploration Program

The Exploration program is directed toward technologies to promote the exploration of undiscovered oil fields on Native American and Alaskan Native Corporation lands. In cooperation with the Tribal management, proposed efforts must be economically and environmentally viable as well as an improvement of oil field exploration techniques. The types of technologies to be considered are not limited to, but may include, non-invasive exploration techniques, computer-based modeling for exploration and well drilling and evaluation;

(3) Environmental Program

The Environmental program is directed toward technologies to reduce the cost of effective environmental oil and gas field compliance. The types of technologies to be considered are not limited to, but may include, soil remediation and remediation due to past operational practices or problems, air emissions, innovative waste and produced water management; and

(4) Oil Processing Program

The oil processing program is directed toward an increase in refining capacity by addressing issues that limit potential construction. The types of studies to be considered are those that evaluate the environmental impact and the economic feasibility of oil processing on Native American lands. Projects that focus on reducing the environmental impact of oil refining on these lands will also be considered.

Proposed efforts must incorporate innovative technologies to improve the development of a known oil field, to promote exploration of undiscovered oil reserves, to study viable solutions to evaluate and minimize the environmental impact of oil processing construction/operation or to reduce the cost of effective environmental oil and gas field compliance.

This solicitation fits into the overall mission of NETL by furthering to resolve the environmental, supply and reliability constraints of producing and using fossil energy resources to provide Americans with a stronger economy,

healthier environment and more secure future. Reserves and production are expected to increase as well as potential for facilitating a cleaner environment and a strong potential to increase processing capacity. The benefits are far-reaching to U.S. citizens, Native American Tribes, Alaskan Native Corporations and the U.S. Government by promoting a stronger economy, healthier environment and more secure future.

This solicitation is a follow-on to a 1999 Native American Solicitation. DOE anticipates issuing approximately two to five financial assistance (grant) awards with a project performance period no less than one year in length and up to two years in length. Approximately $1.2 million of DOE funding is planned for this solicitation. DOE has determined the minimum cost share of twenty percent (20%) of the total estimated project cost is required; details of the cost sharing requirement and the specific funding levels will be contained in the program solicitation.

This solicitation will be targeted for unrestricted competition however, all potential offerors must provide a letter of commitment for the project from the Native American Tribe's governing body or from the governing body of an Alaskan Native Corporation (more information will be provided in the solicitation). Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–02NT15379 (**Note:** The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 20% of the total project cost).

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or e-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on November 29, 2001.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 01–30243 Filed 12–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–56–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 30, 2001.

Take notice that on November 27, 2001, Dominion Transmission Inc. (DTI) filed, as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 31, and Fourteenth Revised Sheet No. 32, with an effective date of January 1, 2002.

DTI states that the purpose of this filing is to adopt the 2002 Gas Research Institute (GRI) surcharges approved by the Commission in Docket No. RP01–434–000.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI 's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 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. 01–30253 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–57–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 30, 2001.

Take notice that on November 27, 2002, Dominion Transmission Inc. (DTI), filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2002:

Second Revised Sheet No. 606
Third Revised Sheet No. 1000
Second Revised Sheet No. 1057
First Revised Sheet No. 1093
Second Revised Sheet No. 1112
Second Revised Sheet No. 1117
Second Revised Sheet No. 1119
Second Revised Sheet No. 1120
Second Revised Sheet No. 1126
Second Revised Sheet No. 1171
Third Revised Sheet No. 1184
Second Revised Sheet No. 1185
First Revised Sheet Nos. 2000–2005
First Revised Sheet Nos. 2052–2054
First Revised Sheet Nos. 2101–2104
First Revised Sheet No. 2151
First Revised Sheet No. 2153
First Revised Sheet No. 2154
First Revised Sheet No. 2156
Second Revised Sheet No. 2203
Second Revised Sheet No. 2204
Second Revised Sheet No. 2206
First Revised Sheet No. 2252
First Revised Sheet No. 2253
Third Revised Sheet No. 2304
First Revised Sheet No. 2305
First Revised Sheet No. 2352
First Revised Sheet No. 2353
First Revised Sheet Nos. 2402–2404
First Revised Sheet Nos. 2452–2454
First Revised Sheet No. 2501
First Revised Sheet No. 2506
First Revised Sheet No. 2507

DTI is filing the above-referenced tariff sheets to make various administrative changes and correct typographical errors.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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. 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. 01–30254 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–65–002; Docket No. EL95–38–002]

Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corporation and Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corporation; Notice of Filing

November 30, 2001.

Take notice that on November 9, 2001, Sithe/Independence Power Partners (Sithe) and Niagara Mohawk Power Corporation (Niagara Mohawk) filed with the Federal Energy Regulatory Commission (Commission) a revised Settlement Agreement in compliance with the requirements of the Commission's October 11, 2001 Letter Order issued in the above-referenced proceedings.

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 14, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the 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. 01–30255 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–35–000, et al.]

Bluegrass Generation Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 29, 2001.

Take notice that the following filings have been made with the Commission:

1. Bluegrass Generation Company, L.L.C.

[Docket No. EG02–35–000]

Take notice that on November 26, 2001, Bluegrass Generation Company, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas 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.

Comment date: December 20, 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. Foothills Generating, L.L.C.

[Docket No. EG02–36–000]

Take notice that on November 26, 2001, Foothills Generating, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas 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.

Comment date: December 20, 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. Renaissance Power, L.L.C.

[Docket No. EG02–37–000]

Take notice that on November 26, 2001, Renaissance Power, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas 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.

Comment date: December 20, 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. Rolling Hills Generating, L.L.C.

[Docket No. EG02–38–000]

Take notice that on November 26, 2001, Rolling Hills Generating, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas 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.

Comment date: December 20, 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.

5. Duke Energy Corporation

[Docket No. ER01–1616–005]

Take notice that on November 26, 2001, Duke Energy Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing in the above-captioned docket pursuant to the Commission's November 7, 2001 order in Docket Nos. ER01–1616–000, *et al.*

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New York Independent System Operator, Inc.

[Docket No. ER01–3001–001]

Take notice that on November 26, 2001 the New York Independent System Operator, Inc. (NYISO) filed a compliance filing in the above-captioned proceedings. The NYISO was required to submit this compliance filing pursuant to New York Independent System Operator, Inc., 97 FERC ¶61,095 (October 25, 2001).

A copy of this filing was served upon all persons designated on the official service list compiled by the Secretary in Docket No. ER01–3001–000.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER01–3026–002]

Take notice that on November 26, 2001, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Amended Facilities Agreement between Ohio Power Company and Fremont Energy Center LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 6, 2001.

A copy of the filing was served upon the Ohio Public Utilities Commission.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Electric Utilities Corporation

[Docket No. ER02–128–002]

Take notice that on November 26, 2001, PPL Electric Utilities Corporation (PPL Electric) and Williams Generation Company—Hazleton (WGC) filed with the Commission revisions to the Interconnection Agreement originally filed with the Commission on October 18, 2001 and supplemented on October 23, 2001.

PPL Electric and WGC request an effective date of October 19, 2001 for the Interconnection Agreement, as revised.

PPL Electric and WGC also enclose a form of cancellation designated in accordance with Order No. 614, to cancel the interconnection agreement that will be superceded by the Interconnection Agreement submitted in this docket.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. The Dayton Power and Light Company

[Docket No. ER02–403–000]

Take notice that on November 26, 2001, The Dayton Power and Light Company (Dayton) submitted service agreements establishing Dominion Nuclear Marketing II, Inc. as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements.

Copies of this filing were served upon Dominion Nuclear Marketing II, Inc. and the Public Utilities Commission of Ohio.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER02–404–000]

Take notice that on November 26, 2001, The Dayton Power and Light Company (Dayton) submitted service agreements establishing with Dominion Nuclear Marketing II, Inc. as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements.

Copies of this filing were served upon with Dominion Nuclear Marketing II, Inc. and the Public Utilities Commission of Ohio.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER02–405–000]

Take notice that on November 26, 2001, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an unexecuted, amended and restated Interconnection and Operating Agreement with Duke Energy Hinds, LLC (Duke Hinds), and an updated Generator Imbalance Agreement with Duke Hinds (the First Revised Interconnection Agreement). Duke Hinds objects to certain aspects of the First Revised Agreement, including Duke Hinds' cost responsibility for the interconnection facilities necessary for the physical interconnection of the Duke Hinds Facility to Entergy's transmission system.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. TransÉnergie U.S. Ltd., Hydro One Delivery Services Inc.

[Docket No. ER02–406–000]

Take notice that on November 26, 2001, TransÉnergie U.S. Ltd. (TEUS) and Hydro One Delivery Services Inc. (Hydro One Delivery), on behalf of their to-be-formed project development subsidiary, LELCO, submitted for filing, pursuant to section 205 of the Federal Power Act, an application requesting that the Commission (1) grant LELCO blanket authority to make sales of transmission rights at negotiated rates, and (2) grant certain waivers, in connection with their proposed Lake Erie Link transmission interconnector project.

Comment date: December 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Geysers Power Company, LLC

[Docket No. ER02–407–000]

Take notice that on November 26, 2001, Geysers Power Company, LLC (Geysers Power), tendered for filing its updated Rate Schedules for the calendar year 2002 for Reliability Must-Run services provided to the California Independent System Operator Corporation (CAISO) pursuant to the Geysers RMR Agreement for Units 13 and 16. This filing is being made in response to the ISO's designation of Geysers Unit 16 as a Reliability Must-Run (RMR) Unit for calendar year 2002 in order to (i) provide required annual updates of the contract service limits, monthly options payments and start-up costs for the Geysers Units 13 and 16 governed by the RMR Agreement; (ii) set new rates reflecting the revisions to the Annual Fixed Revenue Requirement in accordance with Schedule F of the RMR Agreement; (iii) revise the RMR Agreement in accordance with a settlement agreement reached in 1999 among various RMR parties; and (iv) comply with Order No. 614, 90 FERC ¶61,352 (2000).

Copies of this filing have been served upon the CAISO and Pacific Gas and Electric Company.

Comment date: December 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PPL Electric Utilities Corporation

[Docket No. ES02–8–000]

Take notice that on November 13, 2001, PPL Electric Utilities Corporation submitted an application pursuant to section 204 of the Federal Power Act

seeking authorization to issue promissory notes and other evidences of secured and unsecured short-term indebtedness through December 31, 2003, in an amount not to exceed $1 billion at any one time.

Comment date: December 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ES02–9–000]

Take notice that on November 14, 2001, UtiliCorp United Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time, up to and including $500 million, in the aggregate at any one time outstanding, of short-term notes and other evidences of indebtedness, including guarantees of securities issued by subsidiaries or affiliates.

Comment date: December 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ES02–10–000]

Take notice that on November 15, 2001, UtiliCorp United Inc. (UtiliCorp) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue to issue UtiliCorp Common Stock shares in an Exchange Offer pursuant to which the public shareholders of Aquila will receive a determined number of shares of UtiliCorp Common Stock.

UtiliCorp also requests an exemption from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: December 14, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ES02–11–000]

Take notice that on November 9, 2001, UtiliCorp United Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time, up to and including $500 million, in the aggregate at any one time outstanding, of short-term notes and other evidences of indebtedness, including guarantees of securities issued by subsidiaries or affiliates.

Comment date: December 11, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Soyland Power Cooperative Inc.

[Docket No. ES02–12–000]

Take notice that on November 10, 2001, Soyland Power Cooperative Inc. (Soyland) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to and including $12 million of long-term debt.

Soyland also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: December 14, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30217 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

November 30, 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.:* 12132–000.

c. *Date filed:* October 15, 2001.

d. *Applicant:* Lake Altoona Water Power Company, Inc.

e. *Name and Location of Project:* The Lake Altoona Dam Project would be located at the existing county-owned dam on the Eau Claire River in The City of Altoona, Eau Claire County, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Thomas J. Reiss Jr., Lake Altoona Water Power Company, Inc., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (920) 261–7975.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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–12132–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing reinforced concrete, 223-foot-long, 43-foot-high, Lake Altoona Dam, (2) a proposed 50-foot-long, 12-foot-diameter reinforced concrete penstock, (3) a proposed powerhouse containing one generating unit having a total installed capacity of 875 kW, (4) a proposed 200-foot-long 4.2-kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 2.5 GWh.

k. 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). A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no 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.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30249 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 30, 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:* 12136–000.

c. *Date Filed:* November 7, 2001.

d. *Applicant:* Public Utility District No. 1 of Franklin County.

e. *Name of Project:* Scooteney Hydroelectric Project.

f. *Location:* The proposed project would be located at Scooteney Lake 10 miles southeast of Othello, in Franklin County, Washington at Station 1622+11 on the Potholes East Canal, a man-made structure within the Columbia Basin Project. The project will require the use of an existing irrigation canal administered owned by the U.S. Bureau of Reclamation (BOR) and would occupy lands on which the United States has been granted an easement.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth A. Sugden, Manager, Public Utility District No. 1 of Franklin County, 1411 W. Clark, Pasco, WA 99302–2407, Telephone: (509) 547–5591.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, 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 (12136–000) on any comments, protest, 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 utilize the BOR's existing irrigation canal and consist of: (1) An intake structure (2) a concrete bypass weir, (3) a powerhouse with an installed capacity of 1,450 kW, (3) a 13.8 kv transmission line approximately 2,000 feet long, and (4) appurtenant facilities. The project would have an annual generation of 4.23 GWh.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30250 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 30, 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:* 12138–000.

c. *Date Filed:* November 7, 2001.

d. *Applicant:* Public Utility District No. 1 of Franklin County.

e. *Name of Project:* PEC 1973 Hydroelectric Project.

f. *Location:* The proposed project would be located approximately 2 miles west of Mesa, in Franklin County, Washington at an existing check/drop structure within the Potholes East Canal system at station 1973+00. The project will require the use of an existing irrigation canal administered by the U.S. Bureau of Reclamation (BOR) and would occupy lands on which the United States has been granted an easement.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth A. Sugden, Manager, Public Utility District No. 1 of Franklin County, 1411 W. Clark, Pasco, WA 99302–2407, Telephone: (509) 547–5591.

i. *FERC Contact:* Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, 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 (12138–000) on any comments, protest, 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 utilize the BOR's existing irrigation canal and will not require a new or existing dam. The project would consist of: (1) an intake structure constructed integral with the powerhouse to avoid the use of a lengthy penstock, (2) a concrete

bypassed weir, (3) a powerhouse with an installed capacity of 2,000 kW, (3) a 13.8 kv transmission line approximately 500-foot long, and (4) appurtenant facilities. The project would have an annual generation of 5,440,000 kWh.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30251 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 30, 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:* 12139–000.

c. *Date Filed:* November 7, 2001.

d. *Applicant:* Public Utility District No. 1 of Franklin County.

e. *Name of Project:* EBC 625 Hydroelectric Project.

f. *Location:* The proposed project would be located at Station 625+00 on the existing Eltopia Branch Canal, an irrigation canal administered by the U.S. Bureau of Reclamation (BOR) near Eltopia, in Franklin County, Washington. The project would occupy lands on which the United States has been granted an easement.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth A. Sugden, Manager, Public Utility District No. 1 of Franklin County, 1411 W. Clark, Pasco, WA 99302–2407, Telephone: (509) 547–5591.

i. FERC Contact: Mr. Lynn R. Miles, Sr. (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, 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 (12139–000) on any comments, protest, 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 utilize the BOR's existing irrigation canal and would consist of: (1) a concrete intake structure, (2) a concrete bypass weir, (3) a 60-inch diameter, 750-foot-long, buried steel penstock, (4) a powerhouse with an installed capacity of 1.1 MW, (3) a 13.8 kv transmission line approximately 2,000-foot-long, and (4) appurtenant facilities. The project would have an annual generation of 3.76 GWh.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–30252 Filed 12–5–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42080A; FRL–6813–1]

Nebraska State Plan for Certification ofApplicators of Restricted Use Pesticides; Notice of Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 3, 2001 (66 FR 50430) (FRL–6798–8), EPA issued a notice of intent to approve an amended Nebraska Plan for the certification of applicators of restricted use pesticides. In this notice EPA solicited comments from the public on the proposed action to approve the amended Nebraska Plan. The amended Certification Plan Nebraska submitted to EPA contained several statutory, regulatory, and programmatic changes to its current Certification Plan. The proposed amendments established new commercial and noncommercial categories and subcategories along with their respective standards of competency, and the payment of appropriate fees for the licensing of commercial, noncommercial and private applicators. No comments were received and EPA hereby approves the amended Nebraska Plan.

ADDRESSES: The amended Nebraska Certification Plan can be reviewed at the locations listed under Unit I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: John Tice, Water, Wetlands and Pesticide Division/Pesticide Branch (WWPD/PEST), Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, KS; telephone number: (402) 437–5080; fax number: (402) 323–9079; e-mail address: Tice.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a

non-agricultural setting may also be affected. In addition, this action may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of the Amended State Plan, Other Related Documents, and Additional Information?

To obtain copies of the amended Nebraska Certification Plan, other related documents, or additional information contact:

1. John Tice at the address listed under **FOR FURTHER INFORMATION CONTACT.**

2. Tim Creger, Nebraska, Department of Agriculture, P.O. Box 94756, Lincoln, NE 68509–4756; telephone number: (402) 471–2394; e-mail address: timc@agr.state.ne.us.

3. Jeanne Heying, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.; telephone number: (703) 308–3240; e-mail address: heying.jeanne@epa.gov.

4. The Nebraska Certification plan and proposed changes may be viewed on the internet at the following URL: http://www.agr.state.ne.us/division/bpi/pes/p07.pdf.

II. What Action Is the Agency Taking?

EPA is approving the amended Nebraska Certification Plan. This approval is based upon the EPA review of the Nebraska Plan and finding it in compliance with FIFRA and 40 CFR part 171. Further, there were no public comments submitted to the earlier **Federal Register** Notice soliciting comments. The amended Nebraska Certification Plan is therefore approved.

List of Subjects

Environmental protection.

Dated: November 19, 2001.

Martha R. Steincamp,

Acting Regional Administrator, Region VII.

[FR Doc. 01–30273 Filed 12–5–01; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 30, 2001.

Summary: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments should be submitted on or before January 7, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

For Further Information Contact: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

Supplementary Information:

OMB Control No.: 3060–0756.

Title: Procedural Requirements and Policies for Commission Processing of BOC Applications for the Provisions of In-Region, InterLATA Services Under Section 271 of the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 75.

Estimated Time Per Response: 250.9 hours (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 18,820 hours.

Total Annual Cost: $0.

Needs and Uses: The Public Notice sets forth procedural requirements and policies relating to the Commission processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to section 271 of the Communications Act of 1934, as amended. BOCs must file applications, which provide information on which the applicant intends to rely in order to satisfy the requirement of section 271. State regulatory commission and Department of Justice can file written consultations relating to the applications. Interested third parties may file comments and reply comments regarding the applications. All of the requirements are used to ensure that BOCs have complied with their obligations under Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to section 271.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–30245 Filed 12–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATIONS

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, December 10, 2001, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Memorandum of Understanding with Farm Service Agency.

Discussion Agenda:

Memorandum and resolution re: Proposed Regulation Regarding Payment of Post-Insolvency Interest in Receiverships With Surplus Funds.

Memorandum and resolution are: Amendment to Part 325—Capital Standards for Nonfinancial Equity Investments.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 3, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–30345 Filed 12–4–01; 11:12 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: *Tuesday, December 11, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE & TIME: *Thursday, December 13, 2001 at 10:00 A.M.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes

Election of Officers

Service Awards

Future Meeting Dates

Revised Draft Advisory Opinion 2001–16: Democratic National Committee by counsel, Joseph E. Sandler and Neil Reiff

Voting System Standards—Release for Public Comment

Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01–30347 Filed 12–4–01; 11:07 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010786–012.

Title: Contship and Italia di Navigazione SpA Space Charter and Sailing Agreement.

Parties: Contship Containerlines, Italia di Navigazione S.p.A.

Synopsis: The proposed agreement modification increases the minimum number of slots chartered by Italia on Contship's vessels from 130 to 150.

Agreement No.: 011671–004.

Title: Italia/Contship Space Charter and Sailing Agreement.

Parties: Italia di Navigazione S.p.A., Contship Containerlines, Lykes Lines Limited, LLC, TMM Lines Limited, LLC.

Synopsis: The proposed amendment restates the agreement and adds TMM Lines Limited and Lykes Lines Limited as parties, provides for new slot allocations among the parties, eliminates obsolete language, and changes the name of the agreement.

By Order of the Federal Maritime Commission.

Dated: November 30, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–30180 Filed 12–5–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date Reissued
861F	George J. Young & Co., 110 West Ocean Blvd., Suite 622, Long Beach, CA 90802	November 1, 2001.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints, and Licensing.

[FR Doc. 01–30179 Filed 12–5–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant: International Services Corporation, 1629 K Street, NW., Suite 700, Washington,

DC 20006. Officers: Stephen P. Druhot, Exec. Vice President, (Qualifying Individual), Mariano Echevarria, President.

Dated: November 30, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–30181 Filed 12–5–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:30 p.m. on Tuesday, December 4, 2001.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Future capital framework. (This item was originally announced for a closed meeting on December 3, 2001.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: December 3, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–30321 Filed 12–3–01; 5:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), formerly Health Care Financing Administration (HCFA).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled ''Medicare Beneficiary Database (MBD),'' HHS/CMS/CBS, System No. 09–70–0536. The Medicare program is rapidly changing to accommodate expansion of new service delivery models and payment options, allowing for more medical choices for its beneficiaries. To successfully support ongoing and expanded program administration, service delivery modalities and payment coverage options, CMS proposes to establish an enterprise database. More specifically, the proposed system will contain a complete ''beneficiary insurance profile'' that reflects individual Medicare and Medicaid health insurance coverage and Medicare health plan and demonstration enrollment. Once fully developed, the MBD would provide a database of pertinent and comprehensive personal data on people with Medicare and persons dually eligible for both Medicare and Medicaid under either the Fee for Service or Managed Care Programs. It would support data processing, at the discrete beneficiary level, necessary for continued and evolving program operations including but not limited to Medicare claims payment, entitlement, Medicare + Choice elections and payments, coordination of benefits for the purpose of conducting Medicare business, payment demonstrations and Medicaid coverage. The data in this database is held at the person level and is identified through use of an individual health insurance claim number. As such, the MBD would serve as CMS's singular, reliable and authoritative data source, from which all systems can retrieve current, standard, valid and timely data necessary for Medicare Program administration. MBD will provide CMS with a centralized database that is able to communicate with other systems while being able to view, manage, and update beneficiary information. It will also provide new sets of data not found in existing CMS systems. Other groups of information maintained in this data management structure will be initially extracted from data elements currently maintained in other CMS systems of records: ''Enrollment Database (EDB)'' (formerly known as the Health Insurance Master Record), System No. 09–70–0502, ''Group Health Plan (GHP), System No. 09–70–5001,'' and the ''Medicaid Statistical Information System (MSIS), System No. 09–70–4001.'' These systems will remain active for the purposes stated in their current notices. The data elements include, but are not limited to, standard data for identification such as health insurance claim number (HICN), social security number (SSN), sex, race/ethnicity, date of birth, geographical location, Medicare entitlement information, M+C plan elections and enrollment, End Stage Renal Disease (ESRD) coverage, primary insurance coverage, e.g., the ''working aged'' population, historic and current listing of residences, and Medicaid eligibility and Managed Care institutional status.

The MBD is in its first stage of a multi-year implementation. In its full implementation the MBD will be the national source of comprehensive beneficiary information and provide consistent information throughout Medicare operations. The first application of the MBD focuses on the Medicare Managed Care Program. The system is being developed in several different stages and this notice addresses the initial stage of development that will contain data of interest to the Medicare Managed Care program rather than the Fee For Service Program. The initial stage will include two major functions: (1) Allows system users to view and update beneficiary data based upon role based security access and (2) allows accurate and timely processing of beneficiary residence information particularly for mailings and to processing managed care payments. The MBD update function will ensure the accuracy and timeliness of data using business rules developed to assess and validate the correctness of new and changed data. However, historic data will be retained to provide insurance profiles for specified ''points in time''. Further, for accurate beneficiary residence address processing, the MBD identifies the conditions where the acceptance of new or corrected address information will trigger the establishment of a new or corrected period of Beneficiary

Residence History Information or Beneficiary Temporary Residency History Information. It also would identify the conditions where new Social Security Administration (SSA) State and County Codes must be derived when an address is changed. Future modifications of the MBD that substantially change the system of records will follow a corresponding modification or alteration of this system notice.

The primary purpose of this system of records is to provide the Centers for Medicare & Medicaid Services (CMS) with a singular, authoritative, database of comprehensive data on people enrolled in Medicare. The development and operation of the MBD would establish within CMS, a singular, national source of comprehensive beneficiary information. This information would be consistent throughout the Medicare Program, providing key benefits to CMS's program, administrative and customer service goals. The MBD will combine and house beneficiary centric data that resides currently within CMS databases such as the EDB, MSIS and GHP. It will be the authoritative database for approved agency contractors who need specific types of data to support and implement business processes. Although the MBD does not replace any of these systems at this time, the MBD will provide the most current and reliable information for contractors to make timely decisions about payment and service delivery. The Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant, (2) another federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) providers and suppliers of services for administration of Title XVIII, (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs, (5) Peer Review Organizations, (6) other insurers for processing individual insurance claims, (7) facilitate research on the quality and effectiveness of care provided, as well as payment related projects, (8) support constituent requests made to a congressional representative, (9) support litigation involving the agency, and (10) combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS has filed a new system of records report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 28, 2001. We will not disclose any information under a routine use until 40 days after notification to OMB and Congress, whichever is latest. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: William Seabrease, Health Insurance Specialist, Center for Beneficiary Choices, CMS, Mail-stop C5–16–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–6187.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Background

The MBD was established to provide CMS with a singular, authoritative database of comprehensive data on people with Medicare. The MBD is necessary to successfully support ongoing program administration including Medicare claims payment, entitlement; Medicaid coverage, Medicare+Choice elections and payments; coordination of benefits for the purpose of conducting Medicare business; payment demonstrations; and demographic research. As CMS's authoritative enterprise beneficiary database, it will provide new sets of data that is not currently available in the EDB, GHP or MSIS. The ''Medicare Beneficiary Database (MBD),'' System No. 09–70–0536 will also maintain beneficiary data elements extracted from existing CMS systems of records: EDB, GHP, and MSIS. The renamed ''Enrollment Database,'' was established in 1965 to maintain accurate and complete data on Medicare enrollment and entitlement. Notice of the modification to this system, ''Health Insurance Master Record (HIMR),'' HHS/CMS/BDMS, System No. 09–70–0502 was published in the **Federal Register** at 55 FR 37549 (September 12, 1990), 61 FR 6645 (Feb. 21, 1996) (added unnumbered social security use), 63 FR 38414 (July 16, 1998) (added three fraud and abuse uses), and 65 FR 50552 (Aug. 18, 2000) (deleted one and modified two fraud and abuse uses). The ''Group Health Plan (GHP),'' System No. 09–70–4001, published in the **Federal Register** at 57 FR 60819 (December 22,1992), was established to maintain a master file of group health plan members for accounting control, to expedite the exchange of data with the plans, and to control the posting of pro-rata amounts to the part B deductible of enrolled members. The ''Medicaid Statistical Information System (MSIS),'' System No. 09–70–6001, published in the **Federal Register** at 59 FR 41327 (August 11, 1994), was established to maintain an accurate, current, and comprehensive database containing standardized enrollment, eligibility, and paid claims of Medicaid beneficiaries to be used for the administration of the Medicaid program at the Federal level, produce statistical reports, support Medicaid research, and assist in the detection of fraud and abuse.

CMS has long realized that the Medicare program is in the middle of rapidly changing health insurance industry characterized by an expansion of service delivery models and payment options. The Medicare+Choice provisions of the Balance Budget Act (BBA) of 1997 (Pub. L. 105–217) has made the challenge of managing beneficiary health choices one of the most critical challenges facing CMS and the health industry at large. To be of maximum use, the data must be organized and categorized into a comprehensive system. CMS sought to identify key sources, including both organizations and systems that could provide valid and reliable information. Medicare will no longer exist within an environment characterized by limited health insurance options and standard delivery models. The MBD provides CMS with a timely model for data inventory of beneficiary information retained in a database environment that provides flexibility to react quickly to changing Medicare program needs.

Data relating to Medicare Managed Care beneficiaries will be the initial focus of the system implementation.

The MBD provides a solution as a singular, reliable and authoritative source, in which all systems can retrieve current, standard, valid and timely data for processing beneficiary selections of capitated delivery options. It will provide a comprehensive ''national view'' of beneficiary information that is consistent throughout the Medicare program, which will primarily benefit CMS's operational and customer service business goals. In addition to providing a flexible system to accommodate changes, the MBD will support significant improvements in the accuracy of the beneficiary residence address used for capitation, determining payments and will serve as the first identifying record of dual Medicare/Medicaid eligible population which is essential to the capitation process.

An independent technical evaluation of CMS's managed care systems found that without major enhancements, Medicare+Choice provisions could not be supported by existing Medicare systems. Also the comprehensive review of existing systems was necessary in order to proceed with a development effort that would ensure that future customer service and program management objectives were met. The MBD alters an old architecture that could only support two beneficiary Medicare choice options: Fee-for service or traditional Health Maintenance Organizations (HMO). As these models merge and additional choices become available, (i.e., Medicare+Choice Organizations, Medicare Savings Accounts (MSA) and Private Fee for Service options), CMS determined the need for a beneficiary management structure, the MBD, designed to support these expanded program and coverage options.

The MBD design will accommodate the future growth in delivery service options; scalable to support the entire Medicare beneficiary population of approximately 42 million. This would include both the targeted sets of business requirements and processes for beneficiary choice between capitated delivery service options, now, and later to support all beneficiaries remaining in the traditional Medicare Fee For Service Program.

The MBD includes standard data for identification such as the Medicare HICN, SSN, sex, race/ethnicity, date of birth, and geographical location for Medicare beneficiaries. Further, the MBD will maintain data on the following types of beneficiary information: demographic information, Medicare entitlement information, Medicare Secondary Payer data, hospice election, Plan elections and enrollments, End Stage Renal Disease (ESRD) entitlement, historic and current listing of residences, and Medicaid eligibility and Managed Care institutional status. The MBD will have a common interface layer that enables existing legacy systems and new applications to access MBD in a uniform fashion. The system shall support both online and batch transaction volumes up to 200,000-batch update transaction per-day; up to 2 million interactive inquiries per-day. An operational day is assumed to be 16 hours. It is envisioned to be capable of supporting access and interoperability across mainframe, mid-tier, and desktop systems. The MBD is currently scoped to encompass up to 15 logical database tables, containing about 250 logically grouped data elements. The logical database tables include: The Beneficiary Demographics and Communication Profiles, Medicare Entitlement Information, Hospice Election and Usage Information, Beneficiary Service and Delivery Elections, Other Beneficiary Explicit Elections, Fee-For-Service Periods, Managed Care Institutional Status Information, ESRD Medicare entitlement information, Medicaid Eligibility information, and Other Required Beneficiary Specific information. It also will accommodate new and modified beneficiary data that was determined to be necessary to support effective implementation of the BBA.

B. Statutory and Regulatory Basis for System of Records

Authority for maintenance of the system is given under §§ 226, 226A, 1811, 1818, 1818A, 1831, 1833(a)(1)(A), 1836, 1837, 1838, 1843, 1866, 1876, 1881, and 1902(a)(6) of the Social Security Act and Title 42 United States Code (U.S.C.) 426, 1395(a)(1)(A), 1395c, 1395cc, 1395i–2, 1395i–2a, 1395j, 1395l, 1395mm, 1395o, 1395p, 1395q, 1395rr, 1395v, and 1396(a).

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Social Security Act or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of entitlement to such benefits, and the populations dually eligible for both Medicare and Medicaid (Title XIX of the Social Security Act).

The data elements include, but are not limited to, standard data for identification such as HICN, SSN, sex, race/ethnicity, date of birth, geographic location, Medicare enrollment and entitlement information, Medicare Secondary Payer (MSP) data containing insurance information on payers primary to Medicare necessary for appropriate Medicare claim payment, hospice election, plan elections and enrollment, End Stage Renal Disease (ESRD) entitlement, historic and current listing of residences, and Medicaid eligibility and institutional status.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MBD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only disclose the minimum personal data necessary to achieve the purpose of the MBD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system of records will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., ensuring proper enrollment, establishing the validity of individual's entitlement to benefits, verifying the accuracy of information presented by the individual, insuring proper reimbursement for services provided, and claims payment.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be

accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosure of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MBD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds, and/or

c. Assist federal/state Medicaid programs within the state.

Other federal or state agencies in their administration of a federal health program may require MBD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided;

The Internal Revenue Service may require MBD data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b);

In addition, other state agencies in their administration of a federal health program may require MBD information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state;

The Railroad Retirement Board requires MBD information to administer provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and/or the administration of the Medicare program;

The Social Security Administration requires MBD data to enable them to assist in the implementation and maintenance of the Medicare program;

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the Department of Health and Human Services for determining Medicaid and Medicare eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Social Security Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state;

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

Providers and suppliers of services require MBD information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a

result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require MBD information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

The PRO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The PRO will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor. Information to be disclosed shall be limited to Medicare enrollment data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, HMO, and HCPP may require MBD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MBD data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse;

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

11. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MBD information for the purpose of combating fraud and abuse in such federally funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The MBD system will conform to applicable law and policy governing the privacy and security of federal automated information systems. These include but are not limited to: the

Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

➢ Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;

➢ Quality Control Administrator class has read and write access to key fields in the database;

➢ Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;

➢ Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and

➢ Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBD system: Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

➢ User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

➢ Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.

➢ Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.

➢ Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.

➢ Warnings—Legal notices and security warnings display on all servers and workstations.

➢ Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the New System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of MBD. Disclosure of information from the system of records will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: November 28, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0536

SYSTEM NAME:

Medicare Beneficiary Database, HHS/CMS/CBS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various other remote locations (See Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under Title XVIII of the Social Security Act or under provisions of the Railroad Retirement Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act; individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; individuals age 64 and 8 months or over who are likely to become entitled to health insurance (Medicare) benefits upon attaining age 65, and individuals under age 65 who have at least 21 months of disability benefits who are likely to become entitled to Medicare upon the 25th month of entitlement to such benefits and those populations that are dually eligible for both Medicare and Medicaid (Title XIX of the Social Security Act).

CATEGORIES OF RECORDS IN THE SYSTEM:

The data elements include, but are not limited to, standard data for identification such as health insurance claim number (HICN), social security number (SSN), sex, race/ethnicity, date of birth, geographic location, Medicare enrollment and entitlement information, Medicare Secondary Payer data necessary for appropriate Medicare claim payment, hospice election, plan elections and enrollment, End Stage Renal Disease (ESRD) entitlement, historic and current listing of residences, and Medicaid eligibility and Managed Care institutional status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under sections 226, 226A, 1811, 1818, 1818A, 1831, 1833(a)(1)(A), 1836, 1837, 1838, 1843, 1866, 1876, 1881, and 1902(a)(6) of the Social Security Act and Title 42 United States Code (U.S.C.) 426, 1395(a)(1)(A), 1395c, 1395cc, 1395i–2, 1395i–2a, 1395j, 1395l, 1395mm, 1395o, 1395p, 1395q, 1395rr, 1395v, and 1396(a).

PURPOSE(S):

The primary purpose of this system of records is to provide the Centers for Medicare & Medicaid Services (CMS) with a singular, authoritative, database of comprehensive data on people with Medicare. The development and operation of the MBD would establish within CMS, a singular, national source of comprehensive beneficiary information. This information would be consistent throughout the Medicare Program, providing key benefits to CMS's operation, administrative and customer service goals. The MBD will combine and house beneficiary centric data that resides currently within CMS databases such as the EDB, MSIS and GHP. It becomes the authoritative database for approved agency contractors who need specific types of data to support and implement business processes, based upon a beneficiary's health insurance needs. Although the MBD does not replace any of these systems at this time, the MBD does provide the most current and reliable information for contractors to make timely decisions about payment and service delivery elections. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant, (2) another federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) providers and suppliers of services for administration of Title XVIII, (4) third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs, (5) Peer Review Organizations, (6) other insurers for processing individual insurance claims, (7) facilitate research on the quality and effectiveness of care provided, as well as payment related projects, (8) support constituent requests made to a congressional representative, (9) support litigation involving the agency, and (10) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MBD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants who have been engaged by the agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds, and/or

c. To assist federal/state Medicaid programs within the state.

3. To providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

4. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or

more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To Peer Review Organizations (PRO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO), Cost Plans, or a Medicare-approved health care prepayment plan (HCPP), Programs for All Inclusive Care for the Elderly, Medicare + Choice Organizations (i.e. Coordinated Care Plans (CCPs), Religious Based Fraternal Plans Private Fee For Service (PFFS), Medical Savings Accounts (MSAs), Demonstrations) directly or through a contractor. Information to be disclosed shall be limited to Medicare enrollment data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for a research project or to support an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

9. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

10. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

11. To another federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All Medicare records are accessible by Health Insurance Claim Number, and SSN search. This system supports both on-line and batch access.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MBD system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular No. 10, ''Automated Information Systems Security Program;'' CMS's ''IT Systems Securities Policies, Standards, and Guidelines Handbook;'' OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in the active files for a period of 15 years. The records are then retired to archival files maintained at the Health Care Data Center.

SYSTEM MANAGER(S) AND ADDRESS:

Acting Director, Center for Medicare Choices & Deputy Director for Beneficiary Education in the Center for Beneficiary Choices, CMS, 7500 Security Boulevard, C5–18–27, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, health insurance claim number, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The data contained in this system of records are extracted from other CMS systems of records: Enrollment Database, Group Health Plan, and the Medicaid Statistical Information System.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Records

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as Managed Care Organizations, are under contract to the Centers for Medicare & Medicaid Services and the Social Security Administration to perform specific task in the Medicare program (see section three below for information on MCOs).

1. *Central Office Address:* CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

2. *CMS Regional Offices:* BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A—824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street, Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout Street, Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

SEATTLE REGION—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

3. *Managed Care Organizations:* Monthly report of Managed Care Organizations is available at *www.cms.gov.*

[FR Doc. 01–30005 Filed 12–5–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 66 FR 56333–34, dated November 7, 2001).

This notice establishes the Office for the Advancement of Telehealth and revises the functional statement for the Office of Policy and Program Development (RV3) in the HIV/AIDS Bureau (RV).

1. Establish the Office for the Advancement of Telehealth as follows:

Office for the Advancement of Telehealth (RV9)

Telehealth is the use of electronic communications and information technologies to provide and support health care services and training when distance separates the participants. The Office for the Advancement of Telehealth (OAT) serves as the focal point for coordinating and advancing the use of electronic communications and information (telehealth) technologies across all of HRSA's programs. Telehealth information can be used in a broad array of applications, including, but not limited to, the provision of: health care at a distance (telemedicine); distance-based learning to improve the knowledge of the agency grantees, and others; and improved information dissemination to both consumers and providers about the latest developments in health care, and other activities designed to improve the health status of the nation. The Office for the Advancement of Telehealth carries out the following functions, specifically; (1) provides leadership in developing and coordinating telehealth programs and policies; (2) provides professional assistance and support in developing telehealth initiatives; (3) administers grant programs to promulgate and evaluate the use of appropriate telehealth technologies among grantees and others; (4) in conjunction with HRSA's OIT assesses new and existing telehealth technologies and advises on strategies to maximize the potential of these technologies for meeting educational and technical assistance objectives; (5) in conjunction with OIT disseminates the latest information and research findings related to the use of telehealth technologies in the agency programs and underserved areas, including findings on ''best practices''; (6) works with other components of the Department, with other Federal and state agencies, and with the private sector to promote and overcome barriers to cost-effective telehealth programs; and (7) provides advise on telehealth policy.

2. Abolish the functional statement for the Office of Policy and Program Development (RV3) in its entirety and replace with the following:

Office of Policy and Program Development (RV3)

Serves as the Bureau's focal point for program planning and related coordination activities including the development and dissemination of program objectives, alternatives, policy statements and the formulation and interpretation of program related policies. Specifically: (1) Advises the Associate Administrator and Division Directors in the development of plans and proposals to support Administration goals, and serves as the primary staff unit on special projects for the Associate Administrator; (2) coordinates with the Office of Planning and Evaluation, HRSA, and other appropriate offices in the preparation of

HIV/AIDS-related program policies including the preparation of testimony and related information to be presented to the Congress; (3) monitors and analyzes HIV/AIDS-related policy developments, both within and outside the Department, for their potential impact on HIV/AIDS activities, and advises the Associate Administrator on alternative courses of action for responding to such developments; (4) organizes, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's strategic planning agenda; (5) provides staff services and coordinates activities pertaining to policy and position papers to assure the fullest possible consideration of programmatic requirements in meeting established departmental, and HRSA goals; (6) maintains liaison with the Agency, Department, and other agencies; (7) participates in the development and coordination of program policies and implementation plans, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (8) serves as the point of contact for the Agency, developing and coordinating working relationships and conducts specific joint activities among programs to assure optimum interaction on related HIV/AIDS activities and to minimize duplication and overlap; (9) conducts special inquiries and studies with emphasis on coordinating, managing and/or undertaking special projects which cut across Office or Division lines and responsibilities; (10) coordinates Bureau and HRSA comments on HIV/AIDS-related reports, position papers, and related issues; (11) coordinates responses to requests for information received from other OPDIVs of the Department and from outside the Department; (12) provides program policy interpretation and technical assistance to other governmental and private organizations and institutions; and (13) develops and coordinates performance measures.

3. In the HIV/AIDS Bureau, abolish the Office of Communications and Information Dissemination (RV8).

Delegation of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this action will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this action.

This document is effective upon date of signature.

Dated: November 30, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–30233 Filed 12–5–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Notification of Intent To Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opioid Addiction Under 21 U.S.C. 823(g)(2)

—(New)—The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310 (21 U.S.C. 823(g)(2)) amended the Controlled Substances Act to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency application process for physicians who seek waivers.

To implement these new provisions, SAMHSA has developed a notification form to permit it to determine whether practitioners (i.e., individual physicians and physicians in group practices (as defined under section 1877(h)(4) of the Social Security Act, licensed to practice medicine) meet the qualifications for waivers set forth under the new law. The information entered on the form will assist SAMHSA in determining whether practitioners are eligible for a waiver. The Secretary will convey practitioner determination to the Drug Enforcement Administration (DEA), which will assign an identification number to qualifying practitioners; this number will be included in the practitioner's registration under 21 U.S.C. 823(f). Practitioners will also use this notification form to renew their waivers at the time they renew their DEA practitioner registration—every three years.

Practitioners will use the form for three types of notification: (a) New, (b) emergency, and (c) renewal. Under ''new'' notifications, practitioners will make their initial waiver requests to SAMHSA. ''Emergency'' notifications will inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). ''Renewal'' notifications will be submitted to HHS to initiate review of an identification number already provided by DEA.

The form will collect data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; e-mail address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification (new, emergency, or renewal); name of narcotic drugs or combinations for use under the notification; certification of qualifying criteria for treatment and management of opiate-dependent patients; certification of capacity to refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load.

At present, there are no narcotic drugs or combinations for use under notifications; however, SAMHSA believes that it is appropriate to develop a notification system to implement DATA in anticipation of narcotic treatment medications becoming available in the future. Respondents will be able to submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs.)
Initial Application for Waiver	1,200	1	.083	100
Notification to Prescribe Immediately	33	1	.083	3
Application for Renewal	1,200	1	.083	100
Total	1,200			203

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 29, 2001.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–30234 Filed 12–5–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On July 11, 2001, a notice was published in the **Federal Register** (66 FR 36295), that an application had been filed with the Fish and Wildlife Service by Harbor Branch Oceanographic Institution, Fort Pierce, FL, for a permit (PRT–038605) to take for scientific research 6 captive held, 2 captive born, as well as 1 Pre-Act, West Indian manatee (*Trichechus manatus*) for scientific research.

Notice is hereby given that on October 30, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 25, 2001, a notice was published in the **Federal Register** (66 FR 38739), that an application had been filed with the Fish and Wildlife Service by Michael Walker for a permit (PRT–045478) to import one polar bear taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on October 22, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 25, 2001, a notice was published in the **Federal Register** (66 FR 38739), that an application had been filed with the Fish and Wildlife Service by John D. Harris for a permit (PRT–045396) to import one polar bear taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on October 22, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 25, 2001, a notice was published in the **Federal Register** (66 FR 38739), that an application had been filed with the Fish and Wildlife Service by Michael E. Walker for a permit (PRT–045478) to import one polar bear taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on October 24, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: November 2, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–30257 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 020–02–1610–DO–241A,HAG02–0007]

Harney and Malheur Counties, OR; Andrews Resource Area, Steens Mountain; Resource Management Plan

AGENCY: Bureau of Land Management, Burns District, Andrews Field Office.

ACTION: Notice of Intent to (1) prepare a Resource Management Plan (RMP) for the Andrews Resource Area (ARA) and (2) prepare a management plan for the Steens Mountain Cooperative Management and Protection Area (CMPA), designated October 30, 2000. These actions will be addressed in a single Environmental Impact Statement (EIS). The ARA is located in Harney and Malheur Counties, Oregon. The CMPA lies solely within Harney County, largely within the ARA, and to a lesser extent, within the Three Rivers Resource Area (RA), Burns District.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an RMP, with an associated EIS, for the ARA/CMPA. This planning activity encompasses approximately 1,723,564 acres of public land, including 425,550 acres in the CMPA. The area to be addressed involves the ARA, the CMPA, and a small segment of the Burns District's Three Rivers RA, which is included in the CMPA. Depending on the alternative selected and approved, a portion of the Three Rivers RMP may be amended by this planning effort.

The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Steens Mountain Cooperative Management and Protection Act of 2000 (Act), and BLM management policies. The analysis and resulting decisions will also meet the requirements of the Wilderness Act and Wild and Scenic Rivers Act, as applicable. The BLM will work closely with the Steens Mountain Advisory

Council (SMAC), a citizen's advisory group established by the Act, and with other interested parties to collaboratively identify the management decisions that are best suited to local, regional and national needs and concerns.

This notice gives early notification of the public scoping process, which is designed to identify planning issues and develop planning criteria. The SMAC will initiate the scoping process through its work on preliminary planning issues, criteria and alternatives. The scoping process will also include opportunity for internal and external review of the existing management plan.

DATES: The formal scoping comment period is expected to begin in January 2002 with publication of a notice in local newspapers and other media. Formal scoping will end sixty days after publication of that notice. At least 15 days public notice will be given for activities for which the public is invited to attend. Written comments will be accepted throughout the planning process at the address shown below.

Public Participation

The SMAC will be the primary public advisory group for this planning effort. In addition, open-house type public meetings will be held during the scoping and plan preparation period. Public meetings will be held in Burns, Oregon, and at other communities as interest warrants. Early participation by all those interested is encouraged and will help determine the future management of the CMPA and ARA. All public comments and lists of attendees for each meeting will be available to the public and open for 30 days to participants who wish to clarify the views they expressed. Meetings and comment deadlines will be announced through the local news media, newsletters and the Burns BLM web site (*www.or.blm.gov/Burns/*). I n addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the Draft RMP/EIS.

ADDRESSES: Written comments should be sent to Andrews Resource Management Plan, Bureau of Land Management, Burns District Office, HC 74–12533, Highway 20 West, Hines, Oregon 97738; Fax (541) 573–4411, or e-mail (*rkarges@or.blm.gov).* Documents pertinent to this proposal may be examined at the Burns District Office in Hines, Oregon. Comments, including names and street addresses of respondents, will be available for public review at the Burns District Office during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Rhonda Karges, Telephone (541) 573–4433 or Gary Foulkes, Telephone (541) 573–4541 at the BLM Burns District Office.

SUPPLEMENTARY INFORMATION: The creation of the CMPA, including 169,465 acres of the newly created Steens Mountain Wilderness Area, along with the changing needs and interests of the public, necessitate formulation of the Andrews/Steens RMP. The new ARA RMP and the management plan for the CMPA will be combined into one planning effort. In addition, management plans for the Steens Wilderness and WSRs, as well as a transportation plan for the CMPA will be incorporated into the RMP.

Some preliminary issues and management concerns were identified when the Act was developed, through subsequent meetings with individuals and user groups, and by BLM personnel. Major issue themes that will be addressed in the plan effort include: upland and watershed management; riparian areas and wetlands; woodlands management; vegetation; wildlife habitat; special status species; energy and minerals; special management areas; fire/fuels management; recreation management; lands and realty issues; wild horses; cultural resources; noxious weeds; Off Highway Vehicle management; water quality/aquatic resources/fisheries; transportation; and socio-economics. After gathering public comments on issues that the plan should address and reviewing them in concert with the SMAC, the issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of the plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include (but not be limited to) those with expertise in rangeland management, minerals and geology, botany, forestry, outdoor recreation, wilderness management, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

Background Information

The CMPA was established through an Act of Congress (P.L. 106–399). Special Management Areas created within the CMPA include: the Wildland Juniper Management Area; the Steens Mountain Wilderness, which contains a No Livestock Grazing Area; new Wild and Scenic River (WSR) designations; and a Redband Trout Reserve. Congress recognized that the CMPA fosters exceptional cooperative management opportunities and offers outstanding natural, cultural, scenic, wilderness, and recreational resources. To ensure those resources are appropriately managed, the Act mandated that BLM prepare a management plan for the CMPA by October 30, 2004.

In 1995, preparation of the Southeastern Oregon Resource Management Plan (SEORMP) was initiated by the BLM, Vale and Burns District Offices. The SEORMP initially included the ARA. As a result of the Act, however, the Andrews Field Office determined it was necessary to create a separate RMP for the ARA and CMPA to address changes in management resulting from the Act.

Consequently, the ARA is no longer addressed in the SEORMP. The ARA has been managed under the Andrews Management Framework Plan since 1982 and the grazing decisions in the Andrews Rangeland Program Summary (RPS) since 1984. Part of a 900,000 acre Mineral Withdrawal Area designated by the Act is within Malheur County and Vale District's Jordan Resource Area, and the effects of the withdrawal on

those lands have been addressed in the SEORMP.

Miles Brown,

Andrews Field Office Manager.

[FR Doc. 01–30222 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–01–1610]

Notice of Intent To Prepare an Environmental Impact Statement for the Coordinated Activity Plan for the Jack Morrow Hills Area, Sweetwater, Fremont, and Sublette Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Rock Springs Field Office proposes to prepare a Supplemental Draft Environmental Impact Statement (EIS), Coordinated Activity Plan (CAP), and amendment to the Green River Resource Management Plan (GRRMP) for the Jack Morrow Hills (JMH) area of Wyoming. The JMH CAP is an integrated activity planning effort to provide more specific management direction for certain public lands located in Sweetwater, Fremont, and Sublette Counties, Wyoming. The JMH CAP will amend the GRRMP with regard to fluid mineral leasing and mineral location. Comments to the draft EIS for the CAP, issued in July 2000, resulted in the submission of new resource information; consequently, the BLM is preparing a supplemental draft EIS for the JMH CAP. To the extent possible, existing analyses and information used to prepare the original draft EIS will be updated and used in preparing the supplemental draft EIS.

This notice also requests any resource information, including fluid mineral resource information (oil and gas, coalbed methane), mineral location information (gold, diamonds), operational or development plans, and other resource information that will help in developing fluid mineral and mineral location management direction, Resource Management Plan (RMP) decisions, and in analyzing environmental impacts.

DATES: The official scoping period for this planning effort will commence with the publication of this notice. Open house workshops will be scheduled in Lander and Rock Springs, Wyoming, during the week of December 9, 2001. Two scoping meetings will be held in these same locations during the week of January 6, 2002. Notification of the open house-information sharing workshops and the scoping meetings will be done through public notices, media news releases, internet postings, and/or mailings. The purpose of these workshops and scoping meetings is to share information, identify specific concerns and issues pertaining to the various resource and land use values in the JMH CAP planning area, and to identify any data gaps, needs and data sources pertaining to the area. Scoping comments must be submitted by January 11, 2002, or within 30 days of publication of this notice, whichever occurs later.

Future meetings, hearings, or any other public involvement activities will be scheduled as needed. Notification of these activities will be through other public notices, media news releases, internet postings, or mailings.

ADDRESSES: Scoping comments must be submitted to: Rock Springs BLM Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Comments submitted by electronic mail should be sent to: *rock_springs_wymail@blm.gov*, reference Supplemental Draft in the subject line. All comments must include legible full name and return address on the envelope, letter, postcard, or e-mail. Public comments submitted for this planning effort, including names and street addresses of respondents, will be available for public review after the comment period closes at the Rock Springs Field Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. All submissions from organizations, or businesses, and from individuals who are representatives or officials of organizations, or businesses, will be made available for public inspection in their entirety. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review, or from disclosure, under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law.

FOR FURTHER INFORMATION CONTACT: Andy Tenney, Assistant Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901–3447, telephone number 307–352–0311.

SUPPLEMENTARY INFORMATION: The JMH CAP planning area contains 622,340 acres of Federal, State, and private lands. It includes Steamboat Mountain, the Greater Sand Dunes, White Mountain Petroglyphs, and Oregon Buttes Areas of Critical Environmental Concern (ACEC); seven wilderness study areas; and part of the South Pass Historic Landscape ACEC. BLM has deferred fluid mineral leasing and mineral location decisions in the Jack Morrow Hills core area and has placed a moratorium on fluid mineral leasing throughout the JMH CAP planning area pending completion of this CAP. This planning effort will address the leasing and development of energy resources; transportation planning, access, designation of roads; wildlife habitat and vegetation management; livestock grazing practices; and other issues.

In conformance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), a supplemental draft EIS will be prepared in the course of developing the CAP. The existing GRRMP and interim management criteria will guide management actions in the JMH CAP area until the CAP is completed.

BLM invites public identification of the issues that should be addressed in the JMH CAP planning process. Comments may be sent to the address above. Preliminary issues that have been identified to date include:

Issue 1: Minerals Resource Management and Rights-of-Way.

Issue 2: Resource Uses Affecting Vegetation, Soils, Air, and Watershed Values.

Issue 3: Recreation and Cultural Resource Management.

Issue 4: Special Management Area Resource Management.

Public participation will be an essential component of the supplemental draft EIS and Coordinated Activity Plan preparation process. Several techniques for public involvement will be used including: **Federal Register** announcements, one-to-one discussion with key groups and individuals interested in the JMH CAP area, internet postings, news releases and articles in the local media, and individual mailings to all parties who have expressed an interest in the process. For those persons wishing to be placed on this mailing list, a BLM contact is provided elsewhere in this notice.

RMP level decisions to be made through the CAP will constitute amendment to the Green River RMP and will be subject to protest by parties who participate in the planning process and who have an interest which is, or may be, adversely affected by the adoption of RMP decision as provided by Title 43, Code of Federal Regulations, § 1610.5–2 (43 CFR 1610.5–2).

Dated: November 13, 2001.

Alan R. Pierson,

State Director.

[FR Doc. 01–30277 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 124628]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW124628 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW124628 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 01–30224 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 139400]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW139400 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW139400 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 01–30225 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 135437]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW135437 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW135437 effective July 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 01–30226 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1530–02–0036]

State Office Move; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the move of the Bureau of Land Management (BLM) Oregon/Washington State Office, and the temporary closure of the Land Office during the move.

FOR FURTHER INFORMATION CONTACT: Sherrie L. Reid, Chief Realty Records Section, BLM Oregon/Washington State Office, 1515 S.W. 5th Ave., PO Box 2965, Portland, Oregon 97208–2955, (503)952–6655.

SUPPLEMENTARY INFORMATION: Effective at the close of business on January 16, 2002, the Land Office of the BLM Oregon State Office will close for the purpose of moving to 333 S.W. 1st. Ave., Portland, Oregon 97204. The Land Office provides access to and inspection of the official Public Land Tenure Records and Cadastral Survey Records of the Federal Government, and the serialized case files of active land and mineral transactions for Oregon and Washington. The Land Office will reopen, at the new address, at 8:30 a.m. on Monday, January 28, 2002. The Land Office telephone number will be (503) 808–6001.

The BLM Oregon State Office mailing address for delivery by the U.S. Post Office will remain PO Box 2965, Portland, Oregon 97208–2965. For other commercial delivery services that require a street address, the BLM Oregon State Office Warehouse address is: 14015 N.E. Airport Way, Portland, Oregon 97230.

Dated: November 19, 2001.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 01–30229 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–37128]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/Conveyance—Change of Use.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) (R&PP). This land was previously segregated for R&PP on March 12, 1992, in the **Federal Register** under (NV–930–92–4212–11; N–55370 *et al.*) on page 3777, for case file N–41565–07. The City of Las Vegas proposes to amend its existing lease, N–37128, to include the land as part of a public park.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., sec 27
SW¼NE¼NW½

Containing 10 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 25 feet in width along the South boundary and 20 feet in width along the West boundary in favor of the City of Las Vegas for road, sewer, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

2. Those rights for public utility purposes which have been granted to the Nevada Power Company by Permit No. N–59745, and to the Las Vegas Valley Water District by Permit No. N–56526, and to the City of Las Vegas by Permit No. N–47872 under the Act of October 26, 1976 (FLPMA).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 26, 2001.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 01–30227 Filed 12–5–01; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1610–DO]

Notice of Intent To Prepare a Resource Management Plan for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, et al.; Nevada

AGENCY: Bureau of Land Management, Winnemucca (Nevada) and Surprise (California) Field Offices, Department of the Interior.

ACTION: Notice of intent to prepare a Resource Management Plan for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, (NCA) and associated wilderness, and other contiguous lands in Nevada.

SUMMARY: The Bureau of Land Management (BLM) Winnemucca and Surprise Field Offices will jointly prepare a RMP and an Environmental Impact Statement (EIS) for the recently designated Black Rock Desert-High Rock Canyon Emigrant Trails NCA and associated wilderness areas, designated by the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000 (Pub. L. 106–554, December 21, 2000). The following contiguous areas also will be addressed in the plan: (1) The Lahontan Cutthroat Trout Instant Study Area (ISA) and a small area of BLM administered public lands located west of the ISA between the ISA and the Summit Lake Indian Reservation, both of which are contiguous to the northern edge of the NCA; and (2) the southern part of the Black Rock Desert Playa (South Playa), which is contiguous to the southern edge of the NCA.

The planning area encompasses approximately 1,217,500 acres of public land, located in Humboldt, Pershing, and Washoe counties in northwestern Nevada. These public lands are jointly managed by the BLM Winnemucca and Surprise Field Offices. The RMP will be based on statutory requirements and will meet the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976, the Wilderness Act of 1964, the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000, and other applicable provisions of law. The RMP will guide BLM's management actions within the NCA, wilderness, and identified contiguous areas. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and

national needs and concerns. This notice initiates the public scoping process to identify planning issues and to develop planning criteria.

DATES: In compliance with the enabling legislation (Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000 (Pub. L. 106–554, December 21, 2000)), the plan must be completed by December 20, 2003. The public is encouraged to participate in the planning process, beginning with the identification of issues and planning criteria. The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments on issues and planning criteria would be most helpful if received on or before the end of the scoping period. Public participation activities, including scoping meetings to identify issues and planning critieria, will be announced at least 15 days before the scheduled meeting in the local news media and in notices sent to persons and parties on the mailing list. In order to ensure local community participation, public meetings will be rotated among locations including, but not necessarily limited to Cedarville, California, and Gerlach, Reno, and Winnemucca, Nevada. In audition to the ongoing public participation process and the scoping meetings, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the draft RMP/draft EIS. A web site will also be established to display updated information to the public and to provide a means for submission of public comments via e-mail. Persons who would like to be placed on mailing lists, should notify the Winnemucca or Surprise Field Offices at the addresses listed below, or call (775) 623–1500.

ADDRESSES: Written comments should be sent to the attention of the NCA Resource Management Plan Project Manager, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445, Phone (775) 623–1500. Comments, including names and street addresses of respondents, may be published as part of the EIS. Individual respondents may require confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

A map of the planning area is available at the Winnemucca Field Office (address and phone number listed above); the Surprise Field Office, 602 Cressler Street, Cedarville, CA 96104, Phone (530) 279–6101; the Nevada State Office, 1340 Financial Blvd., Reno, NV 89502, Phone (775) 861–6400; and at the California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825–1886, Phone (916) 978–4600.

FOR FURTHER INFORMATION CONTACT: Terry Reed, Field Office Manager or Roger Farschon, Acting NCA Manager, at the Winnemucca Field Office, Phone (775) 623–1500 or the Acting Surprise Field Office Manager, Phone (530) 279–6101.

SUPPLEMENTARY INFORMATION: The RMP will determine management of approximately 1,217,500 acres of federally administered public lands including: the Black Rock Desert-High Rock Canyon Emigrant Trails NCA (Approximately 800,100 acres), ten associated wilderness areas (approximately 757,100 acres), the Lahontan Cutthroat Trout ISA (approximately 13,400 acres) and a small area of BLM administered public lands located west of the ISA between the ISA and the Summit Lake Indian Reservation (approximately 2,300 acres), and the southern portion of the Black Rock Desert Playa (South Playa) (approximately 24,100 acres). Approximately 379,500 acres of wilderness are located within the boundaries of the NCA.

The public is asked to assist the BLM with the identification of issues related to management of the planning area, including the NCA and wilderness. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. Anticipated issues include, but are not limited to the following: how will natural, cultural, and wilderness resources be protected?; how can visitor use, access and safety best be achieved?; how will NCA management be integrated with other agency and community plans and needs?; and what facilities and infrastructure are needed to provide visitor services and administration of the NCA? After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories: (1) Issues to be resolved in the plan; (2) issues resolved through policy or administrative action; and (3) issues beyond the scope of the plan. BLM will provide feedback to the public on the final issues to be addressed in the plan. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, land and realty, hydrology, soils, sociology, and economics.

Plan development will involve close cooperation with the State of Nevada, tribal, county and municipal governments, federal agencies, and interested groups, agencies, and individuals. The Resource Advisory Councils (RACs) for the planning area, the Sierra Front-Northwestern Great Basin RAC and the Northeast California RAC, will be used to provide additional public input. Consistent with the enabling legislation, the plan for the NCA and associated wilderness areas will emphasize the protection and enhancement of the NCA's and wilderness areas' resource values while providing the public with opportunities for compatible recreation activities. The plan for the specified contiguous areas will emphasize management consistent with applicable laws and regulations. The concerns and interest of area residents, including the activities of recreation, grazing, hunting, trapping, mining, energy development, and access will be addressed in the plan.

The Plan will incorporate appropriate decisions from existing BLM plans such as current management plans for the area. It also will use information developed and management alternatives proposed in previous studies of the lands within or adjacent to the NCA (including the Draft Sonoma-Gerlach/Paradise Denio Plan Amendment).

Terry A. Reed,

Field Manager, Winnemucca, Nevada.

[FR Doc. 01–30223 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4489] ES–51270, Group 35, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of a portion of the township boundaries and portions of the subdivisional lines

and the survey of the Lock and Dam No. 26 acquisition boundary, in Townships 48 and 49 North, Range 5 East, of the 5th Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 8, 2002.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 8, 2002.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: November 15, 2001.

Corwyn J. Rodine,

Chief Cadastral Surveyor.

[FR Doc. 01–30228 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 94899, NMNM 94902, NMNM 94903]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed applications to withdraw approximately 329.44 acres of National Forest System lands to protect the area and future investment of existing microwave electronic sites. This notice closes the National Forest System lands for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral leasing and to all other uses which may be made of National Forest System lands.

DATES: Comments must be received by March 6, 2002.

ADDRESSES: Comments should be sent to the U.S. Department of Agriculture, Forest Service, Cibola National Forest, 2113 Osuna Road, NE, Suite A, Albuquerque, New Mexico 87113–1001.

FOR FURTHER INFORMATION CONTACT: Sue McHenry, Cibola National Forest, 505–346–2650.

SUPPLEMENTARY INFORMATION: On April 12, 2001, the United States Department of Agriculture, Forest Service, filed applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

1. NMNM 94899 (Microwave Electronic Site), New Mexico Principal Meridian, Cibola National Forest

T. 11 N., R. 7 W.,
Sec. 8, S½SE¼SW¼ and SW¼SW¼SE¼;
Sec. 17, W½NW¼NE¼, NE¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, and SE¼SW¼NW¼.

The area described contains 130 acres in Cibola County.

2. NMNM 94902 (Capilla Peak Electronic Site), New Mexico Principal Meridian

T. 5 N., R. 5 E.,
Sec. 3, W½ of lot 2, E½ of lot 3, E½W½ of lot 3, NE¼NW¼SW¼NE¼, W½W½SW¼NE¼, SE¼SE¼SW¼NW¼, E½SE¼NW¼, SW¼SE¼NW¼, N½NE¼NE¼SW¼, SW¼NE¼NE¼SW¼, NW¼NE¼SW¼, E½NE¼NW¼SW¼, and NW¼NE¼NW¼SW¼.
T. 6 N., R. 5 E.,
Sec. 34, E½SE¼SE¼SW¼ and W½SW¼SW¼SE¼.

The area described aggregates 131.94 acres in Torrance County.

3. NMNM 94903, East La Mosca Electronic Site, New Mexico Principal Meridian

T. 12 N., R. 7 W.,
Sec. 20, E½E½SE¼SE¼NE¼;
Sec. 21, W½W½SW¼SW¼NW¼.

The area described contains 5.0 acres in Cibola County.

La Mosca Peak Electronic Site, New Mexico Principal Meridian

T. 20 N., R. 7 E.,
Sec. 20, SW¼SW¼NW¼NE¼, W½W½SW¼NE¼, S½NW¼NE¼NW¼, SW¼NE¼NW¼, NW¼SE¼NE¼NW¼, S½SE¼NE¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼, NW¼NW¼SE¼, and N½N½SW¼NW¼SE¼.

The area described contains 62.5 acres in Cibola County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Cibola National Forest Supervisor at the above address.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Cibola National Forest Supervisor, at the above address, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations including, but not limited to, construction and operation of the electronic sites.

Dated: November 6, 2001.

Steven W. Anderson,

Acting Albuquerque Field Manager.

[FR Doc. 01–30230 Filed 12–5–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Record of Decision for the General Management Plan for Cane River Creole National Historical Park, LA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement, Cane River Creole National Historical Park, Natchitoches Parish, Louisiana.

SUMMARY: The U.S. Department of the Interior's National Park Service signed a Record of Decision (March 29, 2001) on a General Management Plan for Cane River Creole National Historical Park.

The National Park Service will implement Alternative 1, the preferred alternative, as described in the Final General Management Plan/Environmental Impact Statement. Cane River Creole National Historical Park will persevere and rehabilitate the cultural landscapes, historic structures, and artifacts of the two park units, Oakland and Magnolia Plantations, to reflect the continuum of history up to about 1960. This will result in few changes to the current configuration of plantation structures or the general appearance of the landscape.

The long history of the plantations and the major cultural, social, and economic stories of Louisiana plantation lifeways and agriculture that they represent will be told (interpreted) to

the public. Based on research and documentation, accounts of the lives and lifestyles of the people who lived and worked at the plantations will be shared through media and programs.

The park will provide access, parking, trails, and basic visitor services at each unit. Development at Oakland Plantation will include an access road and parking area for cars and buses. Visitors will be able to explore the site using an accessible trail system. An outdoor pavilion-style shelter will be constructed and serve as an entry portal for that site, providing visitor information and restrooms. Eventually a park maintenance facility will be constructed either offsite near Oakland or, if an offsite location cannot be found or is infeasible, then a facility will be constructed onsite in the development management area. Development at Magnolia Plantation will include parking for cars and buses, with the goal of limiting bus parking onsite and establishing additional offsite bus parking near Magnolia. An accessible trail system will be developed and will link the major resources of the site.

The parks's historic features will be interpreted, with several structures being adapted either to provide visitors interior access and services or to accommodate park management needs. At Oakland Plantation, the main plantation hours will be furnished, staffed, and interpreted. The plantation store will include a cooperating association sales outlet and interpretive exhibits. Visitors will also be able to access the interior of the mule barn, overseer's house, and quarters. Park offices will be located in the doctor's house and the seed house will be adapted initially for maintenance activities, to be converted later to educational space for groups. At Magnolia, the plantation store will be staffed and provide visitor information and restrooms. Controlled access to the gin barn's main floor will be provided. The interiors of two of the quarters will be restored for visitor access and interpretation and visitors will also have access to the interior of the overseer's house/slave hospital.

To provide the knowledge base needed to fully implement the plan, the park will engage in additional study, data collection and resource monitoring, especially of archeological and ethnographic resources, historic structures and furnishings, cultural landscapes, and visitor uses. The National Park Service will work in partnership with the Cane River National Heritage Area Commission and others to develop a joint regional visitor center and headquarters in the Natchitoches/Cane River area, outside the downtown Natchitoches historic landmark district. This facility will be important for orienting the public to the area's resources and will provide a variety of interpretive and educational opportunities. Also, park managers will pursue the possibility of developing a joint curatorial facility, possibly as part of the joint visitor center complex. The park will work collaboratively with a variety of public and private entities to encourage and fund research, education, and preservation projects and heritage events.

FOR FURTHER INFORMATION CONTACT: Laura Soullière, Superintendent, Cane River Creole National Historical Park; 400 Rapides Drive; Natchitoches, LA 71457. Telephone: (318) 352–0383.

SUPPLEMENTARY INFORMATION: The complete Record of Decision is available on the NPS planning website at *http://www.nps.gov/planning*.

Dated: November 30, 2001.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 01–30240 Filed 12–5–01; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–450]

In the Matter of Certain Integrated Circuits, Processes for Making Same, and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Denying Respondents' Motion for Summary Determination of Lack of Importation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 15) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation, denying a motion of respondents Silicon Integrated Systems Corp. and Silicon Integrated Systems Corporation for summary determination on respondents' first affirmative defense of lack of importation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 6, 2001. The complainants are United Microelectronics Corporation of Hsinchu City, Taiwan; UMC Group (USA) of Sunnyvale, California; and United Foundry Service, Inc. of Hopewell Junction, New York. The respondents are Silicon Integrated Systems Corp. of Hsinchu City, Taiwan; and Silicon Integrated Systems Corporation of Sunnyvale, California. 66 FR 13567 (2001).

On September 13, 2001, complainants filed a motion for summary determination on respondents' first affirmative defense of lack of importation. On September 25, 2001, respondents filed a cross-motion for summary determination on lack of importation. On the same day, the Commission investigative attorney (''IA'') filed his response in support of complainants'' motion.

On October 5, 2001, complainants filed a memorandum in opposition to respondents' cross-motion for summary determination on lack of importation and a reply memorandum in support of complainants' motion for summary determination. On the same day, the IA filed his response in opposition to respondents' cross-motion for summary determination.

On October 23, 2001, complainants filed a motion for leave to file a supplemental memorandum in support of their motion, which was granted. On October 25, 2001, respondents filed a response to complainants' motion for supplemental memorandum.

On November 2, 2001, the ALJ granted complainants' motion for summary determination (Order No. 15) and denied respondents' motion for summary determination. On November 8, 2001, respondents filed petition for review of the ID. On November 16,

2001, complainants and the IA filed responses in opposition to respondents' petition.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: December 3, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30275 Filed 12–5–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–455]

In the Matter of Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Extending the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 53) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation which extended the target date for completion of the investigation to January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 9, 2001, based on a complaint filed by Proxim against 14 entities. 66 FR 18507 (2001). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain wireless network interface cards and access points by reason of infringement of certain claims of U.S. Letters Patents Nos. 5,077,753, 5,809,060, and 6,075,812 owned by Proxim.

On November 1, 2001, the ALJ issued an ID (Order No. 53) extending the target date for completion of the investigation to January 10, 2003. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: December 3, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–30276 Filed 12–5–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 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 Darrin King on (202) 693–4129 or e-mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for OSHA, 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: Occupational Safety and Health Administration (OSHA).

Title: Commercial Diving Operations—29 CFR 1910, Subpart T.

OMB Number: 1218–0069.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Reporting.

Frequency: On occasion and Annually.

Number of Respondents: 3,000.

Requirement	Annual responses	Average response time (hours)	Estimated burden hours
§ 1910.401(b):			
Phone	3,000	0.25	0
Written	3,000	2.00	0
§ 1910.420(a) and (b)	300	1.00	300
§ 1910.420(a) and (b)	3,000	0.05	150

Requirement	Annual responses	Average response time (hours)	Estimated burden hours
§ 1910.423(d)(1)	1,500,000	0.08	120,000
§ 1910.423(d)(2)	150,000	0.08	12,000
§ 1910.423(d)(3)	16,500	0.08	1,320
§ 1910.423(e)	16,500	1.00	16,500
§ 1910.430(a)	180,000	0.05	9,000
§ 1910.430(b)(4)	6,000	0.05	300
§ 1910.430(c)(1)(iii)	20,000	0.05	1,000
§ 1910.430(f)(3)(ii)	300	0.05	15
§ 1910.430(g)(2)	12,000	0.05	600
§ 1910.440(a)(2)	165	0.17	28
§ 1910.440(b)(1) and (b)(2)	193,135	0.03	5,794
§ 1910.440(b)(3)	1,904,465	0.02	38,089
§ 1910.440(b)(4) and (b)(5)	601	0.50	301
Total	4,005,966		205,397

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Standards' paperwork requirements allow employers to deviate from established diving practices and tailor diving operations to unusually hazardous diving conditions, and to analyze diving records (including hospitalization and treatment records) for information they can use to improve diving operations. These requirements are also a direct and efficient means for employers to inform dive-team members about diving-related hazards, procedures to use in avoiding and controlling these hazards, and recognizing and treating diving-related illnesses and injuries. Additionally, employers can review equipment records to ensure that employees performed the required actions, and that the equipment is in safe working order.

Disclosing the records to employees and their designated representatives permits them to identify operational and equipment conditions that may contribute to diving accidents or diving-related medical conditions. Moreover, the records provide the most efficient means for OSHA compliance officers to determine that employers are performing the regulatory requirements of the Standards.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Fire Brigades.

OMB Number: 1218–0075.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Third-party disclosure.

Frequency: On occasion.

Number of Respondents: 8,391.

Number of Annual Responses: 8,391.

Estimated Time Per Response: 5 minutes to obtain a physician's certificate and 2 hours to develop an organizational statement.

Total Burden Hours: 6,042.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: 29 CFR 1910.156 requires employers to develop an organized statement for fire brigades. The organizational statement describes what the fire brigade is expected to do, and will help employees understand their duties are as fire brigade members. It also informs OSHA compliance offices of the type of fire fighting that will be performed.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Occupational Exposure to Hazardous Chemicals in Laboratories.

OMB Number: 1218–0131.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Third-party disclosure.

Frequency: On occasion; Annually; Semi-annually; and Quarterly.

Number of Respondents: 41,900.

Requirement	Annual responses	Average time per response (hours)	Estimated burden hours
Exposure Monitoring and Measurement	41,900	0.17	7,123
Employees Notification of Monitoring Results	41,900	0.08	3,352
Chemical Hygiene Plan—New	750	8.00	6,000
Chemical Hygiene Plan—Existing	41,900	0.50	20,950
Information and Training	15,970	1.00	15,970
Medical Surveillance, Medical Examination	63,880	0.75	47,910
Medical Surveillance, Medical Examination	31,940	1.50	47,910
Medical Surveillance, Medical Examination	31,940	2.25	71,865
Medical Surveillance, Information Provided to Physician	127,760	0.08	10,221
Medical Surveillance, Physician's Written Opinion	127,760	0.08	10,221
Hazardous Identification	0	0.00	0
Use of Respirators	0	0.00	0
Exposure Monitoring/Medical Records	169,660	0.08	13,573
Making Records and Documents Available to Employees or OSHA	173,063	0.08	13,845
Transferring Records to the National Institute of Occupational Safety and Health	333	1.00	333
Totals	868,756		269,273

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $18,235,000.

Description: 29 CFR 1910.1450 requires employers to monitor employee exposure to hazardous chemicals in laboratories, to provide medical consultation and examinations, to train employees about the hazards of chemicals in their working areas, and to establish and maintain accurate records of employee exposure to hazardous chemicals in laboratories. These records are used by employers, employees, physicians, and the Government to ensure the health and safety of workers.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Cadmium in General Industry—29 CFR 1910.1027.

OMB Number: 1218–0185.

Affected Public: Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping.

Frequency: On occasion, Semi-annually, and Annually.

Number of Respondents: 53,161.

Information collection requirement	Annual responses	Average response time (hours)	Requested burden hours
Exposure Monitoring:			
Initial Monitoring	0	0.00	0
Objective Data	167	1.00	167
Monitoring Frequency (Periodic Monitoring)	14,261	0.50	7,131
Additional Monitoring	143	0.50	72
Employee Notification of. Monitoring Results	142,898	0.08	11,432
Compliance Program:			
Review and Update Plan	5,052	1.50	7,578
Compliance Plan for Plants above the Permissible Exposure Level	9,622	1.00	9,622
Respiratory Protection (Respiratory Program and Respirator Fit-Testing)	0	0.00	0
Emergency Situations	0	0.00	0
Notification of Laundry Personnel	0	0.00	0
Medical Surveillance:			
Initial Examination	35,653	1.50	53,480
Additional Examinations	285	1.50	428
Biological Monitoring	1,110	0.75	833
Information Provided to Physician	37,048	0.08	2,964
Physician's Written Medical Opinion	37,048	0.08	2,964
Communication of Cadmium Hazards to Employees:			
Warning Signs and Warning Labels	0	0.00	0
Employee Information and Training	21,659	1.00	21,659
Recordkeeping	0	0.00	0
Training Records	21,490	0.08	1,719
Making Records Available to OSHA or Employees	52,615	0.08	4,210
Transfer of Records	0	0.00	0
Total	379,051	.....	124,259

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $6,190,692.

Description: The information collection requirements specified in the Cadmium in General Industry Standard (Sec. 1910.1027; ''the Standard'') protect employees from the adverse health effects that may result from occupational exposure to cadmium. The major information collection requirements in the Standard include conducting employee exposure monitoring, notifying employees of their cadmium exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical surveillance results, maintaining employees' exposure monitoring and medical surveillance records for specific periods, and providing access to these records by OSHA, the National Institute of Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Standard on Walking-Working Surfaces—29 CFR Part 1910, Subpart D.

OMB Number: 1218–0199.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Third-party disclosure.

Frequency: Initially and On occasion.

Number of Respondents: 10,100.

Number of Annual Responses: 10,100.

Estimated Time Per Response: 3 minutes.

Total Burden Hours: 505.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The following provisions of the Standards on Walking-Working Surfaces (29 CFR part 1910, subpart D; ''the Standards'') specify collection of information requirements: Secs. 1910.22(b)(2), 1910.22(d)(1), 1910.26(c)(2)(vii), and 1910.28(e)(3). These provisions require employers to: Permanently mark aisles and passageways in buildings; post signs in a conspicuous location that show floor-loading limits approved by the building official, and replace these signs if lost, removed, or defaced; mark defective ladders and remove them from service until repaired; and, if a registered professional engineer designs an outrigger scaffold, construct and erect it according to this design, and maintain at the jobsite a copy of the detailed

drawings and specifications showing the sizes and spacing of members. These paperwork requirements prevent serious injury and death among employees by notifying them of: Clearance limits in aisles and passageways to avoid improper use (and resulting impact) by mechanical-handling equipment; maximum loadings to prevent floor collapse; defective ladders that could become unstable or collapse during use; and proper construction and erection of outrigger scaffolds to avoid instability or collapse.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Powered Industrial Trucks.

OMB Number: 1218–0242.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Type of Response: Recordkeeping and Third-party disclosure.

Frequency: On occasion; Initially; Triennially; and Annually.

Number of Respondents: 999,000.

Requirement	Annual reponses	Average response time (hours)	Estimated burden hours
Notification of Truck Approval	199,800	0.08	15,984
Notification of Truck Modifications	49,950	0.08	3,996
Notification of Front—End Attachments	19,980	0.08	1,598
Inspection of Markers	0	0.00	0
Operator Training—Initial Training	28,881	6.17	178,196
Operator Training—Refresher Training	9,627	2.17	20,891
Training Rehires	28,881	2.17	62,672
Operator Evaluation—Triennial Evaluations	513,438	0.58	297,794
Operator Evaluation—Evaluating Rehires	231,047	0.25	57,762
Certifying Evaluation and Training	539,110	0.34	183,298
Total	1,620,714		822,191

Total Annualized Capital/Startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under the paperwork requirement specified by paragraph (a)(3) of 1910.178, employers must place a marker (e.g., label) on an approved truck indicating that a national testing laboratory accepted its design and construction.[1] Paragraph (a)(4) requires that employers obtain the manufacturer's written approval before modifying a truck in a manner that affects its capacity and safe operation; if the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, paragraph (a)(5) mandates that employers provide a marker on the trucks that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally centered load. Paragraph (a)(6) specifies that employers must ensure that the markers required by paragraphs (a)(3) through (a)(5) remain affixed to trucks and are legible.

Paragraphs (1)(1) through (1)(6) of 1910.178 contain the paperwork requirements necessary to certify the training provided to powered industrial truck operators. Accordingly, these paragraphs specify the following requirements for employers:

- Paragraph (1)(1)—Ensure that trainees successfully complete the training and evaluation requirements of paragraph (1) prior to operating a truck without direct supervision.
- Paragraph (1)(2)—Allow trainees to operate a truck only under the direct supervision of an individual with the knowledge, training, and experience to train operators and to evaluate their performance, and under conditions that do not endanger other employees. The training program must consist of formal instruction, practical training, and evaluation of the trainee's performance in the workplace.
- Paragraph (1)(3)—Provide the trainees with initial training on each of 22 specified topics, except on topics that the employer demonstrates do not apply to the safe operation of the truck(s) in the employer's workplace.
- Paragraphs (1)(4)(i) and (1)(4)(ii)—Administer refresher training and evaluation on relevant topics to operators found by observation or formal evaluation to operate a truck unsafely, involved in an accident or near-miss incident, or assigned to operate another type of truck, or if the employer identifies a workplace condition that could affect safe truck operations.
- Paragraph (1)(4)(iii)—Evaluate each operator's performance at least once every three years.
- Paragraph (1)(5)—Train rehires only in specific topics that they performed unsuccessfully during an evaluation and that are appropriate to the employer's truck(s) and workplace conditions.
- Paragraph (1)(6)—Certify that each operator meets the training and evaluation requirements specified by paragraph (1). This certification must include the operator's name, the training date, the evaluation date, and the identity of the individual(s) who performed the training and evaluation.

Requiring markers notifies employees of the conditions under which they can safely operate powered industrial trucks, thereby, preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. Certification of training and evaluation provides a means of informing employers that their employees received the training, and demonstrated the performance necessary to operate a truck within its capacity and control limitations. Therefore, by ensuring that employees operate only trucks that are in proper working order, and do so safely, employers prevent severe injury and death to truck operators and other employees who are in the vicinity of the trucks. Finally, these paperwork requirements are the most efficient means for an OSHA compliance officer to determine that an employer properly notified employees regarding the design and construction of, and modifications made to, the trucks they are operating,

[1] A national testing laboratory evaluates a truck's electrical system for fire safety.

and that an employer provided them with the required training.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–30187 Filed 12–5–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 30, 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 e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, 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: Employment and Training Administration (ETA).

Title: Quantum Opportunity Program (QOP) Demonstration Net Impact Evaluation.

OMB Number: 1205–0397.

Affected Public: Individuals or households.

Frequency: One time in 2002.

Number of Respondents: 846.

Number of Annual Responses: 846.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 282.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The revision to the QOP Demonstration Net Impact Evaluation will provide for a second wave of the survey to be completed approximately 72 months after random assignment of the youth in the research sample. It will allow for an analysis of the impact of QOP on participants' outcomes including education and training, employment, earnings, public assistance participation, childbearing, and other behavior and activities. The findings will be directly relevant for the future development of employment and training policy for youth.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–30218 Filed 12–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 29, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 219–8904 or e-mail *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: Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203–3.

OMB Number: 1210–0048.

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 74,872.

Number of Annual Responses: 74,872.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 18,718.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $62,892.48.

Description: Section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work or to participants who continue to work beyond normal retirement age. The requirement that retirees or participants be notified in the event of a suspension of benefits is intended to protect their non-forfeitable right to their normal retirement benefits. The information collection requirement ensures that the retiree or participant is informed at the initiation of every withholding or suspension of benefits.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–30219 Filed 12–5–01; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Disability Employment Grant Program Funded Under the Workforce Investment Act Title I, Disability Program; Notice of Changes to Solicitation for Grant Application (SGA)

On November 7, 2001, the Department of Labor (DOL) announced in the **Federal Register** (Vol. 66, No. 216; pp. 56347–56358) a solicitation for grant applications (SGA) for the Disability Program (Reference: SGA/DFA 02–100). Proposals for this SGA were to be submitted by 4 p.m. Eastern Standard Time (EST) on Friday, December 21, 2001.

Under Part III Review Process, Evaluation Criteria and Statement of Work, four (4) criteria are described. As a result of several inquiries, the Department wishes to clarify its' intent of criterion A. Project Design. Effective this date, Part III Project Design, No. 2. Training and Supportive Services paragraphs 4 & 5 are replaced as follows:

Applicants are encouraged to include on-the-job training and internship or self-employment strategies in their project design. Project design must describe why these are effective strategies for the client group being served and how many participants are expected to receive specific services (e.g., how many will be in on-the-job training). Private sector employer commitment to on-the-job positions should be identified.

Applicants are also encouraged to include strategies related to training in the information technology skills sector, such as software design, network applications, and service repair technicians. The description provided should be clear on the complexity of the training and expectations for higher salaried employment outcomes with a long range career potential. This may include training on Microsoft WORD, Word Perfect, Lotus, or other basic computer familiarity training.

Other than indicated herein, the requirements established by the above referenced November 7, 2001 SGA (SGA/DFA 02–100) remain in force.

Signed at Washington, DC, this 30th day of November 2001.

Lorraine H. Saunders,

Grant Officer, Division of Federal Assistance.

[FR Doc. 01–30186 Filed 12–5–01; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Notice of Availability of 2002 Competitive Grant Funds for Service Areas LA–1, LA–4 and LA–8 in Louisiana

AGENCY: Legal Services Corporation.

ACTION: Solicitation of proposals for the provision of civil legal services for basic field-general service areas LA–1, LA–4 and LA–8 in Louisiana.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

LSC hereby announces that it is reopening competition for 2002 competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in the service areas LA–1, LA–4 and LA–8 in Louisiana. The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2002 are not known, although it is anticipated that the funding amount will be similar to calendar year 2001 funding. LSC has canceled the competition and rejected all bids for Louisiana service area LA–9.

DATES: Request for Proposals (RFP) are available from *www.ain.lsc.gov.* A Notice of Intent to compete is due by 5 p.m. EST, December 28, 2001. Grant proposals must be received at LSC offices by 5 p.m. EST, January 21, 2002.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Jennifer Bateman, Grants Coordinator, Office of Program Performance, (202) 336–8835.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available at *www.ain.lsc.gov.*

Issue Date: December 3, 2001.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 01–30248 Filed 12–5–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

AGENCY: National Council on Disability

SUMMARY: This notice sets forth the schedules and proposed agenda of the upcoming quarterly meeting of the National Council on Disability (NCD). Notice of this meeting is required under section 522b(e)(1) of the Government Sunshine Act, Pub. L. 94–409).

Type: Quarterly Meeting.

Quarterly Meeting Dates: February 4–5, 2002, 8:30 a.m. to 5:00 p.m.

Location: Los Angeles Marriott Hotel Downtown, 333 South Figueroa Street, Los Angeles, California; 213–617–1133.

Contact Information: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

Agency Mission: NCD is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Accommodations: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

Language Translation: In accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to these meeting.

Multiple chemical Sensitivity/ Environmental Illness: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To

reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Open Meeting: In accordance with the Government in the Sunshine Act and NCD's bylaws, this quarterly meeting will be open to the public for observation, except where NCD determines that a meeting or portion thereof should be closed in accordance with NCD's regulations pursuant to the Government in the Sunshine Act. A majority of NCD members present shall determine when a meeting or portion thereof is closed to the public, in accordance with the Government in the Sunshine Act. At meetings open to the public, NCD may determine when non-members may participate in its discussions. Observers are not expected to participate in NCD meetings unless requested to do so by an NCD member and recognized by the NCD chairperson.

Quarterly Meeting Agenda:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)—
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the quarterly meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on December 3, 2001.

Ethel D. Briggs,

Executive Director.

[FR Doc. 01–30340 Filed 12–4–01; 10:42 am]

BILLING CODE 6820–MA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Federal Advisory Committee on International Exhibitions (FACIE)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) will be held by teleconference from 3 p.m. to 4 p.m. on Monday, December 17, 2001 in Room 709 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 30, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–30214 Filed 12–5–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions; Position of Deputy General Counsel

AGENCY: National Labor Relations Board.

ACTION: Revision of the description of the powers and duties of the Deputy General Counsel.

SUMMARY: The National Labor Relations Board is revising the description of the powers and duties of the Deputy General Counsel to make plain that the Board's Deputy General Counsel is authorized to perform the functions and duties of the office of General Counsel upon the vacancy of the General Counsel's office.

EFFECTIVE DATE: December 6, 2001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, 1099 14th Street NW., Room 11600, Washington, DC 20570, Telephone: (202) 273–1936.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has determined that § 3345(a)(1) of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., authorizes the Board's Deputy General Counsel to perform the functions and duties of the office of General Counsel, upon the vacancy of the General Counsel's office. In pertinent part, § 3345(a) provides:

> If an officer of an Executive agency * * * whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—
>
> (1) The first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346.

Historically, the provisions of section 3(d) of the National Labor Relations Act (29 U.S.C. 153(d)) have been the only mechanism for appointments to the position of Acting General Counsel. The Vancies Act is an alternative means of filing vacancies in positions appointed by the President subject to Senate confirmation, but, until 1988, that statute was applicable only to positions in cabinet departments. By amendment in 1988, Congress made the Vancies Act applicable to all ''executive agencies,'' with the intent of expanding the scope of the statute to independent agencies such as the Board. Thus, although NLRA section 3(d) remains a valid mechanism for appointment to the position of Acting General Counsel, it is now clear that the Vacancies Act provides an alternative procedure and that the President can appoint an Acting General Counsel under that Act, under section 3(d) of the NLRA, or can allow the provisions of section 3345(a) to take effect.

The Deputy General Counsel position is a ''first assistant'' position within the meaning of 5 U.S.C. 3345(a)(1). Although ''first assistant'' is not expressly defined in the statute, it was referred to in debate as a term of art that generally refers to the office holder's top deputy. The National Labor Relations Board's Statement of Organization and Functions makes clear that the Deputy General Counsel acts as the alter ego of the General Counsel and readily satisfies the functions of a ''first assistant:'' ''The Deputy General Counsel is vested with the authority to speak and act for the General Counsel in all phases of the responsibilities of the office to the full extent permitted by law * * *''

Accordingly, the National Labor Relations Board is revising its statement of Organization and Functions, part 201, subpart A, section 202, second paragraph (32 F.R. 9588, as amended by 37 F.R. 15956, 44 F.R. 32415) to read as follows:

Sec. 202 The General Counsel.

* * * * *

The Deputy General Counsel is vested with the authority to speak and act for the General Counsel in all phases of the responsibilities of the office to the full extent permitted by law and is responsible for overall coordination of the General Counsel's organization. The Deputy General Counsel position is a ''first assistant'' for purposes of section

3345(a)(1) of the Federal Vacancies Reform Act. References to the General Counsel hereinafter may refer to either the General Counsel or Deputy General Counsel collectively.

* * * * *

Dated, Washington, DC, December 3, 2001.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 01–30305 Filed 12–5–01; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 29, 2001, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 26, 2001 to: Rennie S. Holt, Permit No. 2002–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–30220 Filed 12–5–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Exelon Generation Company, LLC, Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix E, Item IV.F.2. c, for Facility Operating License Nos. NPF–39 and NPF–85, issued to Exelon Generation Company, LLC (Exelon, the licensee), for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Item IV.F.2. c, regarding conduct of a full-participation exercise of the offsite emergency plan every 2 years. Under the proposed exemption, the licensee would reschedule the exercise originally scheduled for November 1, 2001, and complete the exercise requirements by March 14, 2002.

The proposed action is in accordance with the licensee's application for an exemption dated October 16, 2001.

The Need for the Proposed Action

Currently under 10 CFR part 50, Appendix E, Item IV.F.2. c, each licensee at each site is required to conduct a full-participation exercise of its offsite emergency plan every 2 years. Federal agencies, such as the Federal Emergency Management Agency, observe these exercises and evaluate the performance of the licensee, state, and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its offsite emergency plan on November 1, 2001, which was within the required 2-year interval. However, due to the ongoing national security threat in the United States, and the response, recovery, and other offsite agency activities associated with the September 11, 2001, terrorist attacks, the licensee has decided to postpone the exercise. The licensee does not plan to conduct the full-participation exercise until after the 2-year interval has expired.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Limerick Generating Station, Units 1 and 2, dated April 1984.

Agencies and Persons Consulted

On November 13, 2001, the staff consulted with the Pennsylvania State official, Dennis Dyckman of the Pennsylvania Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments. In addition, the licensee notified the Federal Emergency Management Agency and the Pennsylvania Emergency Management Agency, who indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further details with respect to the proposed action can be found in the licensee's letter dated October 16, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov*

(the Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of November 2001.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Section 2, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30238 Filed 12–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–62]

University of Virginia, University of Virginia Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–66, issued to the University of Virginia (UVA or the licensee), that would allow decommissioning of the UVA Research Reactor located in the north portion of the UVA grounds near Charlottesville, Virginia.

Environmental Assessment

Identification of the Proposed Action

By application dated February 9, 2000, as supplemented on April 26, June 6, and December 19, 2000, and May 4 and 11, 2001, the licensee submitted a decommissioning plan in accordance with 10 CFR 50.82(b), in order to dismantle the 2000-kilowatt (thermal) UVA Research Reactor, to dispose of its component parts and radioactive material, and to decontaminate the facility in accordance with the proposed dismantling plan to meet the Commission's unrestricted release criteria. After the Commission verifies that the release criteria have been met, Facility Operating License No. R–66 would be terminated. The licensee submitted an Environmental Report on February 9, 2000, dated February 2000, that was supplemented on December 19, 2000, that addresses the estimated environmental impacts resulting from decommissioning the UVA Research Reactor.

UVA ceased operating the reactor in July 1998. All the reactor fuel has been removed from the facility.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Virginia, University of Virginia Reactor'' was published in the **Federal Register** on April 4, 2000 (65 FR 17684), and in the Charlottesville, Virginia daily newspaper, The Daily Progress, on April 23, 2000. One comment was received from the Director, Radiological Health, Commonwealth of Virginia, Department of Health, Radiological Health Program that ''the proposed decommissioning plan appears to adequately ensure the return of the facility to unrestricted use without adversely affecting the public health and safety.''

Need for the Proposed Action

The proposed action is necessary because of UVA's decision to cease operations permanently. As specified in 10 CFR 50.82, any licensee may apply to the Nuclear Regulatory Commission for authority to surrender a license voluntarily and to decommission the affected facility. Further, 10 CFR 51.53(d) stipulates that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit with its application an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. UVA is planning to use the area that would be released for other academic purposes.

Environmental Impact of the Proposed Action

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures, and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The operations are calculated to result in a total occupational radiation exposure of about 4 person-rem. Radiation exposure to the general public during decommissioning is expected to be negligible. This will be accomplished by keeping the public at a safe distance and by controlling effluent releases during decommissioning.

Occupational and public exposure may result from offsite disposal of the low-level residual radioactive material from the UVA Research Reactor. The handling, storage, and shipment of this radioactive material are to meet the requirements of 10 CFR 20.2006, ''Transfer for Disposal and Manifest,'' and 49 CFR parts 100–177, ''Transportation of Hazardous Materials.'' It is anticipated that about 220 ft^3 (7 m^3) of irradiated hardware will be shipped during two truck shipments in Type B shipping casks to a waste processor. About 2700 ft^3 (76 m^3) of other waste in strong tight containers will be shipped during four truck shipments to a waste processor. Approximately 9700 ft^3 (275 m^3) of waste will be shipped in strong tight containers to the Envirocare of Utah facility in nine truck shipments. Included in these shipments will be mixed waste consisting primarily of activated and/or contaminated lead (43 ft^3 or 1.2 m^3) and cadmium (1 ft^3 or 0.03 m^3). Radiation exposure to the general public during waste shipments is expected to be negligible.

The NRC Final Rule on License Termination, 10 CFR 20.1402, provides radiological criteria for release of a site for unrestricted use. Release criteria for unrestricted use is a maximum Total Effective Dose Equivalent (TEDE) of 25 mrem per year from residual radioactivity above background. Application of the As Low As Reasonably Achievable (ALARA) principle is also a requirement. The results of the final survey will be used to demonstrate that the predicted dose to a member of the public from any residual activity does not exceed the 25 mrem per year dose limit.

Liquid waste that is generated during the decommissioning activities will be released to the environment in accordance with the regulations in 10 CFR part 20, subpart K, ''Waste Disposal,'' or will be solidified and disposed of as solid waste in accordance with state and Federal guidelines. Containment measures will be taken as necessary to minimize the spread of contamination. Engineered features such as enclosures and temporary barriers with high-efficiency particulate air filters will be used to control the spread of airborne radioactive material. Airborne releases of radioactive materials are not expected.

The licensee analyzed accidents applicable to decommissioning activities. The accident with the greatest potential impact on members of the public is the dropping of a waste shipping liner containing radioactive material. The maximum TEDE to a member of the public at the site boundary for this accident is about 43 mrem which is within the dose limits for members of the public given in 10 CFR part 20, subpart D, ''Radiation Dose

Limits for Individual Members of the Public.''

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the UVA facility, the staff has determined that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, the staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. In addition to the lead and cadmium discussed above, asbestos is present at the UVA Research Reactor. Asbestos will be removed by a licensed asbestos abatement contractor. Decommissioning activities will not affect non-radiological facility effluents and have no other environmental impact. The licensee states that there are no sensitive or endangered species on the UVA Research Reactor site. Therefore, the staff concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The four alternatives for disposition of the UVA Research Reactor are: DECON, SAFSTOR, ENTOMB, and no action. UVA has proposed the DECON option.

DECON is the alternative in which the equipment, structures, and portions of the facility containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use. SAFSTOR is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete; the entombed structure is appropriately maintained; and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. The no-action alternative would leave the facility in its present configuration.

The SAFSTOR, ENTOMB, and no-action alternatives would entail continued surveillance and physical security measures to be in place and continued monitoring by licensee personnel. The SAFSTOR and no-action alternatives would also require continued maintenance of the facility. The radiological impacts of SAFSTOR would be less than the DECON option because of radioactive decay prior to the start of decommissioning activities. However, this option involves the continued use of resources during the SAFSTOR period. The ENTOMB option would also result in lower radiological exposure than the DECON option but would involve the continued use of resources. UVA has determined that the proposed action (DECON) is the most efficient use of the existing facility, since it proposes to use the space that will become available for other academic purposes. These alternatives would have no significant environmental impact. In addition, the regulations in 10 CFR 50.82(b)(4)(i) only allow an alternative if it provides for completion of decommissioning without significant delay. The environmental impacts of the proposed action and the alternatives are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Report submitted on February 9, 2000, dated February 2000, as supplemented on December 19, 2000, for the UVA Research Reactor.

Agencies and Persons Contacted

In accordance with its stated policy, on November 6, 2001, the staff consulted with the Virginia State official, Leslie P. Foldesi, Director, Radiological Health, Commonwealth of Virginia Department of Health, regarding the environmental impact of the proposed action. The state official stated that he concurred with the environmental assessment and had no comments.

Finding of No Significant Impact

On the basis of 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 NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 9, 2000, as supplemented on April 26, June 6, and December 19, 2000, and May 4 and 11, 2001, which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the internet at *http://www.nrc.gov*. Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by email at pdr@nrc.gov.

Dated at Rockville, Maryland, this 27th day of November 2001.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Senior Project Manager, Operational Experience and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–30239 Filed 12–5–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 38–31

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 38–31, We Need More Information About Your Missing Payment, is sent out by the Office of Retirement Programs in response to notification of the loss or non-receipt of payment from the Civil Service Retirement and Disability Fund. The form requests the information needed to enable OPM to trace and/or reissue the payment. Missing payments may also be reported to OPM by a telephone call.

Approximately 8,000 reports of missing payment requests for both Treasury checks and electronic funds

transfers (EFT's) are processed each year; 200 RI 38–31 forms will be completed annually while 7,600 telephone calls are received at OPM. We estimate it takes approximately 10 minutes to complete the form for missing Treasury checks or to report the missing payment by telephone. The annual burden for reporting missing checks is 1,300 hours. The remaining 200 reports are about missing EFT payments. Since people have realized that they can report on the telephone, no missing EFT payments are reported using RI 38–31. The annual burden of reporting 200 missing EFT payments by telephone is 33 hours. The combined burden for collecting this information is 1,333 hours. In 1998 we included a total burden of 25 hours because 50 missing EFT payments were reported using RI 38–31. It takes an estimated 30 minutes to report a missing EFT payment using RI 38–31. The total burden is 17 hours lower because RI 38–31 is no longer used to report missing EFT payments.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received January 7, 2002.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540 and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–30246 Filed 12–5–01; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: INV 41, 42, 43 and 44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of revised information collection forms INV 41, 42, 43 and 44. OPM uses these forms to request information when conducting employment investigations. The investigations are conducted to determine suitability for Federal employment or the ability to hold a security clearance as prescribed in Executive Orders 10450, 12968, and 10577 (5 CFR part V), and 5 U.S.C. 3301.

INV Form 41, Investigative Request for Employment Data and Supervisor Information, is sent to employers and supervisors. INV Form 42, Investigative Request for Personal Information, is sent to references. INV Form 43, Investigative Request for Educational Registrar and Dean of Students Record Data, is sent to educational institutions. INV Form 44, Investigative Request for Law Enforcement Data, is sent to local law enforcement agencies.

Based on current usage, OPM estimates that 1,962,947 individuals will respond annually to the forms (902,204 to INV 41; 494,728 to INV Form 42; 135,304 to INV 43; and 430,711 to INV 44). We believe the forms require an average of 5 minutes to complete. The total estimated public burden is 162,924 hours.

To obtain copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358 or FAX (202) 418–3251 or by e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before January 7, 2002.

ADDRESSES: Send or deliver written comments to:

Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, 1900 E Street, NW Room 5416, Washington, DC 20415–4000; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rasheedah I. Ahmad, Program Analyst, Investigations Service, Phone (202) 606–7983, FAX (202) 606–2390.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–30247 Filed 12–5–01; 8:45 am]

BILLING CODE 6325–40–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Tell Us How We're Doing!'': SEC File No. 270–406, OMB Control No. 3235–0463

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this previously-approved questionnaire to the Office of Management and Budget for approval.

The title of the questionnaire is ''Tell Us How We're Doing!'

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Assistance. The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are those investors who request assistance or information from OIEA.

The total reporting burden of the questionnaire in 2001 was approximately 5 hours. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (20 respondents × 15 minutes = 5 hours).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 28, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30215 Filed 12–5–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25303]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 30, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Vanguard Preferred Stock Fund [File No. 811–2601]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 27, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred $1,890 in expenses in connection with the liquidation.

Filing Dates: The application was filed on November 14, 2001, and amended on November 27, 2001.

Applicant's Address: 100 Vanguard Blvd., Malvern, PA 19355.

Solanus Funds [File No. 811–10311]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on November 20, 2001.

Applicant's Address: 6120 Parkland Blvd., Suite 101, Mayfield Heights, OH 44124.

The Baupost Fund [File No. 811–6138]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 10, 2001 and October 31, 2001, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $202,480 incurred in connection with the liquidation were paid by applicant and applicant's investment adviser, The Baupost Group, L.L.C.

Filing Date: The application was filed on November 15, 2001.

Applicant's Address: 10 Saint James Ave., Suite 2000, Boston, MA 02116.

Pilgrim Government Securities Fund [File No. 811–4432]

Pilgrim Balance Sheet Opportunities Fund [File No. 811–4433]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2000, Pilgrim Government Securities Fund transferred its assets to Pilgrim Government Securities Income Fund, Inc., based on net asset value. On March 27, 2000, Pilgrim Balance Sheet Opportunities Fund transferred its assets to Pilgrim Balanced Fund, a series of Pilgrim Mutual funds, based on net asset value. Expenses of $95,415 and $100,897, respectively, incurred in connection with the reorganizations were paid by each applicant and by its surviving fund.

Filing Date: The applications were filed on November 6, 2001.

Applicants' Address: 7337 East Doubletree Ranch Road, Scottsdale, AZ 85258–2034.

Federated Exchange Fund, Ltd. [File No. 811–2626]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 2, 1996, applicant transferred its assets to Federated Capital Appreciation Fund, a portfolio of Federated Equity Funds, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on September 26, 2001, and amended on November 20, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Fortress Utility Fund, Inc. [File No. 811–4530]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 1, 1996, applicant transferred its assets to Federated Utility Fund, Inc., based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on Septembe 26, 2001, and amended on November 20, 2001.

Applicant's Address: 5800 Corporate Dr., Pittsburgh, PA 15237–7000.

Fiduciary Management Associates [File No. 811–1897]

Summary: Applicant seeks an order clearing that it has ceased to be an investment company. By May 5, 1998, all shareholders of applicant had redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Equitable Government Securities Account, Inc. [File No,. 811–3684]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 15, 1985, all shareholders of applicant had redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1285 Avenue of the Americas, New York, NY 10019.

Alliance Corporate Cash Reserves [File No. 811–3973]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By April 8, 1988, all shareholders of applicant had redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Alliance Regent Sector Opportunity Fund, Inc. [File No. 811–7709]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By March 24, 1999, all shareholders of applicant had redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Bullock Insured New York Tax Exempt Shares, Inc. [File No. 811–4360]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 40 Rector St., New York, NY 10006.

Equitable Capital High Yield Plus Fund [File No. 811–5814] American Energy Resources Fund, Inc. [File No. 811–6326]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants has never made a public offering of their securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1285 Avenue of the Americas, New York, NY 10019.

Alliance Developing Markets Fund, Inc. [File No. 811–8806]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Money Shares, Inc. [File No. 811–2780]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By August 15, 1986, all shareholders of applicant had redeemed their shares based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 28, 2001, and amended on November 15, 2001.

Applicant's Address: 30 Rector St., New York, NY 10006.

Value Trend Large Cap Fund [File No. 811–9041]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $407 incurred in connection with the liquidation were paid by Value Trend Capital Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on October 30, 2001.

Applicant's Address: 480 North Magnolia Avenue, El Cajon, CA 92020.

Tax Free Fund of Vermont, Inc. [File No. 811–6328]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $32,741 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on October 1, 2001, and amended on October 29, 2001.

Applicant's Address: 87 North Main Street, Suite 611, Rutland, VT 05701.

Prudential Developing Markets Fund [File No. 811–8753]

Summary: Applicant seeks on order declaring that it has ceased to be an investment company. On July 28, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. No expenses were incurred in connection with the liquidation.

Filing Dates: The application was filed on July 10, 2001, and amended on November 13, 2001.

Applicant's Address: Gateway Center Three, 100 Mulberry Street, Newark, NJ 07102–4077.

IAI Retirement Funds, Inc. [File No. 811–08032]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 19, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on September 10, 2001.

Applicant's Address: IAI Retirement Funds, Inc., 3700 U.S. Bank Place, 601 Second Avenue, South, Minneapolis, MN 55402.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30216 Filed 12–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 10, 2001:

a closed meeting will be held on Tuesday, December 11 at 10:00 a.m., and an open meeting will be held on Thursday, December 13, 2001, at 10:00 a.m., in Room 1C30, the William O. Douglas Room, followed by a closed meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, December 11, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;
Formal orders of investigation; and
Adjudicatory matter.

The subject matter of the open meeting scheduled for Thursday, December 13, 2001, will be:

The Commission will consider the Nasdaq Stock Market, Inc.'s request that the Commission interpret Section 28(e) of the Securities Exchange Act of 1934 to apply to riskless principal transactions in certain Nasdaq securities in light of recent amendments to Nasdaq's trade reporting rules.

For further information, please contact Catherine McGuire or Joseph Corcoran, Division of Market Regulation, at (202) 942–0073.

The subject matters of the closed meeting scheduled for Thursday, December 13, 2001, will be:
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Formal orders of investigation; and
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 3, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30326 Filed 12–4–01; 9:41 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45119; File No. SR–ISE–2001–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC To Amend the Original Criteria for Underlying Securities Contained in ISE Rule 502

November 30, 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 19, 2001, the International Securities Exchange LLC (''ISE'' 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

Currently, paragraph (b)(5) of ISE Rule 502, ''Criteria for Underlying Securities,'' provides that the market price per share of a security underlying an option must have been at least $7.50 for the majority of business days during the three calendar months preceding the date of the selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days. The ISE proposes to amend ISE Rule 502(b)(5) to provide an alternative listing requirement for underlying securities that satisfy all of the initial listing requirements in ISE Rule 502 other than the $7.50 per share requirement. Specifically, the ISE proposes to amend ISE Rule 502(b)(5) to permit the ISE to list options on securities that satisfy all of the initial listing requirements other than the $7.50 per share requirement so long as: (1) The underlying security meets the guidelines for continued approval in ISE Rule 503, ''Withdrawal of Approval of Underlying Securities;'' (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The text of the proposed rule change appears below. New text is in italics.

Rule 502. Criteria for Underlying Securities

* * * * *

(b) In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the forgoing, however, absent exceptional circumstances, an underlying security will not be selected unless:

* * * * *

(b) *Either*:

(i) The market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days*; or*

(ii) The underlying security meets the guidelines for continued approval in Rule 503; options on such underlying security are traded on at least one other registered national securities exchange; and the average daily volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

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. 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

ISE Rule 502 contains the criteria that an underlying security must meet before the Exchange may initially list options on that security. The ISE states that these criteria are uniform among the five options exchanges. The ISE notes that after an exchange lists options on an underlying security, the underlying security must continue to meet another set of uniform, but somewhat less stringent, requirements for the exchange to list additional series of options on the security (the ''continued listing requirements'').

The ISE believes that although the continued listing requirements are uniform among the five options exchanges, the application of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

standards in the current market environment has had an anticompetitive effect on the ISE. Specifically, the Exchange states that it cannot list several of the more actively-traded options classes because the price of the underlying securities has fallen below the initial listing requirement since the time the options were listed on the other exchanges. Because the underlying securities remain above the continue listing criteria, the other options exchanges may continue to trade options on these securities—and list additional series—while the ISE cannot begin listing any options on these securities.[3]

To address this situation, the Exchange proposes an alternative listing requirement solely with respect to the underlying security's price during the three calendar months preceding listing. Specifically, ISE Rule 502(b)(5) currently provides that the market price per share of the underlying security must have been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection for listing. The ISE proposes to amend ISE Rule 502(b)(5) to provide that, for underlying securities that satisfy all of the initial listing requirements other than the $7.50 per share price requirement, the ISE would be permitted to list options on the securities so long as: (1) The underlying security meets the guidelines for continued approval contained in ISE Rule 503; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

The ISE states that it has narrowly drafted the proposed rule change to address the circumstances where an actively-traded options class is currently ineligible for listing on the ISE. The ISE notes that when an underlying security meets the continued listing requirements and at least one other exchange trades options on the underlying security, the options already are available to the investing public. Therefore, the ISE notes that the current proposal will not introduce any additional listed options classes.

The ISE notes that it has limited the proposed rule change to options that are actively-traded by requiring that the average daily trading volume for the options be at least 5,000 contracts over the last three calendar months. Thus, the ISE maintains that the proposed alternative listing standard would be limited to options with volume in the top half of all options, indicating that there is widespread investor interest in the options. Because these options are actively-traded in other markets, the ISE believes that there would be no investor protection concerns with listing the options on the ISE. In addition, the ISE believes that listing these options on the ISE would enhance competition and benefit investors.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act[4] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–ISE–2001–33 and should be submitted by December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–30274 Filed 12–5–01; 8:45 am]

BILLING CODE 8010–01–M

[3] According to the Exchange, two of the 50 most-actively traded securities, Lucent and Northern Telecom, currently fall into this category. The Exchange asserts that the only reason they fail to meet the initial listing criteria is that they do not meet the $7.50 per share stock price test.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Hilo International Airport, Hilo, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the State of Hawaii, Department of Transportation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and Title 14, Code of Federal Regulations, Part 150 (FAR part 150). These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On November 28, 2000, the FAA determined that the noise exposure maps submitted by the State of Hawaii, Department of Transportation under FAR Part 150 were in compliance with applicable requirements. On

October 24, 2001, the Acting Associate Administrator for Airports approved the Hilo International Airport Noise Compatibility Program. All eight of the program measures have been approved. Two measures were approved as voluntary measures and six measures were approved outright.

EFFECTIVE DATE: The effective date of the FAA's approval of the Hilo International Airport Noise Compatibility Program is October 24, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Planner, Honolulu Airports District Office, Federal Aviation Administration, Box 50244, Honolulu, Hawaii 96850–0001, Telephone: (808) 541–1243. Street Address: 300 Ala Moana Blvd., Room 7–128. Documents reflecting this FAA action may be received at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Hilo International Airport, effective October 24, 2001.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with FAR part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measures according to the standards expressed in FAR part 150 and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

The State of Hawaii, Department of Transportation submitted to the FAA on December 29, 2000, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 1998 through December 2000. The Hilo International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 28, 2000. Notice of this determination was published in the Federal Register on December 21, 2000.

This Hilo International Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2005. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on April 27, 2001 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The Acting Associate Administrator for Airports approved the overall program effective October 24, 2001.

All eight program measures were approved. The following two measures were approved as voluntary measures: Publish an Informal Preferential Runway Use Program and request use of certain flight procedures; and, Restrictions on Military Training Operations. The following six measures were approved outright: Continue to study the possible land exchange with Hawaiian Home Lands to locate suitable State or private lands which could be exchanged for Keaukaha Tract 1 and 2 lands within the 60 DNL contour; Sound attenuation barrier; Sound attenuation treatment of impacted structures; Continue to monitor development proposals in the Hilo International Airport environs and disclose Airport Noise Exposure Maps to the community; Disclose the Base Year and 5-Year Noise Exposure Maps to the local community by providing overlays of the noise contours on a Tax Map; and, Annually monitor Hilo International Airport aircraft noise levels and operations at Hilo International Airport and conduct public informational meetings on the progress of the Part 150 program.

These determinations are set forth in-detail in a Record of Approval endorsed by the Administrator on October 24, 2001. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the State of Hawaii.

Issued in Hawthorne, California on November 28, 2001.

Herman C. Bliss,

Manager, Airports Division.

[FR Doc. 01–30281 Filed 12–5–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and approval. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 25, 2001 (66 FR 49061). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 7, 2002.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys.

Abstract: Executive Order 12862, ''Setting Customer Service Standards'' requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services and products. The surveys covered in this request for a generic clearance will provide the FHWA a means to gather this data directly from our customers. The information obtained from the surveys will be used to assist in evaluating service delivery and processes. The responses to the surveys will be voluntary and will not involve information that is required by regulations. There will be no direct costs to the respondents other than their time. The FHWA plans to provide an electronic means for responding to the majority of the surveys via the World Wide Web.

Survey Frequency and Respondents: A total of 31 agency-wide customer satisfaction surveys are planned over the next 3 years. The survey frequency varies from one-time to annually. For all 31 surveys, there will be approximately 55,500 respondents, including State and local governments, highway industry organizations and the general public.

Estimated Total Annual Burden Hours: The burden hours per response will vary with each survey. A few of the surveys will require approximately 30 minutes each to complete; however, the majority of them will take from 5 to 20 minutes each. We estimate a total of 12,000 annual burden hours for all of the surveys.

FOR FURTHER INFORMATION CONTACT: Connie Yew, 202–366–1078, Department of Transportation, Federal Highway Administration, Corporate Management Service Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s homepage at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: November 30, 2001.

James R. Kabel,

Chief, Management Programs and, Analysis Division.

[FR Doc. 01–30280 Filed 12–5–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment of System of Records ''Health Care Provider Credentialing and Privileging Records—VA''.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. The Department of Veterans Affairs (VA) is amending the system of records, known as ''Health Care Provider Credentialing and Privileging Records-VA'' (77VA11) as set forth in the **Federal Register** 55 FR 30790 dated 7/27/90. VA is changing the system number to 77VA10Q and amending the system notice by revising the paragraphs on System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Purposes; Routine Uses; Storage; Retrievability; Safeguards; System Manager(s) and Address. VA is republishing the system notice in its entirety at this time.

DATES: Comments on the amendment of this system of records must be received no later than January 7, 2002. If no public comment is received, the changes will become effective January 7, 2002.

ADDRESSES: Written comments concerning the proposed amendment of the system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: VA is renumbering the system of records from 77VA11 to 77VA10Q to reflect organizational changes in the Department. In addition, VA has decided, as a matter of policy, to automate and provide direct, on-line, remote access to data on the credentialing of health care practitioners appointed or otherwise utilized by the VHA. The automation and on-line access to credentialing data improves the quality, timeliness, and reliability of the credentialing process; promotes inter-facility sharing of health care resources; supports national readiness; facilitates the establishment of telemedicine initiatives; simplifies the process for covered health care practitioners; and reduces costs. An electronic credentials data file can cross facility and network boundaries and eliminate duplication.

VHA is responsible for the medical treatment of veterans and promotes the provision of quality health care through credentialing the education, training, and qualifications of the practitioners delivering this care. Historically, VHA has maintained these records in a paper format in each medical treatment facility or Veterans Integrated Service Network (VISN). When a practitioner transfers between facilities or the practitioner's services are shared among facilities, either all or portions of the paper record are transferred to the receiving facility. Some medical treatment facilities keep credentialing data in non-validated electronic formats to meet local needs. However, the exchange of paper and/or non-validated electronic data means that some of the practitioner's credentials must be re-verified with the primary source to ensure the adequate and appropriate education, training, and qualifications of the practitioner. This results in unnecessary use of resources by VA and the sources providing information to VA.

VHA is supplementing the paper record through the development of a centralized electronic data warehouse for the storage of credentialing data and the images of the primary source verification. This effort is a joint project between the VHA and the Department of Health and Human Services, Health Resources and Services Administration (HHS/HRSA). The electronic data warehouse will not only store the electronic data and images, but will cross-validate data provided by the practitioner with data received from the primary or secondary source. Primary source verification is that verification received from the source that provided the credential, *i.e.*, **Federal Register**, educational or training institution, certifying or licensing agency. A secondary information source is one that provides credentialing data that is derived from a primary source, *i.e.*, National Practitioners Data Bank (NPDB). Secondary information sources may require additional supporting documentation either from a primary source or additional secondary sources for corroboration. Providers shall enter data into the system through an Internet browser. Once data has been entered into the system, the credentialing staff initiate the primary source verification of the provider's education, training, and qualifications. To ensure provider identification, and appropriate matching of information entered into an electronic system, available unique identifiers which may include name, social security number, national provider identifier, unique physician identification number, etc. will be used for matching data, when available. In instances where electronic data is available from alternate sources and meets or exceeds VA credentialing requirements, it will be utilized.

Access to data in electronic files is controlled at the health care facility in accordance with nationally and locally established data security procedures. These standards include, but are not limited to, requiring a unique password for each user, restricting access to ''need-to-know'' data, and deactivating screen displays after short periods of time. All data transmitted across the Internet is supported by encryption, deactivation with the server after short periods of time without interaction, and insulation of the Internet server by a firewall.

VHA has determined that direct, real-time, remote access to the credentialing data of health care practitioners by authorized users should expedite the processing of health care practitioners for appointment, reappointment, rapid deployment and granting of privileges. VHA has also determined that the use of information technology and data warehousing of credentialing information should result in a more timely and accurate credentials file for ensuring practitioners' education, training, and qualifications while facilitating the accurate identification of providers to all interested parties. The availability will decrease the time it takes to address health care delivery needs met not only through the employment or appointment process, but also through contracting, sharing agreements, affiliations, etc. Valid electronic data will assist VA in meeting legislative mandates and executive orders such as Federal emergency responses. The availability of electronic data required for credentialing can also facilitate VA's requirements related to appointment, emergency response by the appropriate health care providers, telemedicine, or response to scarce medical needs.

VHA may collect biometric information (i.e., fingerprint) for the verification of identity. A verification transaction involves the one-to-one matching of sample data against a particular record of the person presenting the sample. This can be done automatically based completely on biometric minutiae. Since the credentialing process is for the purpose of data validation, personal validation and the unequivocal link of a record to the individual reinforces the credentialing process. The use of a biometric data adds an additional level of patient safety by verifying that providers are who they say they are throughout their professional career. Additionally, a biometric identifier can add an additional level of security to the system in the verification of individuals making transactions in the electronic file at log-on.

Validated credentialing information may be shared with other established data systems such as Veterans Information Systems and Technology Architecture (VistA) and Decision Support System (DSS). The purpose of sharing credentialing data is to decrease the duplicative effort of both providers and staff in gathering the same information multiple times for various data bases used in VA. This data is required for such activities as emergency medical responses in the times of national disaster response, telemedicine, and medical cost care recovery and would be disclosed only to the extent it is reasonably necessary to assist in the accomplishment of legislative or executive order mandates.

Amendments to the System Location include that contractors may maintain the records of contractors who provide care in a VA health care facility in accordance with this notice and VHA policy. With the implementation of the electronic credentials data bank, the System Location is also amended so all the electronic records may be maintained by HHS, a component thereof, a contractor or subcontractor of HHS in accordance with the VA Interagency Agreement. The Categories of Individuals Covered by the System is amended to include those health care providers who are not employed by VA but providing care through contractual or other types of agreements to VA patients. The Category of Records in the System is amended to reflect the inclusion of those health care providers who are providing care through arrangements other than employment. The Category of Records in the System is also amended to more clearly specify the data elements collected, including items that will bring VA into compliance with the National Standard disseminated by HHS.

Routine use 1 was deleted. Former routine uses 2, 3, 5, 6, 10, 12, 18, and 20 are amended to clarify the inclusion of all individuals regardless of employment, utilization, or appointment to the professional staff. VA utilizes the services of numerous providers through various appointment processes beyond the employment process. Former routine use 2 (now 1) was amended to allow disclosure of information in response to scarce or emergency needs of the Department or

other entities when specific skills are required. Former routine use 5 (now 4) was amended to delete the section numbers. Former routine use 7 (now 6) was amended to replace the word ''private'' with ''non-Federal.'' Former routine use 8 (now 7) was amended to delete ''local Government'' and ''State.'' Routine use 12 (now 11) was amended to specify that the relevant information is disclosed at VA's initiative and that names and addresses of veterans are to be excluded from the relevant information that could be disclosed. Former routine use 13 (now 16) is being modified to clarify the conditions under which data is disclosed to officials of labor organizations recognized under 5 U.S.C., chapter 71. The clarification ties such disclosures to the law authorizing such disclosures, i.e., 5 U.S.C. 7114(b)(4). The former version authorized disclosures to officials of labor organizations '' when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.'' An editorial change is being made to routine use 14 (now 13) to clarify the terminology used for fitness for duty examinations. Former routine use 16 (now 15) is being changed to delete the language concerning disclosures to the Equal Employment Opportunity Commission to ensure compliance with the Uniform Guidelines on Employee Selection Procedures, since VA has not chosen to adopt the Uniform Guidelines for use in its Title 38 employment procedures. Former routine use 17 (now 12) is amended to expand the purposes for which information may be disclosed to the Federal Labor Relations Authority to investigate representation petitions and conduct or supervise representation elections. Former routine use 17 (now 12) is also being clarified to indicate that disclosures to the Federal Labor Relations Authority and the Federal Service Impasses Panel may only be made after appropriate jurisdiction has been established. Matters arising out of (1) professional conduct or competence, (2) peer review, and (3) the establishment, determination or adjustment of compensation shall be decided by the Secretary of Veterans Affairs and is not itself subject to collective bargaining and may not be reviewed by another agency. See 38 U.S.C. 7422. One routine use is added to this System (new 20) to allow for the sharing of information and data on a need-to-know basis for providers who move between sites and/or provide care at multiple sites. The routine use disclosure statements are being renumbered.

VA is revising and updating the systems of record notice 77VA10Q, ''Health Care Provider Credentialing and Privileging Records—VA''.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: November 19, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

77VA10Q

SYSTEM NAME:

Health Care Provider Credentialing and Privileging Records-VA.

SYSTEM LOCATION:

Records are maintained at each VA health care facility. Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA system of records. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 and/or Veterans Integrated Service Network (VISN) Offices. Records for those VA contracted health care providers who are credentialed by the contractor in accordance with VHA policy, where credentialing information is received by VHA facilities will be maintained in accordance with this notice and VHA policy. Electronic copies of records may be maintained by the Department of Health and Human Services (HHS), a component thereof, a contractor, subcontractor of HHS, or by another entity in accordance with the VA Interagency Agreement. Back-up copies of the electronic data warehouse are maintained at off-site locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning health care providers currently or formerly employed or otherwise utilized by VA, and individuals who make application to VA and are considered for employment or appointment as health care providers. These records will include information concerning individuals who through a contractual or other type of agreement may be or are providing health care to VA patients. This may include, but is not limited to: audiologists; dentists; dietitians; expanded-function dental auxiliaries; licensed practical or vocational nurses; nuclear medicine technologists; nurse anesthetists; nurse practitioners; nurses; occupational therapists; optometrists; clinical pharmacists; licensed physical therapists; physician assistants; physicians; podiatrists; psychologists; registered respiratory therapists; certified respiratory therapy technicians; diagnostic and therapeutic radiology technologists; social workers; and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record consists of information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment or utilization which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment and/or appointment, for providing health services under a contract or other type of agreement, and/or for appointment to the professional staff.

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well defined limits, which are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession;

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges; and/or

(4) Accessing and reporting to the National Practitioner Data Bank (NPDB).

The record may include individual identifying information (e.g., name, date of birth, gender, social security number, national provider number, and/or other personal identification number), address information (e.g., home and/or mailing address, home telephone number, e-mail address, facsimile number), biometric data and information related to education and training (e.g., name of medical or professional school attended and date of graduation, name of training program, type of training, dates attended, and date of completion). The record may also include information

related to: the individual's license, registration or certification by a State licensing board and/or national certifying body (e.g., number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; honors and awards; type of appointment or utilization; service/product line; professional society membership; professional performance, experience, and judgment (e.g., documents reflecting work experience, appraisals of past and current performance and potential); educational qualifications (e.g., name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration and or State controlled dangerous substance certification (e.g., current status, any revocations, suspensions, limitations, restrictions); information about mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, revocation, or acceptance of surrender or restriction of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination of an individual's request for clinical privileges. Some information that is included in the record may be duplicated in an employee personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38 U.S.C. 501(a) and 7304(a)(2).

PURPOSES(S):

The information may be used for: Verifying the individual's credentials and qualifications for employment or utilization, appointment to the professional staff, and/or clinical privileges; advising prospective health care entity employers, health care professional licensing or monitoring bodies, the NPDB, or similar entities of activities of individuals covered by this system; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations; audits, reviews and investigations conducted by staff of the health care facility, the VISN Directors and Division Offices, VA Central Office, VHA program offices who require the credentialing information, and the VA Office of Inspector General; law enforcement investigations; quality assurance audits, reviews and investigations; personnel management and evaluations; employee ratings and performance evaluations; and, employee disciplinary or other adverse action, including discharge. The records and information may be used for statistical analysis, to produce various management reports, evaluate services, collection, distribution and utilization of resources, and provide clinical and administrative support to patient medical care.

ROUTINE UESE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee; the issuance or reappraisal of clinical privileges; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the letting of a contract; the issuance of a license, grant, or other benefits; or in response to scarce or emergency needs of the Department or other entities when specific skills are required.

2. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of VA, information in connection with the hiring of an employee; appointment to the professional staff; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the letting of a contract; the issuance of a license, grant, or other benefit by the agency; or the lawful statutory or administrative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision; or at the initiative of VA, to the extent the information is relevant and necessary to an investigative purpose of the agency.

3. Disclosure may be made to a congressional office from the record or an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to National Archives and Records Administration in records management inspections conducted under authority of Title 44 United States Code.

5. Information from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-Government entity, which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, utilization, appointment, retention or termination of individuals covered by this system or to inform a Federal agency or licensing boards or the appropriate non-Government entities about the health care practices of a currently employed, appointed, otherwise utilized, terminated, resigned, or retired health care employee or other individuals covered by this system whose professional health care activity so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. Information may be disclosed to non-Federal sector (i.e., State or local governments) agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission on Accreditation of Healthcare Organizations). Such disclosures may be made only when: (a) The records are properly constituted in accordance with VA requirements; (b) the records are accurate, relevant, timely, and complete; and (c) the disclosure is in the best interest of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the non-Federal sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving entity is to be furnished.

7. Information may be disclosed to a state or national certifying body, which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a

health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body, for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

8. Information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

9. Hiring, appointment, performance, or other personnel credentialing related information may be disclosed to any facility or agent with which there is, or there is proposed to be, an affiliation, sharing agreement, partnership, contract, or similar arrangement, where required for establishing, maintaining, or expanding any such relationship.

10. Information concerning a health care provider's professional qualifications and clinical privileges may be disclosed to a VA patient, or the representative or guardian of a patient who, due to physical or mental incapacity, lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care. This information may also be disclosed to a VA patient, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation or discontinuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education, training and current licensure/certification status), professional employment history, and current clinical privileges.

11. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

12. VA may disclose to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

13. Information may be disclosed to the VA-appointed representative of an employee regarding all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under fitness-for-duty examination procedures or Agency-filed disability retirement procedures.

14. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

15. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or the other functions of the Commission as authorized by law or regulation.

16. Information listed in 5 U.S.C. 7114(b)(4) may be disclosed to officials of labor organizations recognized under 5 U.S.C., chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

17. Identifying information in this system, including name, address, social security number and other information as is reasonably necessary to identify such individual, may be disclosed to the NPDB at the time of hiring, appointment, utilization, and/or clinical privileging/reprivileging of physicians, dentists and other health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, appointment, utilization, privileging/reprivileging, retention or termination of the individual.

18. Relevant nformation from this system of records may be disclosed to the NPDB and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (b) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer-matching program to accomplish these purposes.

19. In response to a request about a specifically identified individual covered by this system from a prospective Federal or non-Federal health care entity employer, the following information may be disclosed: (a) Relevant information concerning the individual's professional employment history including the clinical privileges held by the individual; (b) relevant information concerning a final decision which results in a voluntary or involuntary limitation, reduction or loss of clinical privileges; and (c) relevant information concerning any payment which is made in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim and, when through a peer review process that is undertaken

pursuant to VA policy, negligence, professional incompetence, responsibility for improper care, and/or professional misconduct has been assigned to the individual.

20. Disclosure may be made to any Federal, State, local, tribal or private entity in response to a request concerning a specific provider for the purposes of credentialing providers who provide health care at multiple sites or move between sites. Such disclosures may be made only when: (a) The records are properly constituted in accordance with VA requirements; (b) the records are accurate, relevant, timely, and complete; and (c) disclosure is in the best interests of the Government (i.e., to meet the requirements of contracts, sharing agreements, partnerships, etc.). When the exchange of credentialing information through the exchange of individual records directly benefits VA's completion of its mission and enhances public confidence in VA's or the Federal Government's role in the delivery of health care, then the best interests of the Government are served.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents or in electronic format. Information included in the record may be stored on microfilm, magnetic tape or disk.

RETRIEVABILITY:

Records are retrieved by the names and social security number or other assigned identifiers, e.g. the National Provider Identifier, of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the VistA system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file, which is needed in the performance of their official duties.

3. Access to records in VA Central Office and the VISN Directors and Division Offices is only authorized to VA personnel on a ''need-to-know'' basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel.

4. The automated system is Internet enabled and will conform to all applicable Federal regulations concerning information security. The automated system is protected by a generalized security facility and by specific security techniques used within the application that accesses the data file and may include individually unique passwords/codes and may utilize Public Key Infrastructure personal certificates. Both physical and system security measures will meet or exceed those required to provide an adequate level of protection for host systems. Access to file information is limited to only that information in the file which is needed in the performance of official duties. Access to computer rooms is restricted generally by appropriate locking devices to authorized operational personnel. Information submitted to the automated electronic system is afforded the same protections as the data that is maintained in the original files. Access from remote locations, including remote on-line access from other agencies to the data storage site, is controlled in the same manner. Access to the electronic data is supported by encryption and the Internet server is insulated by a firewall.

RETENTION AND DISPOSAL:

Records are maintained at the employing VA facility. If the individual transfers to another VA facility location, the record is transferred to the new location, if appropriate. Paper records are retired to a Federal records center 3 years after the individual separates from VA employment or no longer utilized by VA (in some cases, records may be maintained at the facility for a longer period of time) and are destroyed 30 years after separation. Paper records for applicants who are not selected for VA employment or appointment are destroyed 2 years after non-selection or when no longer needed for reference, whichever is sooner. Electronic records are transferred to the Director, Credentialing and Privileging Program, Office of Quality and Performance, VHA Central Office, when the provider leaves the facility. Information stored on electronic storage media is maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Director, Credentialing and Privileging Program, Office of Quality and Performance (10Q), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Officials maintaining the system: (1) The Chief of Staff at the VA health care facility where the provider made application, is employed, or otherwise utilized; (2) the credentialing coordinator of the VA health care facility for individuals who made application for employment or other utilization, or providers currently or previously employed or otherwise utilized at VA Central Office or at a VISN location; and (3) HHS/HRSA, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, for the electronic data warehouse. In most cases, the electronic data will be maintained by the Department of Health and Human Services, Health Resources and Services Administration (HHS/HRSA), a component thereof (a contractor, subcontractor of HHS/HRSA, or by another entity) in accordance with the VA Interagency Agreement.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility where they made application for employment or appointment, or to the VA facility where they are or were employed. Inquiries should include the employee's full name, social security number, date of application for employment or appointment or dates of employment or appointment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility where they made application for employment or appointment, or the VA facility where they are or were employed.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, National Practitioner Data Bank, professional societies, national certifying bodies, current or previous employers, other health care facilities and staff, references, educational institutions, medical schools, VA staff, patient, visitors, and VA patient medical records.

[FR Doc. 01–30241 Filed 12–5–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 66, No. 233

Thursday, December 6, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2001–8683;Airspace Docket No. 01–ASW–2]

RIN 2120–AA66

Modification of Restricted Area R–6312 Cotulla, TX

Correction

In final rule document 01–27159 beginning on page 54435 in the issue of Monday, October 29, 2001, make the following correction:

§ 73.63 [Corrected]

On page 54436, in the first column, in § 73.63, under the heading **R–6312 Cotulla, TX**, in the second paragraph, in the third line, ''28°′141″ N.'' should read, ''28°17′41″ N.''.

[FR Doc. C1–27159 Filed 12–5–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

Correction

In notice document 01–27268 appearing on page 56192 in the issue of Tuesday, November 6, 2001, make the following correction:

On page 56192, in the first column, in the **DATES** section, in the second line, ''January 7, 2001'' should read, ''January 7, 2002''.

[FR Doc. C1–27268 Filed 12–5–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 6, 2001

Part II

Department of Housing and Urban Development

24 CFR Part 30
Amendments to HUD's Civil Money Penalty Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 30

[Docket No. FR–4399–F–02]

RIN 2501–AC56

Amendments to HUD's Civil Money Penalty Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements sections 561 and 562 of the Multifamily Assisted Housing Reform and Affordability Act of 1997. These sections concern HUD's ability to impose civil money penalties. Section 561 expands the list of parties and violations subject to civil money penalties related to multifamily properties. Section 562 authorizes HUD to impose civil money penalties for violations of Section 8 project-based housing assistance payments contracts.

DATES: Effective Date: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Dane M. Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, U.S. Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024; telephone (202) 708–2350 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The June 26, 2000 Proposed Rule

The proposed rule proposed to implement section 561 and 562 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Pub. L. 105–65, Title V, 111 Stat. 1384) (the MAHRA), the purpose of which is to enhance enforcement against multifamily mortgagors and Section 8 owners who violate program requirements. Section 561 of the MAHRA amended the National Housing Act at 12 U.S.C. 1735f–15, ''Civil Money Penalties Against Multifamily Mortgagors,'' to expand the parties against whom HUD may seek a civil money penalty, as well as the violations potentially subject to a civil money penalty. Under the law, civil money penalty liability can extend to mortgagors, general partners of mortgagors, officers or directors of corporate mortgagors, identity of interest agents, and members of limited liability companies that are mortgagors or partners of partnership mortgagors. Additional violations for which HUD may seek a civil money penalty under section 561 include failure to maintain the mortgaged property, failure to provide acceptable management, and failure to properly maintain the books and accounts of the mortgaged property in accordance with HUD requirements.

Section 562 of the MAHRA added a new section to the U.S. Housing Act of 1937, codified at 42 U.S.C. 1437z–1, entitled ''Civil Money Penalties Against Section 8 Owners.'' Under this section, potentially liable parties include owners, their general partners in the case of a partnership owner, and identity of interest agents. A penalty may be imposed for any knowing and material breach of a housing assistance payments contract, including failure to provide decent, safe and sanitary housing, and knowing submission of false or fraudulent statements or requests for housing assistance payments to HUD or any other government agency.

The final rule implements these sections by amending the existing civil money penalty regulations at 24 CFR part 30. Section 561 of the MAHRA is implemented at § 30.45. Amendments to that section include new definitions, including definitions of ''identity of interest agent'' and further definitions of terms used within that definition. The section also incorporates the amended statutory list of violations for which HUD may seek a civil money penalty. Section 562 of the MAHRA is implemented in a new 24 CFR 30.68.

II. This Final Rule

The public comment period on the proposed rule closed on August 25, 2000. HUD received 11 comments. Five were from trade associations representing housing owners or managers, four were from groups representing tenants, one was from a management corporation on its own behalf, and one was from an individual owner.

III. Public Comments

A. Comments Arguing That the Rule Unfairly Burdens Mortgagors/Owners

Comment: The potential maximum penalty will cause financial hardship to small owners. Many of the owners subject to the rule are single asset entities with only the one property and the related assistance as their sole source of income. Many of these are small businesses or non-profits with limited outside revenue, individuals, elderly, and other like entities. These owners cannot afford the maximum $30,000 penalty being proposed. The reason such owners often fail to maintain properties or submit audited financial statements are income shortages, and the proposed penalty will only exacerbate the problem.

Response: While the maximum amount of civil money penalty is set as a statutory matter, the rule does not require HUD to assess the maximum civil penalty in any given case of a violation subject to such penalty. Rather, in assessing a penalty, HUD, by statute, must assess a variety of factors, including an entity's ability to pay. (See 12 U.S.C. 1735f–15(d)(3); 12 U.S.C. 1701q–1((d)(3); and 42 U.S.C. 1437z–1(c)(3)(C).) HUD's civil money penalty regulations implement this statutory requirement at 24 CFR 30.80(c). Thus, there is already sufficient statutory and regulatory protection of small owners. HUD has made no change to the rule as a result of this comment.

Comment: The cash flow from assisted projects can be too low for owners to fully comply with all HUD standards. It is unfair to require owners to maintain projects at a higher level than the project income allows. There needs to be balance in the system so that owners who are doing a good job of managing the project within the constraints of the rent they can charge are not subject to penalties. It is not fair to require owners to reach into their own pockets to supplement the rent. HUD field officials should be trained in this standard.

Response: HUD is required to consider ''the gravity of the offense'' and ''the degree of the violator's culpability'' when determining whether to seek a civil money penalty and, if so, how much to seek. (See 24 CFR 30.80(a) and (h).) These mandatory considerations should provide sufficient protection to the owner in the scenario described, where an owner is generally doing a good job but is found to have committed a violation. In addition, HUD expects owners with income shortfalls to seek relief that may be available, including budget-based rents or other permitted rent increases, or mortgage restructuring, if applicable. If such relief is available and an owner fails to seek it, HUD will consider that failure as part of its analysis of the gravity of the offense and the degree of culpability. Nonetheless, lack of income is not *per se* an excuse for an owner's failure to comply with legal obligations. Civil money penalties are always a potential result of failure to comply.

As to the commenter's request that HUD provide training, the Departmental Enforcement Center currently provides employees engaged in the civil penalty process with adequate training in applying HUD's regulations on such

penalties, including the standards discussed above. For these reasons, HUD makes no change to the rule as a result of this comment.

Comment: Since owners generally rely on HAP payments to correct violations, and since the owners face civil money penalties if they apply for HAP payments knowing that violations exist, there would never be funds available to correct the violations and return the property to compliance. Therefore, the procedures should allow for an evaluation of the cause of a property's financial distress before imposing monetary penalties.

Response: HUD existing procedures allow sufficient flexibility to consider a variety of circumstances. These procedures include a general requirement that HUD consider ''such matters as justice may require,'' 24 CFR 30.80(j). However, HUD believes that it is important that the agency retain maximum flexibility regarding civil penalties, within the general standards and procedures stated in the regulations. Therefore, after consideration, HUD has decided not to change the rule to address the specific situation raised by the comment. Rather, as to that situation and other individual situations that may arise, owners can consult with legal counsel and/or HUD field office staff, as appropriate.

Comment: Civil money penalties will be ''detrimental'' to housing managers and hinder the operation of their properties.

Response: While HUD considers the ability to pay in assessing a civil money penalty under 24 CFR 30.80(c), it is also true that the purpose of civil money penalties is to provide a disincentive for a manager, or any party statutorily subject to civil money penalties, to violate its legal obligations regarding HUD-assisted housing developments. Thus, the fact that civil money penalties might be detrimental does not argue against their imposition in appropriate cases. HUD makes no change to the rule as a result of this comment.

B. Comments on the Proposed Amount of Penalties

Comment: HUD should seek penalties appropriate to the violations, and not excessive penalties. A number of commenters stated that the amount of penalties should not be excessive and should relate to the severity of the violation, the financial condition of the violator, and whether there was good faith in attempting to comply with HUD regulations. Some commenters specifically cited the Small Business Regulatory Flexibility Act (''SBRFA''), 5 U.S.C. 612(b), and one commenter stated that some of the SBRFA policies should be incorporated into the final rule so that owners and managers will have a basic understanding of them.

Response: HUD's existing regulations governing civil penalties within which the new rule will be codified already provide for consideration of these factors. The regulations require consideration of, among other things, the gravity of the offense (24 CFR 30.80(a)); the violator's ability to pay (which of necessity includes the financial condition)(24 CFR 30.80(c)); and whether there was good faith (24 CFR 30.80(h)). Furthermore, in order to assess a civil penalty, HUD must show that there was a ''knowing and material'' violation. (*See, e.g.,* 24 CFR 30.45(b)(1)(ii) and (c).) Lack of knowledge would be a form of good-faith defense that a respondent could raise. Regarding SBRFA-related matters, HUD has fully complied with SBRFA requirements, and has published material on its SBRFA policies, so that it is not necessary to repeat this material in each individual rule. For more information, please see below the section entitled ''Small Entities and HUD Enforcement Actions.'' In addition, information on HUD's SBRFA policies can be found on the World Wide Web by choosing the ''Small Business'' link from HUD's home page, *http://www.hud.gov,* and clicking on the link to ''1996 Law (SBREFA).''

Comment: Civil money penalties could be crippling in many circumstances, and owners and managers need a clear understanding of their exposure to deter potential wrongdoing.

Response: Under its current statutory authority to assess civil money penalties for multifamily housing, section 202 and section 811 developments, as adjusted under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, HUD may assess a civil money penalty of up to $30,000. For section 8 properties, the Inflation Adjustment Act currently does not result in an increase above the original $25,000 statutory amount (*See* 42 U.S.C. 1437z–1(b)(3)). Owners and managers should consider these amounts their maximum potential civil money penalty exposure. (For the pre-adjustment penalty for multifamily housing, see 12 U.S.C. 1715f–15(c)(2).) See the preamble to the proposed rule for an explanation as to the section 202 and 811 programs, 65 FR 39502–39504 (June 26, 2000).)

Comment: Four commenters supported increased civil money penalties. One also supported the expansion of parties potentially subject to civil money penalties. Others stated that aggressive enforcement of civil money penalties is the best remedy to insure that tenants get decent homes and HUD funds are spent wisely.

Response: These comments do not seek any change in the regulation. Therefore, no change is necessary as a result.

C. Comments Raising Fairness Concerns

Five commenters raised concerns regarding the fairness of civil money penalties. These comments concerned hypothetical situations where HUD contributes to a violation; false statement provisions; due process concerns; and a concern that potential civil money penalties will encourage owners to opt out of assisted housing programs.

Comment: A provision prohibiting HUD from assessing penalties in the case of misconduct by HUD should be more fully implemented in the rule. Three commenters stated that, as to Section 8 owners, the rule implements the statutory provision that HUD may not impose penalties if a material cause of the violation is the failure of HUD or a PHA to comply with an existing agreement at 24 CFR 30.68(e) (*see* 42 U.S.C. 1437z–1(a)(2). However, the rule does not implement a similar provision in 12 U.S.C. 1735f–15(a) relating to HUD-assisted mortgagors. In addition, the rule should provide examples of HUD actions to which this provision would apply. One of the three commenters cited, as an example, HUD denials of requests for rent increases, which the commenter argued made it unfair for HUD to impose penalties for non-compliance. Another commenter similarly argued that the rule should not allow HUD to take any enforcement action until the agency has ''fully complied'' with its obligations under the regulatory agreement between the owner and HUD.

Response: The commenters correctly observe that the provision in question regarding failure to comply with existing agreements is found in both authorizing statutes that this rule implements. Therefore, HUD sees no reason why HUD should not implement the parallel provision in § 30.45. Indeed, failure to do so could be misunderstood to indicate that HUD intended to implement this provision for the Section 8 program only. Therefore, in accordance with this comment, HUD revises the proposed rule to implement this provision in § 30.45.

However, HUD disagrees with the commenters' assertion that HUD should provide examples of conduct to which this provision would apply, or address

the specific issue of the regulatory agreement. In particular, HUD disagrees with the commenter's example, citing a denial of a rent increase as cause for excuse from civil money penalties for noncompliance with HUD regulations. In most circumstances, the ordinary denial of a requested rent increase would not be an example of a failure to comply with an existing agreement, and would not insulate the owner from civil money penalties. Rather, such requests would be assessed in accordance with the regulatory requirements governing them, and approved or denied based on those requirements. As to the comment regarding theoretical future failures of HUD to ''fully comply'' with the regulatory agreement, HUD believes that the issue of whether a failure to comply with an agreement has occurred, and amounts to a violation of the agreement that constitutes a material cause of the owner's malfeasance, is of necessity controlled by the facts of particular cases, and is best examined on a case by case basis in the hearing process. Therefore, HUD makes no change other than to add the parallel provision.

Comment: The provision allowing for civil money penalties to be imposed on Section 8 owners in the case of false statements or false requests to HUD for housing assistance payments is unfair. Two commenters stated that, since it is impossible to determine that each unit is ''decent, safe and sanitary'' each day, the certification on the HAP voucher exposes the owner to a penalty with each submission. It would be an impossible administrative burden for owners to inspect each unit prior to submission on the voucher. In addition, minor technical violations could unfairly lead to large civil money penalties. Therefore, standards need to be set so that *de minimis* inaccuracies in vouchers, which can always be found, do not lead to civil penalties.

Response: In order to be liable for civil penalties, an owner must make a ''knowing or willful'' false submission or statement. While it is impossible to comment on future situations that may or may not arise, in the type of hypothetical scenario described by the comment, the submission might not be ''knowing'' or ''willful,'' and so might not meet the standard for assessing a civil penalty. Of course, this response does not relieve each owner of the responsibility to make reasonable and timely efforts to ascertain the condition of the project and take appropriate corrective action when necessary. In close cases, HUD is still obligated to consider the gravity of the offense and the degree of culpability (see 24 CFR 30.80(a) and (h)). Of course, HUD will consider each case on its merits. In questionable cases, potential respondents are advised to consult with the HUD field office as well as their own counsel. However, the rule as currently written is flexible enough to deal with the commenter's concern, and so no further modification of the rule is necessary.

Comment: Owners will opt out of HUD programs. The proposed rule provides another incentive for owners to opt out at the earliest opportunity. There should be reasonable procedures whereby good owners will not be fined for minor and technical violations. It should be HUD's goal to create incentives for owners who want to stay in HUD's programs.

Response: Reasonable procedures regarding minor and technical violations are already in place. For example HUD is required to consider the gravity of the offense when determining the amount of a civil money penalty. 12 U.S.C. 1735f-15(d)(3); 12 U.S.C. 1701q–1(d)(3); 42 U.S.C. 1437z–1(c)(3)(A), implemented at 24 CFR 30.80(a). In addition, HUD has provided incentives for owners to remain in multifamily assisted housing programs, including mark-to-market and mark-up-to market. Whether or not particular owners will choose to opt out rather than pay civil money penalties is purely hypothetical. In any case, HUD must enforce its program rules, which are for the benefit of tenants and the taxpaying public.

D. Due Process Concerns

Comment: One commenter stated that since the rule does not include a detailed appeals procedure, it violates due process.

Response: The commenter is incorrect. Although these particular revisions to 24 CFR part 30 do not include a separate appeals procedure, the general procedures incorporated into part 30, where these sections will be codified, applies. Under 24 CFR 30.95, hearings regarding part 30 civil money penalties are to be conducted under the procedures in 24 CFR part 26, subpart B. This subpart contains complete hearing procedures that comply with due process, including higher-level administrative appeal and judicial review provisions. Furthermore, judicial review is authorized by the underlying statutes. (*See* 12 U.S.C. 1735f–15(e) and 42 U.S.C. 1437z–1(d)). Therefore, no change is necessary as a result of this comment.

Comment: One commenter stated that the rule should provide that civil penalties cannot be imposed until the appeals process is completed.

Response: Generally, the authorizing statutes provide that a civil penalty may be imposed only after the respondent ''has received notice and an opportunity for a hearing on the record.'' (*See* 12 U.S.C. 1735f–15(d)(1)(B) and 42 U.S.C. 1437z–1(c)(1)(B)). Thus, HUD has authority to impose the penalty at that point, and sees no reason to refrain from imposing a penalty at the time of the initial decision if the respondent is found liable. While respondents have the right to seek a stay of the penalty during the appeals process, HUD does not believe an automatic stay for all cases would be in the public interest, since some cases may involve egregious acts of noncompliance for which a stay would not be appropriate.

E. Use of Funds Collected Through Civil Penalties

Three commenters suggested uses of the funds collected through the civil penalty process to benefit the specific project found liable.

Comment: Since the ultimate goal is to provide decent, safe and sanitary housing, HUD should permit the penalty or a payment in lieu of the penalty to be paid to the project to fix the underlying problems.

Response: The law does not permit the suggested payment of penalties. Penalties collected from multifamily and Section 202 owners may only be deposited in the Flexible Subsidy fund established by Section 201(j) of the Housing and Community Development Amendments of 1978. 12 U.S.C. 1735f–15(j); 12 U.S.C. 1701q–1(j). For FHA-insured or formerly FHA-insured projects, penalties collected against Section 8 owners and agents must either be deposited in the appropriate insurance fund or in another fund established under 42 U.S.C. 1437 (*see* 42 U.S.C. 1437z–1(g)(1)). For projects that are not FHA-insured, penalties collected against Section 8 owners and agents must be applied to the administrative costs incurred in enforcing HUD programs (see 42 U.S.C. 1437z-1(g)(2)). Since HUD cannot promulgate rules that violate Federal law, HUD makes no change as a result of this comment.

Comment: The fines should be directed to be used by the property solely to address any ''damage'' which was caused to the property for failure to meet the defined level of expectation.

Response: As in the comment above, the law does not permit the suggested application of penalties. Penalties collected from multifamily and section 202 owners may only be deposited in the Flexible Subsidy fund established by section 201(j) of the Housing and Community Development Amendments

of 1978. 12 U.S.C. 1735f–15(j); 12 U.S.C. 1701q–1(j). Penalties collected against Section 8 owners and agents must either be deposited in the appropriate insurance fund or another fund established by 42 U.S.C. 1437, or applied to the administrative costs incurred in enforcing HUD programs. 42 U.S.C. 1437z–1(g). Since HUD cannot promulgate rules that violate Federal law, HUD makes no change as a result of this comment.

F. Accessibility Issues

Comment: Failure to provide accessibility features required by law should be a basis for liability for civil penalties. One commenter stated that under § 561, failure to maintain the premises should include failure to have accessibility features required by law. Failure to have acceptable management should include failure to grant reasonable accommodations and other fair housing compliance as required by law. A commenter stated that under § 562, decent, safe and sanitary housing should be changed to ''decent, safe, accessible, and sanitary housing.''

Response: The proposed rulemaking for this rule did not put the public on notice that violations of civil rights laws could lead to the assessment of civil money penalties under sections 561 and 562 of the MAHRA. HUD does not believe it can add entirely new categories of penalties at this stage of the rulemaking, but rather would have to do so through a new proposed rule. Therefore, HUD makes no change to this rule as a result of these comments.

G. Additional Factors in Assessing Penalties

Two commenters argued for the inclusion of additional factors when assessing civil money penalties.

Comment: A past pattern of violation, prior to the publication of the final rule, and/or evidence of continuing violation should be given ''material weight'' in whether or not to establish penalties and in establishing their amount.

Response: 24 CFR 30.80(b) requires HUD to consider any history of past violations in determining whether to assess a civil penalty and the amount of such penalty. Therefore, no further revision to part 30 is necessary as a result of this comment.

Comment: The rule should clarify that mortgagors/owners who are in noncompliance with HUD procedures and management standards, particularly those affecting tenant living conditions and security of tenure, will be subject to penalties. For example, failure by the owner to comply with the notice requirements for Section 8 opt-outs and/or mortgage prepayments should be subject to penalties. Similarly, common violations of HUD management standards stated in handbooks, such as failure to maintain proper waiting lists for vacancies or transfers, improper charges to tenants, violations of local and State landlord/tenant laws and tenants' rights under leases, should be subject to penalties.

Response: HUD agrees that the violation of programatic procedures and standards, including the examples given by the commenter, are indicators of unsatisfactory management. The rule has been clarified to include this interpretation. However, the rule also makes clear that HUD does not believe that a single programmatic violation, unless extraordinarily serious, constitutes unacceptable management for which a civil money penalty may be imposed.

Comment: The rule should clarify that failure to respect the right of tenants to organize, should be subject to civil penalties. One commenter states that rule on tenant organization did not include civil penalties as an enforcement mechanism, and that HUD advised tenant representatives that this was an oversight that could be corrected by a subsequent rulemaking.

Response: HUD agrees with the comment, and the final rule has been revised accordingly.

H. Opt-Out Projects

One commenter stated that the rule should be extended to cover project-based Section 8 developments that opt out and convert to preservation vouchers.

Comment: HUD has authority to apply the civil penalty rule to projects that opt out because the MAHRAA statute which extended ''civil monetary authority'' over Section 8 units has been amended to provide for preservation vouchers in the event of an opt out. Doing so would eliminate the different standards used for units receiving preservation vouchers as opposed to project-based assistance. Ultimately, the commenter would prefer that oversight of units receiving preservation vouchers be transferred from PIH to the Office of Multifamily Housing. In the meantime, HUD should seek to equalize the standards. If further research suggests that MAHRAA, as amended, does not give HUD the authority to do this, HUD should propose legislation to accomplish this objective.

Response: HUD does not believe that it has the authority under the statute being implemented by this rule to take the steps suggested by the commenter under the MAHRAA, which states that a penalty may be imposed for a knowing and material breach of a HAP contract. (See 42 U.S.C. 1437z–1(b)(2).) This provision applies to owners, general partners, and identity-of-interest management agents of projects receiving project-based Section 8, 42 U.S.C. 1437z–1(b)(1). However, the enhanced vouchers granted to opt-out projects are generally tenant-based, and projects receiving project-based vouchers are generally not projects that have opted out. Thus, the statute being implemented by this rule does not appear to grant HUD the authority over projects that opt out as the commenter claims. Furthermore, HUD is reluctant to seek an expansion of its civil money penalty authority until it has gained sufficient experience to determine the effectiveness of its existing authority. Therefore, HUD makes no change to the rule as a result of this comment.

I. Tenant Participation in Civil Penalty Proceedings

Comment: Tenants and tenant organizations should be able to have a voice in HUD's process for assessing civil money penalties. Specifically, tenants should get notice of any proposed civil penalties; access to information regarding the administrative record of such proceedings, including all correspondence between HUD and owners on proposed penalties; and the right to comment before HUD's final decision. This should be done because tenants have the greatest stake in the maintenance of HUD standards, and they aspire to be major partners with HUD in the oversight of their homes. Allowing tenants to participate will allow tenants to be HUD's ''eyes and ears'' and enhance HUD's ability to gather evidence.

Response: The civil penalty process, by statute, is conducted by the government. HUD does not believe that involvement by tenants in the actual conduct of civil penalty cases is authorized, and therefore declines to adopt this suggestion.

As to the portion of the comment seeking information regarding ongoing civil penalty proceedings, the Freedom of Information Act would apply to those requests.

J. Clarification of Terms

Five commenters requested that the meaning of various terms used in the rule be clarified.

Comment: The definition of ''ownership interest in'' is too broad and should be clarified to mean persons holding legal title to interests in the subject entity.

Response: HUD believes that the suggested revision is too restrictive, as there are a variety of legal and equitable forms of ownership interest. Furthermore, for purposes of determining whether there is an identity of interest between ownership and the managing agent, the commenter's suggested definition is inadequate. HUD therefore declines to adopt the suggested change.

Comment: The definition of ''effective control'' is too broad and should be clarified to mean actual or apparent legal authority to bind the subject entity.

Response: HUD believes that effective control means much more than the authority to bind, and includes various forms of influence over others in the organization. Such influence is often based on financial or family considerations. HUD has thus adopted a functional definition of ''effective control.'' The suggested clarification would prevent HUD from taking relevant factors into consideration when determining whether an identity of interest relationship exists between an owner and a management agent. Therefore, HUD declines to adopt the suggested change.

Comment: HUD should amend ''agent employed to manage the property that has an identity of interest'' so it is the same as for ''identity of interest agent'' in Handbook 4381.5 REV–2, Chapter 1.

Response: The definition for identity of interest agent used in the rule is statutory, and HUD does not believe it has the authority to alter it. (*See* 12 U.S.C. 1735f–15–1(k), 42 U.S.C. 1437z–1(h).)

Comment: The rule should contain more precise cross-references to new Section 29 of the U.S. Housing Act of 1937 and the corresponding provisions of 24 CFR parts 26 and 30.

Response: The ''Authority'' statement at the beginning of the rule and the discussion in the preamble provide appropriate cross-references to the underlying statutory authority.

Comment: The definition of ''entity'' is too broad. In the case of a public corporation, a low-level staff member such as a ''low ranking Vice President'' can be the owner of a small number of shares in an employee stock ownership plan, and could be included in the definition. Similarly, the definition of ''entity'' in 30.45(a)(3) as ''any other organization or group of people'' is overly broad. The same problem occurs in section 30.68. The definition should be narrowed to limit the scope of liability to those with actual responsibility for violations.

Response: Although the commenter seems to take the position that one can become liable for civil penalties simply by meeting the definition of ''entity,'' in fact the definition of ''entity'' does not control who is potentially liable for civil penalties; rather, the only potentially liable parties are those listed under 12 U.S.C. 1735f–15(c)(1)(A) and 42 U.S.C. 1437z–1(b)(1). HUD does not believe, as the commenter fears, that the relevant statutory sections and rule would allow HUD to hold a person liable for a civil money penalty for the sole reason that he or she is a ''low-level staff member'' of, or holds a few shares in, the management agent. The proposed definition of ''entity'' properly takes account of the various legal and business entities that can be involved in housing transactions.

Comment: Entities subject to fines in §§ 30.45(b)(1) and (c)(1) and 30.68(b) should include the officers or directors of a corporate general partner in a partnership entity. This is necessary to prevent bad landlords from avoiding liability by using complex corporate structures to shield themselves.

Response: Applicable statutes do not give HUD authority to impose civil money penalties directly against the parties mentioned in the comment. 12 U.S.C. 1735f–15(c)(1)(A); 12 U.S.C. 1701q–1(b)(1) and (c)(1); 42 U.S.C. 1437z–1(b)(1). Of course, ''any'' general partners, including corporate ones, are covered under 12 U.S.C. 1735f–15(c)(1)(A) and 42 U.S.C. 1437z–1(b)(1).

K. Effective Date

Comment: The rule should be effective retroactively. The effective date should be amended to include past patterns of violation or continuing violations that have not been corrected as of the date of publication of the rule. This is essential to prevent bad landlords who have escaped effective enforcement action for years from getting away with impunity by claiming that only violations going forward from the date of rule publication are subject to fines. HUD should be able to take into account a previous administrative record of non-compliance with HUD standards in assessing fines quickly and firmly after the date of publication.(#8)

Response: HUD currently has the authority to impose civil money penalties for violations listed in the original civil penalty statutes which occurred after December 15, 1989, the effective date of those statutes. Sections 108(b) and 109(b) of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, 103 Stat. 2007, 2011. With respect to violations which were added by Section 561 of MAHRAA, HUD has statutory authority to impose civil money penalties only for violations which take place after the effective date of the final rule implementing section 561. (See Public Law 105–65 at section 561(c)(1). Section 562 has a similar provision. (See Public Law 105–65 at section 562(b).

Although HUD cannot make violators liable under the new laws for conduct occurring prior to the effective date of final regulations, HUD does consider a history of past violations in determining whether to assess a civil penalty and how much. 24 CFR 30.80(b).

L. Section 811 and 202 Properties

Comment: Four commenters support the application of the rule to 811 and 202 properties.

Response: Since these comments seek no change in the proposed rule, no response is necessary.

IV. Small Entities and HUD Enforcement Actions

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847, approved March 29, 1996) (SBREFA) provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 21, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, *under appropriate circumstances,* waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity.

With respect to the imposition of civil money penalties, HUD is cognizant that section 222 of the SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To

implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its May 21, 1998 **Federal Register** notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the Council on Environmental Quality regulations and 24 CFR 50.19(c)(1) and (c)(6) of the HUD regulations, the policies and procedures contained in this final rule are determined not to have the potential of having a significant impact on the human environment and are therefore exempt from further environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule. In so doing, the Secretary certifies that this final rule would not have a significant economic impact on a substantial number of small entities. This rule implements sections 561 and 562 of the Multifamily Reform Act. The rule makes conforming changes to HUD's regulations at 24 CFR part 30 to reflect statutory changes made to the National Housing Act and the United States Housing Act of 1937. These changes were mandated by the Multifamily Reform Act and are not discretionary on the part of HUD.

The purpose of these amendments is to grant HUD additional enforcement tools to use against those who violate agreements and program requirements. The Multifamily Reform Act expanded the list of persons and the types of violations subject to civil money penalties under HUD's insured housing and Section 8 programs. To the extent that these statutory changes impact small entities, it will be as a result of actions taken by the small entities themselves—that is, by violating multifamily and Section 8 program regulations and requirements.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not, within the meaning of the UMRA, impose any Federal mandates on any State, local, or tribal governments nor on the private sector.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 30

Administrative practice and procedure, Loan programs—housing and community development, Mortgages, Penalties.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 30 as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

1. The authority citation for 24 CFR part 30 is revised to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

2. Add paragraph (f) to § 30.5 to read as follows:

§ 30.5 Effective dates.

* * * * *

(f) Under § 30.68, a civil money penalty may be imposed for violations, or for those parts of continuing violations, occurring on or after January 7, 2002.

3. Revise § 30.45 to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

(a) *Definitions.* The following definitions apply to this section only:

(1) *Agent employed to manage the property that has an identity of interest* and *identity of interest agent.* An entity:

(i) That has management responsibility for a project;

(ii) In which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and

(iii) Over which the ownership entity exerts effective control.

(2) *Effective control.* The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

(3) *Entity.* An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

(4) *Multifamily property.* Property that includes 5 or more living units and that has a mortgage insured, co-insured, or held pursuant to the National Housing Act (12 U.S.C. 1702 *et seq.*).

(5) *Ownership interest.* Any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (e.g. general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (e.g., a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(6) *Section 202 or 811 property.* Property that includes 5 or more living units and that has a mortgage held pursuant to a direct loan or capital

advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) or capital advances under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

(b) *Violation of agreement.*—(1) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against a mortgagor of a section 202 or 811 property or a mortgagor, general partner of a partnership mortgagor, or any officer or director of a corporate mortgagor of a multifamily property who:

(i) Has agreed in writing, as a condition of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of the mortgage terms, or a workout agreement, to use nonproject income to make cash contributions for payments due under the note and mortgage, for payments to the reserve for replacements, to restore the project to good physical condition, or to pay other project liabilities; and

(ii) Knowingly and materially fails to comply with any of the commitments listed in paragraph (b)(1)(i) of this section.

(2) *Maximum penalty.* The maximum penalty for each violation under paragraph (b) of this section is the amount of loss that the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(c) *Other violations.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any of the following who knowingly and materially take any of the actions listed in 12 U.S.C. 1735f–15(c)(1)(B):

(1) Any mortgagor of a multifamily property;

(2) Any general partner of a partnership mortgagor of such property;

(3) Any officer or director of a corporate mortgagor;

(4) Any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

(5) Any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

(d) *Acceptable management.* For purposes of this rule, ''management acceptable to the Secretary'' under 12 U.S.C. 1735f–15(c)(1)(B)(xiv) shall include:

(1) Proper fiscal management;

(2) Proper handling of vacancies and tenanting in accordance with HUD regulations;

(3) Appropriate handling of rent collection;

(4) Proper maintenance;

(5) Compliance with HUD regulations on tenant organization; and

(6) Any other matters that pertain to proper management.

(e) *Civil money penalty.* A consistent pattern of violations of HUD program requirements, or a single violation that causes serious injury to the public or tenants, can be a basis for an action to assess a civil money penalty.

(f) *Section 202 or 811 projects.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, may initiate a civil money penalty action against any mortgagor of a section 202 or 811 property who knowingly and materially takes any of the actions listed in 12 U.S.C. 1701q–1(c)(1).

(g) *Maximum penalty.* The maximum penalty for each violation under paragraph (c) of this section is $30,000.

(h) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

(i) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

4. Add § 30.68 to read as follows:

§ 30.68 Section 8 owners.

(a) *Definitions.* The following definitions apply to this section only:

Agent employed to manage the property that has an identity of interest and *identity of interest agent.* An entity:

(1) That has management responsibility for a project;

(2) In which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

(3) Over which the ownership entity exerts effective control.

Effective control. The ability to direct, alter, supervise, or otherwise influence the actions, policies, decisions, duties, employment, or personnel of the management agent.

Entity. An individual corporation; company; association; partnership; authority; firm; society; trust; state, local government or agency thereof; or any other organization or group of people.

Ownership interest. Any direct or indirect interest in the stock, partnership interests, beneficial interests (for a trust) or other medium of equity participation. An indirect interest includes equity participation in any entity that holds a management interest (*e.g.* general partner, managing member of an LLC, majority stockholder, trustee) or minimum equity interest (*e.g.,* a 25% or more limited partner, 10% or more stockholder) in the ownership entity of the management agent.

(b) *General.* The Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, and the Assistant Secretary for Public and Indian Housing, or his or her designee, may initiate a civil money penalty action against any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for a knowing and material breach of a housing assistance payments contract, including the following:

(1) Failure to provide decent, safe, and sanitary housing pursuant to section 8 of the United States Housing Act of 1937 and 24 CFR 5.703; or

(2) Knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $25,000.

(d) *Payment of penalty.* No payment of a civil money penalty levied under this section shall be payable out of project income.

(e) *Exceptions.* The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

4. Revise § 30.80(k) introductory text, to read as follows:

§ 30.80 Factors in determining appropriateness and amount of civil money penalty.

* * * * *

(k) In addition to the above factors, with respect to violations under §§ 30.45, 30.55, 30.60, and 30.68, the Assistant Secretary for Housing-Federal Housing Commissioner, or his or her designee, or the Assistant Secretary for Public and Indian Housing, or his or her designee, shall also consider:

* * * * *

Dated: November 26, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–30033 Filed 12–5–01; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Thursday,
December 6, 2001

Part III

Department of Veterans Affairs

38 CFR Part 17

Copayments for Inpatient Hospital Care and Outpatient Medical Care, Copayments for Medications; Interim and Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK50

Copayments for Inpatient Hospital Care and Outpatient Medical Care

AGENCY: Department of Veterans Affairs.

ACTION: Interim and final rule.

SUMMARY: This document amends VA's medical regulations to set forth a mechanism for determining copayments for inpatient hospital care and outpatient medical care. This is necessary to implement provisions of the Veterans Millennium Health Care and Benefits Act and to set forth exemptions from copayment requirements as mandated by statute.

DATES: *Effective Date:* December 6, 2001.

Comment Date: Comments must be received by VA on or before February 4, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK50.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Nancy L. Howard at (202) 273–8198, Revenue Office (174), Office of Finance, Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420. (The telephone number is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends VA's medical regulations to set forth a mechanism for determining copayments for inpatient hospital care and outpatient medical care provided to veterans by VA. As explained below, a number of groups of veterans and services would be exempted from the copayment requirements.

The provisions of 38 U.S.C. 1710(a), (f), and (g) state that certain veterans are not eligible for inpatient hospital care or outpatient medical care provided by VA under 38 U.S.C. 1710(a) unless they agree to pay a copayment.

Inpatient Hospital Care

The rule restates provisions of 38 U.S.C. 1710(f), which state that the copayment for inpatient hospital care during any 365-day period is the sum of:

(i) $10 for every day the veteran receives inpatient hospital care, and

(ii) The lesser of:

(A) The sum of the inpatient Medicare deductible for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period, or

(B) VA's cost of providing the care.

Outpatient Medical Care

Previously, the copayment amount for outpatient medical care was $50.80. This was based on statutory provisions that required the copayment to be ''an amount equal to 20 percent of the estimated average cost (during the calendar year in which the services are furnished) of an outpatient visit in a * * * [VA] facility.''

This statutory provision was changed by the Veterans Millennium Health Care and Benefits Act, Public Law 106–117, 113 Stat. 1545. VA now has authority to change the copayment amount to ''the applicable amount or amounts established by the Secretary by regulation.''

HR Report 106–237, July 16, 1999, which accompanied the Veterans Millennium Health Care and Benefits Act, indicates that the previous copayment for routine outpatient medical care is too high. The Committee noted, at pp. 43 and 44, that ''[such copayments] may in many cases approach the full cost for the episode of treatment. Requiring so high a copayment for a routine, primary care visit appears to the Committee to be unreasonable. * * * The Committee recommends that the Secretary not set a single copayment amount, but consider practices within the health care industry to differentiate between primary care and specialty clinic visits.''

Accordingly, based on the new statutory authority, we are establishing a copayment amount of $15 for primary care visits and $50 for specialty care visits. Further, as discussed below, we would not charge a copayment for certain services.

The $50 copayment for specialty care visits is essentially the same as the current copayment. However, the $15 copayment for primary care visits is more in line with copayment amounts charged in the private sector. A VHA copayment work group found that the mean copayment for primary care in HMOs is $6.84, the mean copayment for mental health care in HMOs is $15.32, and the mean copayment for emergency care in HMOs is $28.91. The work group also found that the most common copayment for all types of HMO care is $10.00. TRICARE Prime copayments range from $6 to $12 for primary and specialty care, from $6 to $25 for mental health care, and $10 to $30 for emergency care.

A primary care outpatient visit is an episode of care furnished in a clinic that provides integrated, accessible healthcare services by clinicians who are accountable for addressing a large majority of personal healthcare needs, developing a sustained partnership with patients, and practicing in the context of family and community. Primary care includes, but is not limited to, diagnosis and management of acute and chronic biopsychosocial conditions, health promotion, disease prevention, overall care management, and patient and caregiver education. Each patient's identified primary care clinician delivers services in the context of a larger interdisciplinary primary care team. Patients have access to the primary care clinician and much of the primary care team without need of a referral. A specialty care outpatient visit is an episode of care furnished in a clinic that does not provide primary care, and is only provided through a referral. Some examples of specialty care provided at a specialty care clinic are radiology services requiring the immediate presence of a physician, audiology, optometry, magnetic resonance imagery (MRI), computerized axial tomography (CAT) scan, nuclear medicine studies, surgical consultative services, and ambulatory surgery.

We believe these definitions of primary care and specialty care are consistent with the common understanding of these terms.

The rule provides that if a veteran has more than one primary care encounter on the same day and no specialty care encounter on that day, the copayment amount is the copayment for one primary care outpatient visit. The rule also provides that if a veteran has one or more primary care encounters and one or more specialty care encounters on the same day, the copayment amount is the copayment for one specialty care outpatient visit. This is intended to encourage veterans to get as much care as they can get scheduled on the same day. Further, we believe that this will help veterans meet their appointments and, consequently, will help veterans obtain the care they need as quickly as possible.

Exceptions

As mandated by statutory authority, the rule provides that the following veterans are not subject to the

copayment requirements for inpatient hospital care or outpatient medical care:

- A veteran with a compensable service-connected disability;
- A veteran who is a former prisoner of war;
- A veteran awarded a Purple Heart;
- A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- A veteran who receives disability compensation under 38 U.S.C. 1151;
- A veteran whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that the veteran's continuing eligibility for care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
- A veteran whose entitlement to disability compensation is suspended because of the receipt of military retirement pay;
- A veteran of the Mexican border period or of World War I;
- A military retiree provided care under an interagency agreement as defined in section 113 of Public Law 106–117, 113 Stat. 1545; and
- A veteran who VA determines to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

Also, as mandated by statutory authority, the rule provides that veterans are not subject to the copayment requirements for inpatient hospital care or outpatient medical care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Gulf War veterans, or post-Gulf War combat-exposed veterans. Further, as mandated by statutory authority, the rule provides that care provided for a veteran's noncompensable zero percent service-connected disability is not subject to the copayment requirements for inpatient hospital care or outpatient medical care.

We have authority to impose a copayment for inpatient hospital care and outpatient medical services only if the care or services are provided under 38 U.S.C. 1710. Accordingly, the rule also exempts the following from the copayment requirements for inpatient hospital care and outpatient medical services because they are provided under authorities other than 38 U.S.C. 1710:

- Special registry examinations (including any follow-up examinations or testing ordered as part of the special registry examination) offered by VA to evaluate possible health risks associated with military service;
- Counseling and care for sexual trauma as authorized under 38 U.S.C 1720D;
- Compensation and pension examinations requested by the Veterans Benefits Administration;
- Care provided as part of a VA-approved research project authorized by 38 U.S.C. 7303;
- Outpatient dental care provided under 38 U.S.C. 1712;
- Readjustment counseling and related mental health services authorized under 38 U.S.C 1712A;
- Emergency treatment paid for under 38 U.S.C. 1725 or 1728;
- Extended care services authorized under 38 U.S.C. 1710B; and
- Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

The rule also exempts publicly announced VA public health initiatives (*e.g.*, health fairs) or outpatient visits solely consisting of preventive screening and immunizations (*e.g.* influenza immunization, pneumonococcal immunization, hypertension screening, hepatitis C screening, tobacco screening, alcohol screening, hyperlipidemia screening, breast cancer screening, cervical cancer screening, screening for colorectal cancer by fecal occult blood testing, and education about the risks and benefits of prostate cancer screening). These initiatives are viewed as cost-effective for health care in that they often provide early detection of irregularities or abnormalities that can be resolved without major intervention. Charging a copayment for these services would deter a veteran from obtaining these services. Also, these health care screenings often are provided at no charge to the patient in private health care settings.

The rule provides that laboratory services, flat film radiology services, and electrocardiograms are not subject to the copayment requirements. These services are considered to be a part of the initial provision of care and a separate copayment would not be charged.

The rule provides that outpatient care is not subject to the outpatient copayment requirements under this section when provided to a veteran during a day for which the veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract. We believe that this will encourage veterans to obtain outpatient care needed which should reduce medical problems for patients in a hospital, nursing home, or domiciliary.

Administrative Procedure Act

We have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) because compliance with such provisions would be impracticable and contrary to the public interest. It is necessary to reduce primary care copayments for outpatient medical care as quickly as possible to encourage enrolled veterans to utilize VA primary outpatient care services, thereby helping to avoid potentially more costly specialty services.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

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

OMB Review

This document has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government

contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 30, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. An undesignated center heading and § 17.108 are added to read as follows:

Copayments

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

(a) *General.* This section sets forth requirements regarding copayments for inpatient hospital care and outpatient medical care provided to veterans by VA.

(b) *Copayments for inpatient hospital care.* (1) Except as provided in paragraphs (d) or (e) of this section, a veteran, as a condition of receiving inpatient hospital care provided by VA (provided either directly by VA or obtained by VA by contract), must agree to pay VA (and is obligated to pay VA) the applicable copayment, as set forth in paragraph (b)(2) of this section.

(2) The copayment for inpatient hospital care shall be, during any 365-day period, a copayment equaling the sum of:

(i) $10 for every day the veteran receives inpatient hospital care, and

(ii) The lesser of:

(A) The sum of the inpatient Medicare deductible for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period, or

(B) VA's cost of providing the care.

Note to § 17.108(b): The requirement that a veteran agree to pay the copayment would be met by submitting to VA a signed VA Form 10–10EZ. This is the application form for enrollment in the VA healthcare system and also is the document used for providing means-test information annually.

(c) *Copayments for outpatient medical care.* (1) Except as provided in paragraphs (d), (e) or (f) of this section, a veteran, as a condition of receiving outpatient medical care provided by VA, must agree to pay VA (and is obligated to pay VA) a copayment as set forth in paragraph (c)(2) of this section.

(2) The copayment for outpatient medical care is $15 for a primary care outpatient visit and $50 for a specialty care outpatient visit. If a veteran has more than one primary care encounter on the same day and no specialty care encounter on that day, the copayment amount is the copayment for one primary care outpatient visit. If a veteran has one or more primary care encounters and one or more specialty care encounters on the same day, the copayment amount is the copayment for one specialty care outpatient visit.

(3) For purposes of this section, a primary care visit is an episode of care furnished in a clinic that provides integrated, accessible healthcare services by clinicians who are accountable for addressing a large majority of personal healthcare needs, developing a sustained partnership with patients, and practicing in the context of family and community. Primary care includes, but is not limited to, diagnosis and management of acute and chronic biopsychosocial conditions, health promotion, disease prevention, overall care management, and patient and caregiver education. Each patient's identified primary care clinician delivers services in the context of a larger interdisciplinary primary care team. Patients have access to the primary care clinician and much of the primary care team without need of a referral. In contrast, specialty care is generally provided through referral. A specialty care outpatient visit is an episode of care furnished in a clinic that does not provide primary care, and is only provided through a referral. Some examples of specialty care provided at a specialty care clinic are radiology services requiring the immediate presence of a physician, audiology, optometry, magnetic resonance imagery (MRI), computerized axial tomography (CAT) scan, nuclear medicine studies, surgical consultative services, and ambulatory surgery.

Note to § 17.108(c): The requirement that a veteran agree to pay the copayment would be met by submitting to VA a signed VA Form 10–10EZ. This is the application form for enrollment in the VA healthcare system and also is the document used for providing means-test information annually.

(d) *Veterans not subject to copayment requirements for inpatient hospital care or outpatient medical care.* The following veterans are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability;

(2) A veteran who is a former prisoner of war;

(3) A veteran awarded a Purple Heart;

(4) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(5) A veteran who receives disability compensation under 38 U.S.C. 1151;

(6) A veteran whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that the veteran's continuing eligibility for care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(7) A veteran whose entitlement to disability compensation is suspended because of the receipt of military retirement pay;

(8) A veteran of the Mexican border period or of World War I;

(9) A military retiree provided care under an interagency agreement as defined in section 113 of Public Law 106–117, 113 Stat. 1545; or

(10) A veteran who VA determines to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(e) *Services not subject to copayment requirements for inpatient hospital care or outpatient medical care.* The following are not subject to the copayment requirements under this section:

(1) Care provided to a veteran for a noncompensable zero percent service-connected disability;

(2) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Gulf War veterans, or post-Gulf War combat-exposed veterans;

(3) Special registry examinations (including any follow-up examinations or testing ordered as part of the special registry examination) offered by VA to evaluate possible health risks associated with military service;

(4) Counseling and care for sexual trauma as authorized under 38 U.S.C 1720D;

(5) Compensation and pension examinations requested by the Veterans Benefits Administration;

(6) Care provided as part of a VA-approved research project authorized by 38 U.S.C. 7303;

(7) Outpatient dental care provided under 38 U.S.C. 1712;

(8) Readjustment counseling and related mental health services authorized under 38 U.S.C 1712A;

(9) Emergency treatment paid for under 38 U.S.C. 1725 or 1728;

(10) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck;

(11) Publicly announced VA public health initiatives (*e.g.*, health fairs) or an outpatient visit solely consisting of preventive screening and immunizations (*e.g.* influenza immunization, pneumonococcal immunization, hypertension screening, hepatitis C screening, tobacco screening, alcohol screening, hyperlipidemia screening, breast cancer screening, cervical cancer screening, screening for colorectal cancer by fecal occult blood testing, and education about the risks and benefits of prostate cancer screening); and

(12) Laboratory services, flat film radiology services, and electrocardiograms.

(f) *Additional care not subject to outpatient copayment.* Outpatient care is not subject to the outpatient copayment requirements under this section when provided to a veteran during a day for which the veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract.

(Authority: 38 U.S.C. 1710)

[FR Doc. 01–30182 Filed 12–5–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK85

Copayments for Medications

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends VA's medical regulations to set forth copayment requirements for medications. This is necessary to implement provisions of the Veterans Millennium Health Care and Benefits Act.

DATES: *Effective Date:* February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy L. Howard at (202) 273–8198, Revenue Office (174), Office of Finance, Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420. (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 16, 2001, we proposed to amend VA's medical regulations to set forth copayment requirements for medications provided to veterans by VA (66 FR 36960). Interested persons were given 60 days to submit comments. We received over 1000 comments, almost all of which opposed all or portions of the proposal. Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule.

A number of commenters asserted that VA should not charge any veteran a medication copayment. Other commenters asserted that VA should not charge veterans who had combat service a medication copayment. Other commenters asserted that military retirees should not be charged a medication copayment. Other commenters asserted that veterans who are service-connected should not be charged a medication copayment for any condition. No changes are made based on these comments. With certain statutory exceptions set forth in § 17.110(c) of this final rule, the provisions of 38 U.S.C. 1722A require veterans to pay a copayment for each 30-day or less supply of medication furnished on an outpatient basis. The applicable statutory provisions do not allow an exemption based merely on the fact that an individual is a veteran, that an individual was a combat veteran, or that a veteran is a military retiree. The provisions in the final rule concerning service-connection are also reflections of statutory requirements. The final rule exempts from the copayment requirements medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability. The final rule also exempts from the copayment requirements medication for a veteran's service-connected disability. However, VA has no authority to exempt from the medication copayments medication for a nonservice-connected condition of a veteran whose total service-connected disabilities are rated at less than 50%.

The vast majority of commenters opposed the proposal to increase the copayment amount from $2 to $7. Some asserted there should be no increase at all. Others asserted that the increase was just too great. Others asserted that the increase would cause them a financial hardship. Some of the commenters asserted that the Prescription Drug Component of the Medical Consumer Price Index should not be used to determine whether the copayment amount should be increased since this is typically greater than the overall inflation rate. A number of the commenters also asserted that the copayment increase also would cause the annual caps to be too high. A few were in favor of the proposal. No changes are made based on these comments.

The copayment amount was set at $2 in 1990 by 38 U.S.C. 1722A for each 30-day or less supply of medication and until now has never been changed. The Veterans Millennium Health Care and Benefits Act, Public Law 106–117, amended 38 U.S.C. 1722A authorizing VA to increase the copayment amount and to establish maximum annual copayment amounts. Clearly, the statutory intent was for VA to increase the copayment amount. In helping VA to determine the amount of the copayment, the House Conference Report (H. Rept. 106–237, July 16, 1999) specifically noted that the copayment for DOD's Tricare Prime Plan included a $9 copayment for each 30-day prescription. Further, the House Conference Report indicated, at page 42, that ''[a] survey of copayment trends in 1996–7 found the most common [prescription drug] copayment among members of the American Association of Health Plans * * * [to be] in the range of $5 to $10 per prescription.'' Also, as we stated in the proposal, we believe that the proposed $7 medication copayment would be lower than or equal to most medication copayments charged by the private health care industry. Many recent newspaper articles have reported dramatic increases throughout the health care industry for medication copayment amounts which are reflective of increases in medication costs. Accordingly, even with the increase we may have one of the lowest copayment amounts. Under these circumstances, we believe that a $7 copayment amount is reasonable. Further, we believe that increases should be based on the Prescription Drug Component of the Medical Consumer Price Index since it is most relevant to the cost of prescriptions and thereby should be relevant to any general increases in medication copayments in the private sector.

Also, as we stated in the proposal, under 38 U.S.C. 1722A, VA may not require a veteran to pay an amount in excess of the actual cost of the medication and the pharmacy administrative costs related to the dispensing of the medication. VHA conducted a study of the pharmacy administrative costs relating to the dispensing of medication on an outpatient basis and found that VA incurred a cost of $7.28 to dispense an outpatient medication even without consideration of the actual cost of the medication. This amount covers the cost of consultation time, filling time,

dispensing time, an appropriate share of the direct and indirect personnel costs, physical overhead and materials, and supply costs. Under these circumstances, we believe that a $7 copayment would not exceed VA's costs.

A number of commenters asserted that the increase in the medication copayment would cause them a financial hardship, particularly in those cases when a veteran would obtain multiple prescriptions requiring multiple copayments. No changes are made based on these comments. The issue of financial hardship caused by copayments was addressed by statute. The text portion of this document restates statutory provisions by providing that certain veterans whose income is less than the VA pension level are exempt from the copayment requirements. Moreover, the final rule includes an annual cap to help eliminate financial hardships for veterans who in unusual circumstances need a significant number of prescriptions. Furthermore, VA has statutory authority under 38 U.S.C. 5302 to waive debts arising from a veteran's failure to pay the pharmacy copayment when collection of the debt would be against equity and good conscience. One factor VA uses in determining whether collection would be against equity and good conscience is whether it would cause undue hardship by depriving the veteran and his or her family of basic necessities.

One commenter asserted that the income threshold for requiring a medication copayment should be raised. No changes are made based on this comment. This reflects a statutory requirement and we have no authority to change the amount.

A number of commenters indicated that they would return to private-sector health care if the copayment were increased. Although some might choose not to obtain their medications from VA, as we indicated above, we believe that our copayment amount is still on the low end of the private-sector copayment scale.

A number of commenters asserted that VA should not charge copayments in those cases when VA is reimbursed by Medicare. No changes are made based on these comments. Medicare does not provide medication coverage and does not reimburse VA for medication costs.

One commenter suggested that the copayment amount should vary based on geographic location. No changes are made based on this comment. We do not believe that this would be administratively feasible.

One commenter suggested that we refrain from establishing a new copayment amount based on the conclusion that the copayment authority is scheduled to expire September 30, 2002. No changes are made based on this comment. We anticipate that a timely extension of the copayment authority will be enacted into law. If this does not occur we would delete the copayment provisions.

Compliance With the Congressional Review Act and Executive Order 12866

This rule is economically significant under Executive Order 12866 and constitutes a major rule under the Congressional Review Act. The rule is necessary to implement the provisions of section 201 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act. These provisions, which are set forth at 38 U.S.C. 1722A, authorize VA to set the copayment charge for medications.

I. Benefits Costs

This rule would directly impact veterans who receive prescriptions for other than service-connected conditions and who have been paying a $2 copayment. Based on VA records for fiscal year 2000, we found that approximately 1.1 million veterans averaged 47 30-day supply prescriptions per year. VA collected $101 million in fiscal year 2000 as copayments. This rule would increase the copayment from the current $2 level to $7. We do not believe the increase in the copayment amount will have an impact upon utilization. It is anticipated that the same number of veterans will continue to receive the same average number of prescriptions generating an increase in collections of $250 million annually.

II. Administrative Costs

The estimated administrative cost for these increased collections would remain the same at the current collection expense of $17 million. This is based upon an average cost of a GS–5 at $12/hour x 8.2 million bills per year at the average rate of 10.3 minutes per bill.

III. Alternatives

In addition to alternatives discussed above, VA considered establishing higher and lower copayment and cap amounts and considered whether or not to have escalator provisions. However, for the reasons discussed above, we believe that the copayment and cap amounts, and the escalator provisions, are appropriate.

Paperwork Reduction Act

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

Unfunded Mandates

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

OMB Review

This rule is economically significant under Executive Order 12866 and major under the Congressional Review Act. This rule has been reviewed by OMB.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 30, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.110 is added under the undesignated center heading COPAYMENTS to read as follows:

§ 17.110 Copayments for medication.

(a) *General.* This section sets forth requirements regarding copayments for medications provided to veterans by VA.

(b) *Copayments.* (1) Unless exempted under paragraph (c) of this section, a veteran is obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). For the period from February 4, 2002 through December 31, 2002, the copayment amount is $7. The copayment amount for each calendar year thereafter will be established by using the Prescription Drug component of the Medical Consumer Price Index as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of $7. The copayment amount for the new calendar year will be this result, rounded down to the whole dollar amount.

Note to Paragraph (b)(1): Example for determining copayment amount. If the ratio of the Prescription Drug component of the Medical Consumer Price Index for September 30, 2003, to the corresponding Index for September 30, 2001, is 1.2242, then this ratio multiplied by the original copayment amount of $7 would equal $8.57, and the copayment amount for calendar year 2004, rounded down to the whole dollar amount, would be $8.

(2) The total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6 of VA's health care system (see § 17.36) shall not exceed the cap established for the calendar year. The cap for calendar year 2002 is $840. If the copayment amount increases after calendar year 2002, the cap of $840 shall be increased by $120 for each $1 increase in the copayment amount.

(c) *Medication not subject to the copayment requirements.* The following are exempt from the copayment requirements of this section:

(1) Medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability;

(2) Medication for a veteran's service-connected disability;

(3) Medication for a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of VA pension which would be payable to such veteran if such veteran were eligible for pension under 38 U.S.C. 1521;

(4) Medication authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(5) Medication for treatment of sexual trauma as authorized under 38 U.S.C. 1720D;

(6) Medication for treatment of cancer of the head or neck authorized under 38 U.S.C. 1720E; and

(7) Medications provided as part of a VA approved research project authorized by 38 U.S.C. 7303.

(Authority: 38 U.S.C. 501, 1710, 1720D, 1722A)

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Part IV

Environmental Protection Agency

40 CFR Part 8

Environmental Impact Assessment of Nongovernmental Activities in Antarctica; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 8

[FRL–7114–3]

RIN 2020–AA34

Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act), amends the Antarctic Conservation Act of 1978 to implement the Protocol on Environmental Protection (the Protocol) to the Antarctic Treaty of 1959 (the Treaty). The Act directs the Environmental Protection Agency (EPA) to promulgate regulations that provide for assessment of the environmental impacts of nongovernmental activities in Antarctica and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. This final rule establishes the requirements for assessment of the environmental impacts of nongovernmental activities in Antarctica and for coordination of the review of information regarding environmental impact assessments received from other parties under the Protocol.

DATES: This rule will be effective on January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs at telephone: (202) 564–7157 or (202) 564–7144, respectively, or by mail at: NEPA Compliance Division; Office of Federal Activities (2252A); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW; Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Introduction
A. Statutory Background
B. Background of the Rulemaking
II. Public Comments on the Proposed Rule and EPA's Response to These Comments
III. Description of Program and These Regulations
A. The Antarctic Treaty and Protocol
B. The Purpose of These Regulations
C. Summary of the Protocol
D. Activities Covered by These Regulations
1. Persons Required to Carry Out an EIA
2. Differences Between Governmental and Nongovernmental Activities
3. Appropriate Level of Environmental Documentation
4. Criteria for a CEE
5. Measures to Assess and Verify Environmental Impacts
E. Incorporation of Information, Consolidation of Environmental Documentation, Waiver or Modification of Deadlines, and Provision for Multi-Year Environmental Documentation
F. Submission of Environmental Documents
G. Prohibited Acts, Enforcement and Penalties
H. Provision for Categorical Exclusions
IV. Coordination of Review of Information Received from Other Parties to the Treaty
V. Administrative Requirements
A. Executive Order 12866 Clearance
B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 601 et seq.)
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note)
F. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
G. Executive Order 13132, Federalism
H. Executive Order 13175, Consultation and Coordination with Tribal Governments
I. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use
K. Submission to Congress and the Comptroller General of the United States

I. Introduction

A. Statutory Background

On October 2, 1996, the President signed into law the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act). The purpose of the Act is to implement the provisions of the Protocol on Environmental Protection (the Protocol) to the Antarctic Treaty of 1959 (the Treaty). The Act provides that:

''The [Environmental Protection Agency] shall within 2 years after the date of * * * enactment * * * promulgate regulations to provide for * * * the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty * * * and * * * coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol.'' Regulations must be ''consistent with Annex I to the Protocol.''

B. Background of the Rulemaking

Although the Act gave the Environmental Protection Agency (EPA) two years to promulgate regulations, the United States (U.S.) sought immediate ratification of the Protocol which, in turn, required EPA, contemporaneous with ratification, to have regulations in effect which enabled the U.S. to comply with its obligations under the Protocol. Accordingly, on April 30, 1997, EPA promulgated an interim final rule so that the United States could ratify the Protocol and implement its obligations under the Protocol as soon as the Protocol entered into force.

Because of the importance of facilitating the Protocol's prompt entry into force, EPA believed it had good cause under 5 U.S.C. 553(b)(B) to find that implementation of notice and comment procedures for the interim final rule would be contrary to the public interest and unnecessary. Therefore, the interim final regulations were issued without notice and an opportunity to comment and, for the same reasons, under 5 U.S.C. 553(d)(3), the interim final regulations took effect on April 30, 1997.

Further, EPA believed that public comment on the requirements for environmental documentation, including procedures and content, in the interim final regulations was unnecessary because the interim final regulations incorporated the environmental documentation requirements of the Protocol, which was signed by the U.S. in 1991 and received the advice and consent of the Senate in 1992. Specifically, language from the Protocol was incorporated into the interim final regulations regarding the content of initial environmental evaluation (IEE) and comprehensive environmental evaluation (CEE) documentation as required by the Protocol, and the timing requirements of the interim final regulations were set out to meet those established by Annex I to the Protocol.

At the time the interim final regulations were promulgated, EPA announced its plans to provide extensive opportunities for public comment in the development of the proposed final regulations. EPA stated the final regulations would be proposed and promulgated in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), which generally requires notice to the public, description of the substance of the proposed rule and an opportunity for public comment. Further, EPA announced that it would prepare under the National Environmental Policy Act

(42 U.S.C. 4321 *et seq.*) an Environmental Impact Statement (EIS), which would consider the environmental impacts of the proposed rule and alternatives and address the environmental and regulatory issues raised by interested agencies, organizations, groups and individuals. EPA stated that the public would have an opportunity to participate in the scoping process for the EIS. The Notice of Availability for the ''Draft Environmental Impact Statement for the Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica'' (DEIS) was published in the **Federal Register** on February 16, 2001; the public comment period closed on April 2, 2001. In preparing this final rule, EPA considered the comments received on the issues involved with and the alternatives presented in the DEIS for this regulatory action.

The interim final regulations were intended to be limited in time and effect to provide for a transition period until the final regulations could be developed. This was expected to occur prior to the statutory deadline of October 2, 1998. However, during scoping, the International Association of Antarctica Tour Operators, individual tour operators, and The Antarctica Project/Antarctic and Southern Ocean Coalition requested that the deadline for the interim final rule be extended to give the operators an opportunity to determine the ''workability'' of the requirements and then to comment to EPA. After consultation with other interested federal agencies, EPA determined that this request was reasonable and that additional time to develop the final rule would be beneficial. Thus, EPA issued a direct amendment to the interim final rule effective July 14, 1998, which extended its applicability through the 2000–2001 austral summer. The interim final regulations served as the model for these final regulations which are described below. Certain aspects of these final regulations are new or different from the interim final regulations, including a new provision that would allow submission of environmental documentation on a multi-year basis and a definition of the term ''more than a minor or transitory impact.''

II. Public Comments on the Proposed Rule and EPA's Response to These Comments

Five sets of comments were received in response to the June 29, 2001, notice of proposed rule-making. Comments were received from: two federal agencies, the U.S. Department of State and the National Science Foundation; tour industry respondents including the International Association of Antarctica Tour Operators (IAATO), its U.S. members and one non-member; and two non-governmental environmental interest organizations including The Antarctica Project on behalf of the Antarctic and Southern Ocean Coalition, and the Defenders of Wildlife. Most of the comments raised by the industry respondents and the non-governmental environmental interest organizations were the same or similar to comments raised by these entities during scoping for EPA's EIS and the subsequent public comment period on the DEIS. The scoping comments were considered by EPA in the development of the alternatives for the proposed rule-making, and the comments on the DEIS were considered by EPA in the development of the proposed rule.

Federal agencies. The two federal agencies support the rule as proposed. One agency supports implementation of the rule as soon as possible since the rule supports implementation of the Protocol on Environmental Protection to the Antarctic Treaty. The other agency commented that the rule, as proposed, is fully responsive to, and consistent with, the requirements of the Protocol and EPA's implementation authority under the Act.

Tour industry respondents. The tour industry respondents generally support EPA's approach in the proposed rule, particularly the provision for multi-year environmental documentation, although they opine that certain modifications to reduce regulatory burdens, as previously commented to EPA under the EIS scoping and DEIS review process, would be appropriate. However, the tour industry respondents did provide other specific comments which are addressed below.

In their previous comments, the tour industry respondents requested elimination of EPA's ability to pass on the adequacy of environmental documentation and to eliminate the enforcement provision in the rule in order to reduce regulatory burden. EPA is not accepting these proposed modifications because the Act requires EPA to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Treaty in order for the U.S. government to implement certain of its obligations under the Protocol. The procedures in the rule ensure that: (1) Nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; (2) operators consider these impacts in deciding whether or how to proceed with proposed activities; and (3) operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. In keeping with the U.S. government's obligations under the Protocol and EPA's obligations under the Act, under the rule, EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of the regulations. EPA believes that before such a finding is made, it is prudent to offer comments to the operator so that the operator may, at its discretion, make necessary revisions to the document. If the operator proceeded after EPA made a finding that the documentation does not meet the requirements of Article 8 and Annex I and the requirements of the regulations, the operator would be in violation of the regulations and would be subject to enforcement.

The tour industry respondents requested elimination of Preliminary Environmental Review Memorandums (PERMS) in order to reduce regulatory burden. EPA is not accepting this proposed modification because the preliminary environmental review process that may result in PERM-level environmental documentation is significantly different from submitting the basic information delineated in 40 CFR 8.4(a) of the rule, information similar to that submitted by operators for advance notification purposes. Simply submitting this information does not constitute the preliminary environmental review process as delineated in 40 CFR 8.6 of the rule for PERMS. EPA notes that, to date, none of the U.S.-based operators has submitted PERM-level documentation for its final environmental document.

The tour industry respondents requested that the rule provide for automatic reciprocity when environmental documentation is prepared for other Treaty Parties in order to reduce regulatory burden. EPA is not accepting this proposed modification because it is the responsibility of the U.S. government to comply with its obligations under the Protocol. The U.S. government would need to determine whether on a case-by-case basis it could rely on the regulatory procedures of another Party. Therefore, EPA believes that a discretionary process should not be included in the rule.

To reduce regulatory burden, the tour industry respondents requested that the rule provide a ''categorical exclusion''

from the requirement to prepare environmental documentation for ship-based tourism conducted according to the ''Lindblad model.'' EPA is not accepting this proposed modification for the following reasons. As discussed in the Preamble at section III.H., the National Environmental Policy Act (NEPA) defines ''categorical exclusion'' as ''a category of actions which do not individually or cumulatively have a significant effect on the human environment * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required'' (40 CFR 1508.4). Only narrow and specific classes of activities can be categorically excluded from environmental review. For example, EPA in its NEPA regulations at 40 CFR 6.107(d) excludes ''* * * actions which are solely directed toward minor rehabilitation of existing facilities * * *'' and the National Science Foundation in its environmental assessment regulations at 45 CFR 641(c)(1) and (2) excludes certain scientific activities (*e.g.*, use of weather/research balloons that are to be retrieved) and interior remodeling and renovation of existing facilities. EPA does not have a specific definition for the ''Lindblad model.'' EPA also believes that a broad categorical exclusion covering ship-based tourism as now conducted does not fit well with the approach used by the U.S. government for categorical exclusions because it does not identify actions to be excluded in sufficient detail. Further, more needs to be known about potential cumulative impacts of nongovernmental activities undertaken by U.S.-based ship-based tour operators before deciding to exclude some or all of these specific activities. Categorical exclusions can be designated by amendment to the rule if categorical exclusion activities are identified in the future. Any such amendment to the rule would be subject to notice and comment.

The tour industry respondents requested that the rule clarify that even if mitigation is not carried out as described in the environmental documentation, this would not subject an operator to enforcement action or otherwise place an operator in violation of its obligations under the Protocol, the Act and EPA's implementing regulations. EPA is not accepting this proposed modification for the following reasons. EPA recognizes that the rule requires only that environmental documentation be prepared and does not specifically require implementation of either the activities, as described, or the planned mitigation measures. However, if, for example, an operator proposes to mitigate the potential environmental impacts associated with a proposed activity, and the assessment of the proposed activity without the mitigative measures would be greater than minor or transitory effects, EPA assumes the operator will proceed with these mitigation measures. Otherwise, to be in compliance with the provisions of the rule, the operator's decision might have been to prepare a CEE, a different level of environmental documentation used when the reasonably foreseeable potential environmental effects of a proposed activity are likely to be more than minor or transitory. (*e.g.*, if planned mitigation measures are the basis for the level of documentation there is an obligation on the part of the operator to implement the planned mitigation, otherwise, the level of documentation might not have met the requirements of the Protocol and the regulations.)

Further, EPA assumes the activities will be undertaken as planned and described because, based on experience to date, the planned mitigation measures are generally one of the following: requirements or prohibitions of federal laws (for example, tour vessels are operated according to the domestic legislation of its flag state that gives effect to MARPOL, U.S.-based tour operators adhere to applicable domestic statutes and regulations, and staff are trained and passengers educated on the mandates and prohibitions of the Treaty, the Protocol, and U.S. regulations); adopted recommendations under the Antarctic Treaty System (for example, certain mitigation measures include staff training and passenger education on Recommendation XVIII–1); and, for most U.S.-based ship-based tour operators, requirements for membership under IAATO's Bylaws (for example, certain mitigation measures include adherence to the membership provisions of the IAATO Bylaws, specifically, agreement not to have more than 100 passengers ashore at any one site at the same time). EPA acknowledges that section II.D.3.(d), Mitigation, in the proposed rule's Preamble (section III.D.3.(d) in the Preamble to this final rule) was not in the Preamble to the Interim Final Rule. However, section II.D.5, Measures to Assess and Verify Environmental Impacts, in the Preamble to the Interim Final Rule states in the example for activities requiring an IEE that the information could include, as appropriate, ''* * * *description of any activity requiring mitigation,* the mitigative actions undertaken, and the actual or projected outcome of the mitigation'' (italics added for emphasis). Once again, EPA believes that if an operator chooses to mitigate and the mitigation measures are the basis for the level of environmental documentation, EPA assumes the operator will proceed with these mitigation measures. Otherwise, the level of documentation may not have met the requirements of Article 8 and Annex I and the provisions of the regulations. Were an operator to fail to comply with these regulations, the operator could be subject to enforcement under the provisions listed in 40 CFR 8.11.

The tour industry respondents requested that EPA, in the Preamble to the rule, confirm the respondents' interpretation of the nature of the requirements of section 8.9, measures to assess and verify environmental impacts, including that operators are under no regulatory obligation to submit post-season reports related to the assessment and verification of environmental impacts to EPA (or to any other Federal agency), that operators are responsible for deciding whether and how to proceed with proposed activities, and that operators are not subject to any regulatory requirement to make assessment and verification information available to EPA. These same issues were addressed by EPA in the Information Collection Request, Part C of the Supporting Statement, for the Interim Final Rule and have been addressed by EPA in the Supporting Statement for the Information Collection Request for this rule. With regard to assessment and verification information, the Protocol, and thus the Act, requires that operators have procedures designed to provide a regular and verifiable record of the impacts of their activities. Like the Interim Final Rule, such a provision has been incorporated into this final rule in order to ensure that the U.S. government has the ability to implement its environmental impact assessment obligations for nongovernmental operators under the Protocol, including a requirement that operators have procedures designed to provide a regular and verifiable record of the impacts of these activities. EPA believes that this establishes a requirement that the information be available to EPA in order to verify that the operator has assessment and verification procedures. Otherwise, there would be no way to know if an operator was in compliance with this requirement of the regulation. Operators are currently voluntarily providing this information to the

government, thus it is available to EPA. As indicated in the regulations (40 CFR 8.1(b)), this Preamble (section III.C.), and the Supporting Statement for the Information Collection Request for this rule (section 2(b)), the operator is responsible for deciding whether or how to proceed with proposed activities.

The tour industry respondents requested that EPA clarify in the final rule that, at least in the near term, the Agency does not expect environmental documentation to include assessment of cumulative impacts in that information is currently insufficient to determine whether such impacts are in fact likely. EPA is not accepting this proposed modification because, as acknowledged by the tour industry respondents, Annex I includes consideration of cumulative impacts in light of existing and known planned activities for IEE and CEE level documentation. In order to remain consistent with Annex I, the final rule requires the same. However, EPA believes that, to date, the IEEs submitted by U.S.-based operators have contained sufficient detail to assess whether proposed activities may have more than a minor or transitory impact on the Antarctic environment including consideration of cumulative impacts in light of existing and known proposed activities. EPA further believes that the operators' conclusions to date, including those for cumulative impacts, have been supported by the information currently available. (*e.g.*, based on the current scientific studies, there is no evidence of cumulative environmental impacts related to tourism.) However, the issue of cumulative impacts, particularly in the Peninsula area, remains a concern in light of such factors as the increasing number of tour operators, expeditions, and passengers landed; the number of sites visited; and the frequency with which certain sites are visited. For these reasons, EPA jointly sponsored a workshop with the National Science Foundation and IAATO to consider the issue of possible cumulative environmental impacts associated with ship-based tourism. Amongst other things, the workshop discussions exemplified the difficulties of identifying cumulative impacts related specifically to tourism. (For example, research findings suggest that most of the variability associated with the decline in Adelie penguins can be explained by the effects of climate change, and tourism is not having a measurable impact on Adelie penguin populations in the Palmer Station area.) As data and information become available on cumulative impacts, the operators may, as appropriate, decide to modify their activities and/or their mitigation measures, or they may determine that a different level of environmental documentation is appropriate. To date, however, EPA believes that the IEEs prepared by the U.S.-based operators have identified and assessed the potential environmental consequences associated with their planned activities, including cumulative impacts.

Non-governmental environmental interest organizations. One of the non-governmental environmental interest organizations incorporated by reference the comments it made to EPA during the scoping process for the DEIS for the proposed rule and on the DEIS. Comments in these attachments either reiterate comments provided by the commentor on the proposed rule and/or provide recommendations that were considered in EPA's preparation of the DEIS for this rule-making. EPA has focused its response to the issues specifically addressed in the commentor's letter on the proposed rule except where both non-governmental environmental interest organizations provided comment on the same issue; any such issues are specifically responded to below.

Both of the non-governmental environmental interest organizations supported EPA's decision not to categorically exclude Antarctic ship-based tourism organized under the ''Lindblad Model.'' One of the commentors does not believe that categorical exclusions are appropriate for any type of non-emergency activity in Antarctica. EPA disagrees with this opinion. Although no activities have yet been identified that can be categorically excluded, EPA believes this regulatory option should not be precluded automatically. EPA reiterates that categorical exclusions can be designated by amendment to the rule if such activities are identified in the future. Any such amendment to the rule would be subject to notice and comment.

One of the non-governmental environmental interest organizations supported a provision for multi-year environmental documentation and the other objected to the multi-expedition/multi-year environmental documentation provisions. EPA is not removing these provisions from the final rule for the following reasons. EPA believes that the environmental impact assessment process documented in the IEEs prepared by the U.S.-based operators that have included multiple expeditions by a single operator, and by more than one operator, have identified the potential environmental impacts, including direct, indirect and cumulative impacts. The assessment process employed by the operators under the regulations is the same as that delineated in Article 8 and Annex I. EPA believes this process can be, and has been, applied appropriately to multiple expeditions by a single operator, or by more than one operator. Further, the multi-year provision is applicable only if the conditions described in the document, including the assessment of cumulative impacts, are unchanged. An operator would need to take into account any additional data or information obtained over the course of the five-year life of the environmental document and if the conditions described in the initial multi-year document are changed by this data or information, then the operator would need to submit supplemental environmental documentation that appropriately addresses this information relative to the operator's planned activities as delineated in the multi-year document. If, for example, a new activity is added, this information can be submitted as a supplement to the multi-year document provided that this does not change the overall assessment of impacts and conclusion by the operator (*e.g.*, for an IEE, the potential impacts are no more than minor or transitory).

One of the non-governmental environmental interest organizations supported the multi-year environmental documentation provision but recommended that operators submit some form of annual certification, under the enforcement sanctions provision, that there have been no change in the conditions described in the multi-year document. EPA is not accepting this proposed modification to the multi-year provision because this requirement, including the enforcement sanction provision, is implicit in 40 CFR 8.4(e). If the operator were to continue with planned expeditions that do not meet the conditions described in the multi-year document, the operator's documentation may not met the requirements of Article 8 and Annex I and the requirements of the rule and the operator could, therefore, be subject to enforcement under 40 CFR 8.11.

Both of the non-governmental environmental interest organizations disagree with defining in the rule ''more than a minor or transitory impact'' as having the same meaning as the term ''significantly'' as defined in regulations under the National Environmental Policy Act at 40 CFR 1508.27. EPA is retaining this definition for the following reasons. The Protocol does not define ''minor or transitory.'' Until the Antarctic Treaty Consultative

Meeting (ATCM) provides guidance or definition, EPA believes it is reasonable to provide such guidance to operators and that it is prudent to define the term ''more than a minor or transitory impact'' consistent with the threshold definition applied to the environmental impact assessment of governmental activities in Antarctica as delineated in 16 U.S.C. 2401 et seq. If a definition were to be provided under the Protocol or other appropriate means under the Treaty, EPA would amend its final rule, as appropriate, to ensure it is consistent with Annex I as required by the Act. Contrary to the commentors' assertions, as with the Protocol, NEPA's starting point is the environment. As stated in 40 CFR 1500.1, NEPA ''is our basic national charter for protection of the environment'' (italics added for emphasis).

Both of the non-governmental environmental interest organizations commented on public review of IEEs. One commentor agreed with EPA's process for advertising the public availability of IEEs on its website and the schedule for IEE reviews. The other commentor recommended a regulatory provision for EPA to advertise the availability of IEEs on its website and for public comment on IEEs. EPA is not accepting these proposed modifications because this process is required by Article 8 and Annex I only for CEEs. EPA will continue to publish notice of availability of IEEs on its website. Based on its experience to date, there has been no evidence that interested parties have been unable to obtain IEEs and to offer comments to the operators under this notification scheme. EPA believes that including a regulatory provision for public notice and comment on IEEs would not necessarily reduce environmental impacts (*e.g.*, an operator's conclusion for an IEE would remain that the potential impacts of the proposed activity will be no more than minor or transitory). It would, however, impose obligations and undue burden on U.S. nongovernmental operators not required under Annex I or the Act, and would not be consistent with the environmental impact assessment requirements that apply to U.S. governmental entities for activities in Antarctica. C.f. 45 CFR 641.10 through 641.22 (National Science Foundation regulations for assessing impacts of governmental activities in Antarctica).

Both of the non-governmental environmental interest organizations commented on the schedules for environmental documentation submission and review. One commentor recommended that EPA change either the default provisions that provide for approval of nongovernmental activities or extend the time period in which it can respond to environmental documentation. The other commentor believes the dates listed for CEEs are inaccurate and recommends that CEEs be required 180 days prior to the next ATCM rather than on December 1 since the December 1 date assumes the ATCMs will be on schedule for spring meetings which is not always the case. Regarding the first comment, under the final rule, EPA does not ''approve'' activities. EPA, in consultation with other interested Federal agencies, will review the environmental documentation to determine whether it meets the requirements of Article 8, Annex I and the regulations. Regarding the comments on the schedules for review, EPA is not accepting the commentors' proposed modifications because it believes the schedules in the rule are reasonable, as has been demonstrated by experience under the Interim Final Rule. Further, these schedules conform to the necessary time frames should an operator decide, based on comments offered by EPA, to revise the document or to submit a higher level of environmental documentation. Regarding the recommendation to change the submission for CEEs to 180 days before the next ATCM, EPA believes this is not reasonable nor is it warranted. The ATCM traditionally has been held in the May-June time frame, although the Protocol does not dictate this schedule. The date of the ATCM may vary. While it is possible that the meeting schedule would be set early enough to allow time for an operator to submit a draft CEE 180 days before the next ATCM, this is not certain. This commentor also expressed concern that since an activity cannot be held up for more than 15 months, there may not be time for the operator to address comments received at the ATCM, particularly if the ATCM is held relatively close to the beginning of the Antarctic tourist season. The final rule states that a draft CEE must be submitted by December 1 of the preceding year. The 15-month clock does not begin on the date the CEE is submitted to the State Department, but rather starts on the date the State Department circulates the draft CEE to the Parties to the Protocol and the Committee for Environmental Protection. Thus, even if the draft CEE was circulated by the State Department as early as mid-December, the 15-month clock for this project would run through mid-March of the next season which falls after the end of the regular tourist season for that year.

One of the non-governmental environmental interest organizations commented that it believes the rule proceeds on a number of erroneous factual, legal and policy conclusions, that it insufficiently implements the mandate of Congress in legislating the Act, and will inadequately protect the Antarctic environment for nongovernmental activities conducted there, particularly tourism. EPA disagrees with this opinion. EPA sought assistance from the Department of State, the Department of Justice and the National Science Foundation on factual, legal and policy issues.

One of the non-governmental environmental interest organizations reiterated its concern that the rule proceeds on the assumption that Antarctic tourism is limited, controlled and easily subject to self-regulation by the industry, and that the projections for increases in Antarctic tourism have been deliberately understated perhaps requiring a new round of regulatory review in 5–10 years. EPA disagrees with these opinions. In keeping with the purpose and need for this rule-making, EPA's objective during the rule-making process, including the DEIS for the proposed rule, has not been to analyze the magnitude and impact of tourism on the Antarctic environment but rather to evaluate the environmental impacts of the alternatives for the final rule. EPA disagrees that the projections for increases in Antarctic tourism have been deliberately understated. The projections used by EPA are based on the available data and information in referenced sources in the DEIS. The rule delineates the environmental impact assessment process, a process that accounts for increases in tourism and assessment of any potential impacts, including cumulative impacts, that could result from such increases. EPA does not believe that increases in tourism will necessarily require new regulatory review. Rather, to the extent that increases in tourism would have the potential to result in impacts that are more than minor or transitory, an operator would prepare a CEE to be in compliance with the regulations.

One of the non-governmental environmental interest organizations' primary objections to the legal conclusions propounded in the rule includes objection that the rule does not broaden the definition of ''operator;'' in the opinion of the commentor, section 4(a)(6) of the Act extends applicability of the Act, and thus the rule, to any person who organizes, sponsors, operates or promotes a non-governmental expedition to the United States, and who does business in the

United States. In response, the authority for EPA's rule-making is 16 U.S.C. 2401 *et. seq.,* as amended, 16 U.S.C. 2403a. EPA does not believe that section 2403(a)(6) (e.g., section 4(a)(6) of the Act) is germane to this rule-making. EPA sought legal, and programmatic, assistance from the Department of State, the Department of Justice and the National Science Foundation on this issue; EPA stands by this analysis.

One of the non-governmental environmental interest organizations' primary objections to the legal conclusions propounded in the rule includes its opinion that the rule should include a requirement that environmental documentation demonstrate compliance with applicable Protocol and statutory provisions; further, the Act does not require parity between governmental and nongovernmental activities in this regard. EPA is not accepting this proposed modification for the following reasons. First, certain provisions of the Act are the responsibility of other federal agencies. Further, rather than imposing a blanket requirement that may add unnecessary burden on the operator, EPA maintains that the EIA documentation provides the mechanism to identify whether a proposed activity raises issues under other obligations of the Protocol or domestic law which need further review by the responsible authority. Operators may, and do, reference compliance with appropriate Protocol provisions and U.S. regulations as planned mitigation measures for their activities, measures which support the level of environmental documentation for the planned activities. A mandatory blanket requirement to demonstrate compliance would impose obligations not required under Annex I or the Act and would require considerations that may have no relevance to the activity and, thus, no effect in reducing environmental impacts. EPA acknowledges that the Act does not require consistency between the governmental and nongovernmental environmental impact assessment processes and regulations. However, regardless of whether the activities are governmental or nongovernmental, it is the U.S. government that has the responsibility to ensure that the U.S. is able to comply with its obligations under the Protocol. The National Science Foundation is charged with this responsibility for governmental activities, and EPA for purposes of nongovernmental activities. EPA believes it is reasonable that the governmental and nongovernmental processes be consistent with regard to the requirements of Article 8 and Annex I to the Protocol.

One of the non-governmental environmental interest organizations' primary objections to the legal conclusions propounded in the rule includes its opinion that Article 3 of the Protocol, unlike NEPA, imposes substantive requirements and because the rule does not impose substantive requirements, nongovernmental operators can file IEEs and CEEs that disclose substantial risks to the Antarctic environment or associated and dependent ecosystems and those activities could be approved. EPA sought legal, and programmatic, assistance from the Department of State and the National Science Foundation on the Article 3 issue. It is the U.S. government's position that Article 3 of the Protocol does not impose substantive obligations. Thus, EPA is not accepting this proposed modification. Further, as noted above, as with the Interim Final Rule, under the final rule, EPA does not ''approve'' activities. EPA, in consultation with other interested federal agencies, will review the environmental documentation to determine whether it meets the requirements of Article 8 and Annex I and the regulations.

One of the non-governmental environmental interest organizations expressed concerns that the Preamble language discussing harmonization between regulation of governmental and nongovernmental actors and cost/benefit analyses of the provisions of the rule have the effect of narrowing the scope of the regulatory regime. This commentor also maintains the regulatory regime is also narrowed by EPA's argument that if enhanced regulation and enforcement is adopted, U.S.-based operators will simply move to another country to evade such regulation or enforcement. EPA acknowledges that the Act does not require consistency between the governmental and nongovernmental environmental impact assessment processes and regulations. However, regardless of whether the activities are governmental or nongovernmental, it is the U.S. government that has the responsibility to ensure that the U.S. is able to comply with its obligations under the Protocol. As discussed above, the National Science Foundation is charged with this responsibility for governmental activities, and EPA for purposes of nongovernmental activities. EPA believes it is reasonable that the governmental and nongovernmental processes be consistent with regard to the requirements of Article 8 and Annex I of the Protocol. EPA further acknowledges that neither the Protocol nor the Act dictates a cost-benefit requirement but that it gave consideration to, amongst other things, the concern that U.S.-based operators continue to do business as U.S. operators and not move their Antarctic business operations to a non-Party country because of any undue burden imposed by the final rule. However, this was one of several considerations that EPA believed was reasonable in its analysis of the alternatives for the rule-making in the DEIS and the process to promulgate the final rule.

One of the non-governmental environmental interest organizations expressed concern that the Preamble language discussing IEEs as the appropriate level of environmental documentation has the effect of corrupting the integrity of the environmental impact assessment process and narrowing the scope of the regulatory regime. EPA disagrees with this opinion. The Preamble at section III.D.3.(b) includes reference to not only ATCM Recommendation XVIII–1 but also the relevant provisions of other U.S. statutes and Annexes II–V to the Protocol. The information in the Preamble is not regulatory, rather it is a guideline to operators. The regulations state the mandatory requirements that must be met by operators and include the criteria for the level of environmental documentation. EPA believes that providing a level of guidance to those subject to regulation does not corrupt the integrity of the regulatory process. Contrary to the commentor's assertion that EPA has made a conclusory statement regarding IEEs, including that a CEE may not be called for in some cases for nongovernmental activities, EPA's view is that, as stated in the Preamble, at a minimum, an IEE is the appropriate level of environmental documentation where multiples of the activity over time are likely and may create a cumulative impact.

One of the non-governmental environmental interest organizations expressed concern that the Preamble language discussing the criteria for a CEE narrows the scope of the regulatory regime. EPA disagrees with this opinion. In section III.D.4., EPA provides the new crushed rock airstrip or runway example as a level of guidance to those subject to regulation. EPA disagrees that a 10% increase in tourism activity would automatically trigger the need for a CEE. As with any activity, including the runway example or a 10% increase in tourism, the rule delineates the environmental impact assessment process to be employed by

an operator to determine the level of potential impact for the proposed activity and, thus, the level of environmental documentation required by the rule.

This final rule is being promulgated without change in response to comments for the reasons stated above and because these regulations are consistent with Annex I to the Protocol and ensure that the U.S. government is able to meet its obligations under the Protocol. This final rule ensures that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. This final rule also provides for coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol.

III. Description of Program and These Regulations

A. The Antarctic Treaty and Protocol

The Antarctic Treaty of 1959 entered into force in 1961 and guarantees freedom of scientific research in Antarctica, reserves Antarctica exclusively for peaceful purposes, establishes regular meetings of the Parties to the Treaty (Parties) to develop measures to implement the Treaty and to deal with issues that may arise, and freezes territorial claims. Currently 27 countries participate in decision-making under the Treaty as Consultative Parties. Eighteen other countries are Parties, but may not block decisions taken by consensus of the Consultative Parties.

As human activities in Antarctica intensified, concern grew regarding the effects of such activities on the Antarctic environment and the potential consequences of the development of mineral resources. In 1990, the U.S. Congress responded by passing the Antarctic Protection Act, which prohibited persons subject to U.S. jurisdiction from engaging in Antarctic mineral resource activities and called for the negotiation of an environmental protection agreement.

Over the years, the Antarctic Treaty Parties have adopted a variety of measures to protect the Antarctic environment. In 1991, the Parties adopted the Protocol on Environmental Protection which builds upon the Treaty by extending and strengthening Antarctic environmental protection. The Protocol designates Antarctica as a natural reserve dedicated to peace and science, and bans non-scientific mineral activities. The Protocol requires prior assessment of the possible environmental impacts of all activities to be carried out in Antarctica. It establishes the Committee for Environmental Protection (the Committee) to provide expert scientific and technical advice to the Parties on measures necessary to effectively implement the Protocol. The Protocol requires that draft CEEs for activities likely to have more than a minor or transitory impact on Antarctica and its dependent and associated ecosystems be provided to the Parties and to the Committee. Because legislation was needed in order for the United States to be able to implement its obligations under the Protocol, the Antarctic Science, Tourism, and Conservation Act of 1996 was enacted by Congress. The Act directs EPA to issue regulations implementing the requirements for environmental impact assessments of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under the Treaty.

B. The Purpose of These Regulations

The purpose of these final regulations is to provide for the evaluation of the potential environmental impact of those nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty. The Treaty requires notice of, *inter alia,* ''all expeditions to Antarctica organized in or proceeding from'' the United States. In addition, these regulations provide for coordination of reviews of draft CEEs received from other Parties, in accordance with the Protocol. The Act states that these regulations are to be consistent with Annex I to the Protocol.

Among other things, these regulations specify the procedures that need to be followed by any person or persons organizing a nongovernmental expedition to or within Antarctica (''operator'' or ''operators'') in evaluating the potential environmental impacts of their activities. These regulations include considerations and elements relevant to environmental documentation of the evaluation, as well as procedures for submission of environmental documentation that allow the EPA to review whether the evaluation meets the provisions of the regulations and the requirements of Annex I of the Protocol.

Operators currently provide information prior to each Antarctic summer season to the Department of State to meet U.S. obligations for notification pursuant to Article VII of the Treaty, which requires advance notice of expeditions to and within Antarctica. This information is also part of the basic information requirements for preparation of environmental documentation, as addressed in Section 8.4(a) of these regulations. While operators would be required to include this information in environmental documentation, they could also continue to provide this information directly to the Department of State.

C. Summary of the Protocol

This final rule implements Annex I to the Protocol, which describes procedures to be used in conducting environmental impact assessments of effects of activities in Antarctica. Article 8 of the Protocol provides that Parties to the Protocol ensure that the assessment procedures of Annex I are applied in planning processes leading to decisions about any activities, including nongovernmental activities, including tourism, to be undertaken in the Antarctic Treaty area for which advance notice is required under paragraph 5 of Article VII of the Treaty.

The procedures set forth in Annex I require that all proposed activities by operators be assessed, through one or more stages of environmental impact assessment. If an activity will have an impact that is less than minor or transitory, only a preliminary environmental assessment would need to be submitted in accordance with these regulations before the activity proceeds. For an activity that will have no more than a minor or transitory impact, an initial environmental evaluation (IEE) must be submitted in accordance with these regulations before the activity proceeds. Finally, if it is determined (through an IEE or otherwise) that an activity is likely to have more than a minor or transitory impact, a comprehensive environmental evaluation (CEE) must be submitted in accordance with these regulations before the activity proceeds.

An IEE describes an activity's purpose, location, duration and intensity, and considers alternatives and assesses impacts, including cumulative impacts, in light of existing and known proposed activities. A CEE is a detailed analysis that comprehensively evaluates the activity, its impacts, alternatives, mitigation and the like. A draft CEE must be provided to the Parties and the Committee at least 120 days before the next consultative meeting where the draft CEE may be addressed. No final decision shall be taken to proceed with any activity for which a CEE is prepared

unless there has been an opportunity for consideration of the draft CEE at an Antarctic Treaty Consultative Meeting (ATCM) on the advice of the Committee (unless the decision to proceed with the activity has already been delayed more than 15 months since the date of circulation of the draft CEE). A final CEE must be circulated at least 60 days before commencement of the proposed activity. Any decision by the operator on whether a proposed activity should proceed in either its original or modified form must be based upon the final CEE as well as other relevant considerations, and procedures must be put in place for monitoring the impact of any activity that proceeds following completion of a CEE.

Environmental impact assessments need to address Annex I to the Protocol. The information contained in an evaluation should allow the operator to make decisions based on a sound understanding of factors relevant to the likely impact of the proposed activity. An evaluation should, as appropriate, contain sufficient information to allow assessments of, and informed judgements about, the likely impacts of proposed activities on the Antarctic environment and on the value of the Antarctic environment for the conduct of scientific research. Depending on the specific circumstances surrounding the proposed activities, various factors may be relevant for consideration in the environmental impact assessment process such as the scope, duration and intensity of the activity proposed in Antarctica, cumulative impacts, impacts on other activities in the Antarctic Treaty area, and capacity to assess and verify adverse environmental impacts. Operators may also find it appropriate to consider the availability of technology and procedures for environmentally safe operations and whether there exists the capacity to respond promptly and effectively to accidents with environmental effects.

D. Activities Covered by These Regulations

1. Persons Required to Carry Out an EIA

The requirements of these final regulations apply to operators of nongovernmental expeditions organized in or proceeding from the territory of the United States to Antarctica. The term ''expedition'' is taken from paragraph 5 of Article VII of the Treaty and encompasses all actions or activities undertaken by a nongovernmental expedition while it is in Antarctica. These regulations do not apply to individual U.S. citizens or groups of citizens planning to travel to Antarctica on an expedition for which they are not acting as an operator.

For a commercial tour, typical functions of an operator would include, for example, acting as the primary person or group of persons responsible for acquiring use of vessels or aircraft, hiring expedition staff, planning itineraries, and other organizational responsibilities. Non-commercial expeditions covered by these regulations would include trips by yachts, skiing or mountaineering expeditions, privately funded research expeditions, and other nongovernmental or nongovernment-sponsored activities.

These regulations do not apply to U.S. citizens who participate in tours organized in and proceeding from countries other than the United States. As provided in the Protocol, the requirements do not apply to activities undertaken in the Antarctic Treaty area that are governed by the Convention on the Conservation of Antarctic Marine Living Resources or the Convention for the Conservation of Antarctic Seals. Persons traveling to Antarctica are subject to the requirements of the Marine Mammal Protection Act, 16 U.S.C. 1371 *et seq.*

2. Differences Between Governmental and Nongovernmental Activities

These regulations do not apply to governmental activities. C.f. 45 CFR 641.10 through 641.22 (National Science Foundation regulations for assessing impacts of governmental activities in Antarctica). However, EPA believes that, to the extent practicable, similar procedures should generally be used for assessing both governmental and nongovernmental activities. Consistent with this approach, these regulations generally establish procedures for assessing the impacts of nongovernmental activities in Antarctica similar to those used for governmental activities under the National Science Foundation regulations.

However, EPA also recognizes that it will not always be appropriate to apply identical standards and procedures for governmental and nongovernmental activities. Specifically, numerous mechanisms and processes exist to ensure public scrutiny and accountability of governmental activities. In some instances, no comparable mechanisms or processes exist for nongovernmental activities. Thus, these regulations provide for direct federal review of each nongovernmental environmental impact assessment by giving EPA authority to review, in consultation with other interested federal agencies, nongovernmental environmental impact assessments for compliance with the requirements of Annex I to the Protocol and these regulations.

To promote consistency regarding environmental documentation, EPA intends to consult with the National Science Foundation and other U.S. government agencies with appropriate expertise in the course of reviewing the assessments of proposed nongovernmental activities in the Antarctic. Further, following the final response from the operator to EPA's initial comments, EPA will obtain the concurrence of the National Science Foundation in making any determination that the environmental documentation submitted by an operator fails to meet the requirements under Article 8 and Annex I to the Protocol and the provisions of these regulations.

3. Appropriate Level of Environmental Documentation

(a) Preliminary Environmental Review Memorandum (PERM). These regulations provide that an operator who asserts that an expedition will have less than a minor or transitory impact must provide a Preliminary Environmental Review Memorandum (PERM) to the EPA no later than 180 days before the proposed departure of the expedition to Antarctica. The timing requirement has been established to provide sufficient time for the operator to prepare an IEE if one is needed. The EPA, in consultation with other interested federal agencies, will review the PERM to determine if it is sufficient to demonstrate that the activity will have less than a minor or transitory impact or whether additional environmental documentation, *i.e.,* an IEE or CEE, is required to meet the obligations of Annex I. The EPA will provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator will have seventy-five (75) days to prepare a revised PERM or an IEE, if necessary. Following the final response from the operator, EPA may make a finding that the submitted environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these regulations. This finding will be made with the concurrence of the National Science Foundation. If EPA does not provide notice of such a finding within thirty (30) days, the operator will be deemed to have met the requirements of these regulations.

If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period,

the schedule for review will follow the time frames set out for an IEE in these regulations. (See: section II.D.3(b), below.) Should EPA recommend a CEE, timing requirements applicable to CEEs may necessitate a delay in plans to initiate a proposed activity. Operators are encouraged to consult with EPA on options in this regard.

(b) Initial Environmental Evaluation (IEE). Article 2 of Annex I to the Protocol requires that unless it has been determined that an activity will have less than a minor or transitory impact, or unless a CEE is being prepared in accordance with Article 3 of Annex I, an IEE must be prepared. Among the items to be included in an IEE to document that an activity will have no more than a minor or transitory impact are the cumulative impacts of the proposed activity in light of existing and known proposed activities. Expeditions, by their nature, involve the transport of persons to Antarctica that will result in physical impacts, which may include, but are not limited to: air emissions, discharges to the ocean, noise from engines, landings for sight-seeing, and activities by visitors near wildlife. Accordingly, it is EPA's view, which has been confirmed by its experience under the interim final regulations, that, at a minimum, an IEE is the appropriate level of environmental documentation for proposed activities where multiples of the activity over time are likely and may create a cumulative impact, unless an existing IEE or CEE supports a finding that the type of activity proposed results in a less than minor or transitory cumulative impact. However, as noted below, it is also EPA's view that the types of nongovernmental activities that are currently being carried out will typically be unlikely to have impacts that are more than minor or transitory assuming that activities will be carried out in accordance with the guidelines set forth in the ATCM Recommendation XVIII–1, Tourism and Non-Governmental Activities, the relevant provisions of other U.S. statutes, and Annexes II–V to the Protocol. In the event that a determination is made that a CEE is needed to meet the requirements of Annex I to the Protocol and the provisions of these regulations, timing requirements applicable to CEEs may necessitate a delay in plans to initiate a proposed activity, and operators are encouraged to consult with EPA on options.

Any operator who wishes to make an expedition to Antarctica is required to provide an IEE to EPA no less than ninety (90) days prior to the proposed departure of the expedition to Antarctica unless: (1) A decision has been made to prepare a CEE, or (2) the operator has submitted a PERM and there has not been a finding within the time limits of these regulations that the PERM fails to meet the requirements under Annex I to the Protocol and the provisions of these regulations.

The EPA will provide its comments to the operator within thirty (30) days of receipt of the IEE, and the operator will have forty-five (45) days to prepare a revised IEE, if necessary. Following the final response from the operator, EPA may make a finding that the documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these regulations. This finding will be made with the concurrence of the National Science Foundation. If a notice of such a finding is required, EPA will provide it within fifteen (15) days of receiving the final IEE from the operator or, if the operator does not provide a final IEE, within sixty (60) days following EPA's comments on the original IEE. If EPA does not provide notice within these time limits, the operator will be deemed to have met the requirements of these regulations, provided that procedures, which may include appropriate monitoring, are carried out to assess and verify the impact of the activity.

If a CEE is required, the operator must adhere to the time limits applicable to such documentation. (See: section II.D.3.(c), below.) In the event that a determination is made that a CEE is required, EPA, at the operator's request, will consult with the operator regarding possible changes in the proposed activity that would allow preparation of an IEE.

The EPA, upon receipt of an IEE, will electronically publish notice of its receipt on the Office of Federal Activities' World Wide Web Site: *http://www.epa.gov/oeca/ofa/*. The Department of State will circulate to the Parties and make publicly available a copy of an annual list of IEEs prepared by U.S. operators in accordance with Article 2 of Annex I of the Protocol and any decisions taken in consequence thereof. Any IEE prepared in accordance with these regulations will be made available by the EPA on request.

(c) Comprehensive Environmental Evaluation (CEE). Article 3(4), of Annex I of the Protocol requires that draft CEEs be circulated to all Parties and the Committee 120 days in advance of the next Antarctic Treaty Consultative Meeting at which the CEE may be addressed. Since the 2001 ATCM occurred in July, CEEs prepared for nongovernmental activities in the 2001–2002 season would have to have been distributed by March 2001. Operators who are anticipating activities for the 2002–2003 season that may require a CEE are encouraged to consult with the EPA as soon as possible.

In order to meet the requirements of Article 3(4), of Annex I of the Protocol which requires that draft CEEs be circulated to all Parties and forwarded to the Committee 120 days in advance of the next Antarctic Treaty Consultative Meeting at which the CEE may be addressed, and because the ATCM generally meets in May, the regulations require the operator to submit a draft CEE the preceding December in order to ensure its timely distribution to all Parties and the Committee. Thus, for example, for the 2002–2003 season, any operator who plans an activity which would require a CEE will need to submit a draft of the CEE to EPA by December 1, 2001. Within fifteen (15) days of receipt of the draft CEE, EPA will send it to the Department of State for transmittal to other Parties, publish notice of receipt of the CEE in the **Federal Register**, and provide copies to any person upon request. The EPA will accept public comments on the CEE for a period of ninety (90) days following notice in the **Federal Register**. The EPA will make these public comments available to the operator.

The EPA, in consultation with other interested federal agencies, will review the CEE to determine if it meets the requirements under Annex I to the Protocol and the provisions of these regulations. EPA will transmit its comments to the operator within 120 days following publication of notice of availability in the **Federal Register** to allow for the inclusion of any additional information in the CEE. The operator must prepare a final CEE that addresses and includes or summarizes any comments on the draft CEE received from EPA, the public and the Parties. The final CEE must be sent to EPA at least seventy-five (75) days before the proposed departure date. Following the final response from the operator, the EPA will notify the operator if EPA, with the concurrence of the National Science Foundation, makes the finding that the submitted environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these regulations. This notification will occur within fifteen (15) days of submittal of the final CEE if the CEE is submitted by the operator within the time limits set out in these regulations. If no final CEE is submitted by the operator, or if the operator fails to meet

these time limits, EPA will provide such notification sixty (60) days prior to departure of the expedition. If, after receipt of such notification, the operator proceeds with the expedition without fulfilling the requirements of these regulations, the operator will be subject to enforcement proceedings pursuant to Sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672. If EPA does not provide notice, the operator will be deemed to have met the requirements of these regulations provided that procedures, which include appropriate monitoring, are carried out to assess and verify the impact of the activity. The EPA will transmit the final CEE to the Department of State which will circulate it to all Parties no later than sixty (60) days before proposed departure of the expedition, along with a notice of any decisions by the operator relating to the CEE. The EPA will publish a notice of availability of the final CEE in the **Federal Register**.

Operators are encouraged to consult with the EPA as early as possible if there are questions as to whether a CEE will be required for a proposed expedition.

(d) Mitigation. If an operator chooses to mitigate the environmental impacts of its activity and the mitigation measures are the basis for the level of environmental documentation, EPA will assume that the operator will undertake these mitigation measures. Otherwise, the documentation may not have met the requirements of Article 8 and Annex I and the provisions of these regulations.

4. Criteria for a CEE

Article 3 of Annex I to the Protocol requires a CEE when it is determined that an activity is likely to have more than a minor or transitory impact. While the need for a CEE will be evaluated for each activity on a case-by-case basis, it is EPA's view that the type of nongovernmental activities that are currently being carried out will typically be unlikely to have impacts that are more than minor or transitory.

However, the need for a CEE could be triggered by a proposed activity that represents a major departure from current nongovernmental activities, resulting in a large increase in an adverse environmental impact at a site. Similarly, a CEE may be required if an activity is likely to give rise to particularly complex, cumulative, large-scale or irreversible effects, such as perturbations in unique and very sensitive biological systems. An example of an activity that might require a CEE would be the construction and operation of a new crushed rock airstrip or runway.

In evaluating whether a CEE is the appropriate level of environmental documentation, the EPA will consider the impact in terms of the context of the Antarctic environment and the intensity of the activity. The Antarctic environment is for the most part unspoiled, has intrinsic value, and is of great value to science and to humankind's overall understanding of the global environment. In addition, because of the location and uniqueness of the ecosystem, there would likely be great difficulty responding to environmental threats and mitigating damage to the Antarctic ecosystem. The EPA believes a comparable threshold should be applied in determining whether an activity may have an impact that is more than minor or transitory under these regulations as is used in determining if a Federal activity will have a significant effect for purposes of the National Environmental Policy Act (NEPA). See 40 CFR 1508.27. For this reason, for purposes of these regulations and consistent with the environmental impact assessment regulations for federal activities, the term ''more than a minor or transitory impact'' has been defined to have the same meaning as the term ''significantly'' under NEPA. 16 U.S.C. 2403a(a)(1)(B); 40 CFR 1508.27. The recommendation to add this definition to these regulations was made to EPA during the scoping process and was considered in the DEIS prepared by EPA.

5. Measures To Assess and Verify Environmental Impacts

The Protocol and these regulations require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of any activity that proceeds on the basis of an IEE or CEE. The record developed through these measures must be designed to: (a) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts, and, where appropriate, on the need for suspension, cancellation, or modification of the activity. Moreover, an operator must monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE has been prepared.

For activities requiring an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. For example, such information could include, as appropriate and to the best of the operator's knowledge: identification of the number of tourists put ashore at each site, the number and location of each landing site, the total number of tourists at each site per ship and for the season; the number of times the site has been visited in the past; the number of times the site is expected to be visited in the forthcoming season; the times of the year that visits are expected to occur (e.g., before, during, or after the penguin breeding season); the number of visitors expected to be put ashore at the site at any one time and over the course of a particular visit; what visitors are expected to do while at the site; verification that guidelines for tourists are followed; description of any tourist exceptions to the landing guidelines; and a description of any activity requiring mitigation, the mitigative actions undertaken, and the actual or projected outcome of the mitigation.

These regulations do not set out detailed monitoring procedures for activities requiring a CEE because the Parties are still working to identify monitoring approaches that can best support the Protocol's implementation. Thus, should an activity require a CEE, the operator should consult with EPA to: (a) Identify the monitoring regime appropriate to that activity, and (b) determine whether and how the operator might utilize relevant monitoring data collected by the U.S. Antarctic Program. The EPA would consult with the National Science Foundation and other interested federal agencies regarding this monitoring regime.

E. Incorporation of Information, Consolidation of Environmental Documentation, Waiver or Modification of Deadlines, and Provision for Multi-Year Environmental Documentation

The EPA is strongly committed to minimizing unnecessary paperwork and to implementation of these regulations such that undue burden is not placed on operators, particularly in view of the time requirements associated with environmental documentation requirements. Therefore, provided that documentation complies with all applicable provisions of Annex I to the Protocol and these regulations, and, provided that the environmental documentation is appropriate in light of the specific circumstances of each operator's expedition or expeditions, the EPA will allow the following approaches to documentation: (1) Material may be incorporated by

referring to it in the environmental document with its content briefly described when the cited material is reasonably available to the EPA; (2) more than one proposed expedition by an operator may be included within one environmental document and may, if appropriate, include a single discussion of components of the environmental analysis that are applicable to some or all of the proposed expeditions; (3) one environmental document may also be used to address expeditions being carried out by more than one operator, provided that the environmental documentation includes the names of each operator for which the environmental documentation is being submitted pursuant to obligations under these regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions described in the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision also allows operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. Further, the EPA may waive or modify the deadlines of these regulations where EPA determines an operator is acting in good faith and that circumstances outside the control of the operator created delays, provided that environmental documentation fully meets deadlines under the Protocol. The multi-year documentation provision was recommended to EPA during the scoping process and was considered in the DEIS prepared by EPA.

F. Submission of Environmental Documents

The operator must submit five copies of its environmental documentation, along with an electronic copy in HTML format, if available, to the EPA by mail at: U.S. Environmental Protection Agency; Office of Federal Activities; Director, NEPA Compliance Division—Mail Code 2252A; 1200 Pennsylvania Avenue, NW; Washington, DC 20460.

Environmental documents may also be sent by special delivery (Federal Express, United Parcel Service, etc.) or hand-carried to: U.S. Environmental Protection Agency; Office of Federal Activities; Director, NEPA Compliance Division—Room 7239A; Ariel Rios Building; 1200 Pennsylvania Avenue, NW; Washington, DC 20004.

An operator may submit environmental documentation at an earlier date than required by this final rule. The EPA review process, including notification for public review and comment, will commence with the submittal of environmental documentation and will follow deadlines for response indicated in the appropriate sections of this rule.

G. Prohibited Acts, Enforcement and Penalties

It is unlawful for any operator to violate these regulations. An operator who violates any of these regulations will be subject to enforcement proceedings, which may include civil and criminal enforcement proceedings, and penalties, pursuant to sections 7,8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

H. Provision for Categorical Exclusions

The National Environmental Policy Act defines 'categorical exclusion' as ''a category of actions which do not individually or cumulatively have a significant effect on the human environment * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required'' (40 CFR 1508.4). Only narrow and specific classes of activities can be categorically excluded from environmental review. For example, EPA in its NEPA regulations at 40 CFR 6.107(d) excludes * * * actions which are solely directed toward minor rehabilitation of existing facilities * * * and the National Science Foundation in its environmental assessment regulations at 45 CFR 641(c)(1) and (2) excludes certain scientific activities (e.g., use of weather/research balloons that are to be retrieved) and interior remodeling and renovation of existing facilities. The DEIS considered a modification that would add a provision for categorical exclusion. The DEIS noted that the International Association of Antarctica Tour Operators (IAATO) recommended that Antarctic ship-based tourism organized under the ''Lindblad Model'' be categorically excluded. However, EPA does not have a specific definition for the ''Lindblad Model.'' EPA also believes that a broad categorical exclusion covering ship-based tourism as now conducted does not fit well with the approach used by the U.S. government for categorical exclusions because it does not identify actions to be excluded in sufficient detail. Further, more needs to be known about potential cumulative impacts of nongovernmental activities undertaken by U.S.-based ship-based tour operators before deciding to exclude some or all of these specific activities. In the Preamble to the proposed rule, EPA requested comments on specific activities that the Agency should consider including as categorical exclusions in the final rule including the justification for this proposed designation. EPA did not receive any such comments, therefore, the final rule does not include a provision for categorical exclusions. However, if categorical exclusion activities are identified in the future, the rule could be amended.

IV. Coordination of Review of Information Received From Other Parties to the Treaty

Article 6 of Annex I to the Protocol provides that the following information shall be circulated to the Parties, forwarded to the Committee for Environmental Protection, and made publicly available: (1) A description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs and CEEs; and (4) information in a final CEE. In addition, Article 6 requires that any IEE be made available on request, and Article 3 requires that draft CEEs be circulated to all Parties, who shall make them publicly available. A period of ninety (90) days is allowed for the receipt of comments. To implement these requirements of the Protocol, this rule sets out the process for circulation of this information within the United States.

Upon receipt of a CEE from another Party, the Department of State will publish notice of receipt in the **Federal Register** and will circulate a copy of the CEE to all interested federal agencies. The Department of State will coordinate responses from federal agencies to the CEE and will transmit the coordinated response, if any, to the Party that has circulated the CEE. The Department of State will make a copy of the CEE available upon request to the public. Members of the U.S. public should comment directly to the operator who has drafted the CEE and provide a copy to the EPA for its consideration.

Upon receipt of the annual list from another Party of IEEs prepared in accordance with Article 2 of Annex I and any decisions taken in consequence thereof, the Department of State will circulate a copy to all interested federal agencies. The Department of State will make a copy of any list of IEEs from other Parties prepared in accordance

with Article 2 and any decisions taken in consequence thereof available upon request to the public.

Upon receipt of a description of appropriate national procedures for environmental impact assessments from another Party, the Department of State will circulate a copy to all interested federal agencies. The Department of State will make such descriptions available upon request to the public.

Upon receipt from another Party of significant information obtained, and any action taken in consequence therefrom from procedures put in place with regard to monitoring pursuant to Articles 2(2) and 5 of Annex I to the Protocol, the Department of State will circulate a copy to all interested federal agencies. The Department of State will make a copy of this information available upon request to the public.

Upon receipt of a final CEE from another Party, the Department of State will circulate a copy to all interested federal agencies. The Department of State will make a copy available upon request to the public.

V. Administrative Requirements

A. Executive Order 12866 Clearance

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the EPA must determine whether the regulatory action is ''significant'' and therefore subject to the Executive Order and to review by the Office of Management and Budget (OMB). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' This rule raises novel legal or policy issues arising out of legal mandates under Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996 and the Protocol on Environmental Protection to the Antarctic Treaty of 1959. Accordingly, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, 5 U.S.C. 601 et seq.)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration with the North American Industry Classification System (NAICS) code for ''Tour Operators'' (NAICS code 561520) with maximum annual receipts of $5.0 million (13 CFR part 121); and (2) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under the Antarctic Science, Tourism, and Conservation Act of 1996, governmental jurisdictions are not subject to this rulemaking.

For purposes of assessing the potential impacts of the rule on small entities, EPA assessed the potential impacts the rule may have on the U.S.-based operators regulated under the interim final rule, that is, those for which the United States provided advance notice under Paragraph 5 of Article VII of the Treaty for proposed nongovernmental expeditions organized in or proceeding from the U.S. to the Antarctic Treaty area during the austral summer season 2000–2001, and other U.S.-based operators included in such documentation. The screening assessment indicated that of the twelve operators, four would qualify as small entities under the Small Business Administration definition. EPA has estimated that these small entities have annual operating expenditures (small organization) or annual sales (small business) ranging from about $100,000 to about $4,600,000. Based on costs estimated under the interim final rule, EPA estimated the potential impact on these small entities to range from an average of about $1,400 to about $4,200 for the 5-year period a multi-year environmental document could be in effect; this represents an impact in the range of less than 1% to about 1.4%. Even if the small entities did not take advantage of the additional cost-saving alternative provided in the multi-year provision of the rule, the impact of the rule would range from an average of about $2,300 to $6,800 for the same 5-year period. Of the four small entities subject to today's rule, only one may be impacted significantly. Therefore, this rule will not impact a substantial number of small entities. Moreover, the potential impact on that small entity arguably is not significant. In addition, as discussed below, EPA included in today's rule cost-saving alternatives that are available to all operators, including small operators. Under the interim final rule, all operators made use of the cost-saving alternatives and EPA expects them to continue using these alternatives and the additional alternative included in today's rule.

The cost reduction provisions in this final rule include: (1) Material may be incorporated by referring to it in the environmental document with its content briefly described when the cited material is reasonably available to the EPA; (2) more than one proposed expedition by an operator may be included within one environmental document and may, if appropriate, include a single discussion of components of the environmental analysis which are applicable to some or all of the proposed expeditions; (3) one environmental document may also be used to address expeditions being carried out by more than one operator, provided that the environmental documentation includes the names of each operator for which the environmental documentation is being submitted pursuant to obligations under these regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions described in the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision also allows operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. Further, the EPA may waive or modify the deadlines of these regulations where EPA determines an operator is acting in good faith and that circumstances outside the control

of the operator created delays, provided that environmental documentation fully meets deadlines under the Protocol.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The EPA believes that, because this rule only requires assessment of environmental impacts, the effects on any small entities will be limited primarily to the cost of preparing such an analysis and that the requirements are no greater than necessary to ensure that the United States will be in compliance with its international obligations under the Protocol and the Treaty. The costs are likely to be minimal because, in EPA's view, the types of activities currently being carried out typically will be unlikely to have impacts that are more than minor or transitory assuming that the activities will be carried out in accordance with the guidelines set forth in the ATCM Recommendation XVIII–1, Tourism and Non-Governmental Activities, the relevant provisions of other U.S. statutes, and Annexes II–V to the Protocol. Therefore, most activities will likely need only IEE documentation, the cost of which is minimal as shown in section VII, Paperwork Reduction Act. Further, EPA has included provisions in this final rule that are available to all respondents, including small entities, that will have a positive effect by minimizing the cost of such an analysis.

Therefore, after considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Today's rule contains no Federal mandates for State, local, or tribal governments or the private sector. Furthermore, the UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. These regulations are necessary to enable the United States to implement its obligations under the Protocol on Environmental Protection to the Antarctic Treaty of 1959. This rule does not apply to any governmental jurisdictions. For the private sector, there are currently less than 20 regulated operators and, because of the nature of business and the Antarctic location, this number is not expected to increase significantly. Moreover, as described in section V.B., above, this final rule provides alternatives that may be used by operators to reduce the burden and costs associated with the rule.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2020–0007.

Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act) amends the Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.*, to implement the provisions of the Protocol on Environmental Protection to the Antarctic Treaty of 1959. The Act provides that EPA must promulgate regulations to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty, and for coordination of the review of information regarding environmental impact assessment received from other Parties under the Protocol. This rule provides nongovernmental operators with the specific environmental documentation requirements they must meet in order to comply with the Protocol.

Nongovernmental operators, including tour operators, conducting expeditions to Antarctica are required to submit environmental documentation to EPA that evaluates the potential environmental impact of their proposed activities. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of these regulations, the operator would have no further obligations pursuant to the applicable requirements of these regulations provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity. The type of environmental document required depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. Nongovernmental operators would be able to use the following approaches for submission of the environmental documentation required under the final rule: (1) Material may be incorporated by referring to it in the environmental document with its content briefly described when the cited material is reasonably available to the EPA; (2) more than one proposed expedition by an operator may be included within one environmental document and may, if appropriate, include a single discussion of components of the environmental analysis which are applicable to some or all of the proposed expeditions; (3) one environmental document may also be used to address expeditions being carried out by more than one operator, provided that the environmental documentation includes the names of each operator for which the environmental documentation is being submitted pursuant to obligations under these regulations; and (4) one environmental document may be submitted by one or more operators for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions described in the multi-year environmental document, including the assessment of cumulative impacts, are unchanged. The multi-year provision also allows operators to update basic information and to provide information on additional activities to supplement the multi-year environmental document without having to revise and re-submit the entire document. EPA anticipates that operators will make one submittal per year for all of their expeditions for that year and that most operators will be able to use the multi-year environmental documentation provision. EPA does not expect or anticipate receipt of any confidential information. No capital costs or operational and maintenance

costs are anticipated to be incurred as a result of this ICR.

Frequency of Reporting: Once per year.

Affected Public: Businesses, other nongovernmental entities including for profit entities, and not-for-profit institutions.

Number of Respondents: 13 to 14.

Estimated Average Time Per Respondent: 29 to 185 Hours depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

Total Annual Burden Hours: 377 to 562 Hours depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

Estimated Average Cost Per Respondent To Prepare and Submit Environmental Documentation for the First Year: $2,668 to $13,405 depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

Estimated Average Cost Per Respondent To Prepare and Submit Environmental Documentation for Subsequent Years: $1,844 to $14,117 depending on the anticipated level of environmental documentation and the paperwork reduction provisions employed by the respondent.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note)

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards.

F. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 56 FR 7629 (1994), requires each Federal agency, to the greatest extent practicable and permitted by law, to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations, including Indian tribes. The provisions of Executive Order 12898 do not apply to this regulatory action because it does not have any effects on minority or low income populations.

G. Executive Order 13132, Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No governmental jurisdictions including Federal, State, local and tribal governments are subject to this rulemaking. Thus, Executive Order 13132 does not apply to this rule.

H. Executive Order 13175, Consultation and Coordination with Tribal Governments

Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (Tribal Consultation) as of that date. EPA developed the proposed rule, however, during the period when Executive Order 13084 was in effect. Thus, EPA addressed tribal considerations under Executive Order 13084. Executive Order 13175, Consultation and Coordination with Tribal Governments, requires federal agencies to adhere to certain fundamental principles and policy making criteria when formulating or implementing policies with tribal implications and to establish a process to ensure that tribal officials have the opportunity to provide meaningful and timely input into regulatory policies that have tribal implications. Tribal governments are not subject to this rulemaking. Thus, neither Executive Order 13084 nor Executive Order 13175 apply to this rule.

I. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

J. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution and Use

Executive Order 13211 requires federal agencies to prepare a Statement of Energy Effects and to submit such statements to the Office of Management and Budget. This final rule is not subject to Executive Order 13211 because it does not significantly affect energy supply, distribution or use.

K. Submission to Congress and the Comptroller General of the United States

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 on January 7, 2002.

List of Subjects in 40 CFR Part 8

Environmental protection, Antarctica, Environmental impact statements, Penalties, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Christine Todd Whitman,

Administrator.

Therefore, for the reasons set forth in the Preamble, EPA hereby amends title 40 chapter 1 of the Code of Federal Regulations by revising part 8 to read as follows:

PART 8—ENVIRONMENTAL IMPACT ASSESSMENT OF NONGOVERNMENTAL ACTIVITIES IN ANTARCTICA

Sec.

8.1 Purpose.
8.2 Applicability and effect.
8.3 Definitions.
8.4 Preparation of environmental documents, generally.
8.5 Submission of environmental documents.
8.6 Preliminary environmental review.
8.7 Initial environmental evaluation.
8.8 Comprehensive environmental evaluation.
8.9 Measures to assess and verify environmental impacts.
8.10 Cases of emergency.
8.11 Prohibited acts, enforcement and penalties.
8.12 Coordination of reviews from other Parties.

Authority: 16 U.S.C. 2401 *et seq.*, as amended, 16 U.S.C. 2403a.

§ 8.1 Purpose.

(a) This part is issued pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996. As provided in that Act, this part implements the requirements of Article 8 and Annex I to the Protocol on Environmental Protection to the Antarctic Treaty of 1959 and provides for:

(1) The environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; and

(2) Coordination of the review of information regarding environmental impact assessment received by the United States from other Parties under the Protocol.

(b) The procedures in this part are designed to: ensure that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. These procedures are consistent with and implement the environmental impact assessment provisions of Article 8 and Annex I to the Protocol on Environmental Protection to the Antarctic Treaty.

§ 8.2 Applicability and effect.

(a) This part is intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable, appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

(b) The requirements set forth in this part apply to nongovernmental activities for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959: All nongovernmental expeditions to and within Antarctica organized in or proceeding from its territory.

(c) This part does not apply to activities undertaken in the Antarctic Treaty area that are governed by the Convention on the Conservation of Antarctic Marine Living Resources or the Convention for the Conservation of Antarctic Seals. Persons traveling to Antarctica are subject to the requirements of the Marine Mammal Protection Act, 16 U.S.C. 1371 *et seq.*

§ 8.3 Definitions.

As used in this part:

Act means 16 U.S.C. 2401 *et seq.*, Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996.

Annex I refers to Annex I, Environmental Impact Assessment, of the Protocol.

Antarctic environment means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic, and other environments.

Antarctic Treaty area means the area south of 60 degrees south latitude.

Antarctic Treaty Consultative Meeting (ATCM) means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

Antarctica means the Antarctic Treaty area; i.e., the area south of 60 degrees south latitude.

Comprehensive Environmental Evaluation (CEE) means a study of the reasonably foreseeable potential effects of a proposed activity on the Antarctic environment, prepared in accordance with the provisions of this part and includes all comments received thereon. (See: § 8.8.)

Environmental document or environmental documentation (Document) means a preliminary environmental review memorandum, an initial environmental evaluation, or a comprehensive environmental evaluation.

Environmental impact assessment (EIA) means the environmental review process required by the provisions of this part and by Annex I of the Protocol, and includes preparation by the operator and U.S. government review of an environmental document, and public access to and circulation of environmental documents to other Parties and the Committee on Environmental Protection as required by Annex I of the Protocol.

EPA means the Environmental Protection Agency.

Expedition means any activity undertaken by one or more nongovernmental persons organized

within or proceeding from the United States to or within the Antarctic Treaty area for which advance notification is required under Paragraph 5 of Article VII of the Treaty.

Impact means impact on the Antarctic environment and dependent and associated ecosystems.

Initial Environmental Evaluation (IEE) means a study of the reasonably foreseeable potential effects of a proposed activity on the Antarctic environment prepared in accordance with § 8.7.

More than a minor or transitory impact has the same meaning as the term ''significantly'' as defined in regulations under the National Environmental Policy Act at 40 CFR 1508.27.

Operator or *operators* means any person or persons organizing a nongovernmental expedition to or within Antarctica.

Person has the meaning given that term in section 1 of title 1, United States code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

Preliminary environmental review means the environmental review described under that term in § 8.6.

Preliminary Environmental Review Memorandum (PERM) means the documentation supporting the conclusion of the preliminary environmental review that the impact of a proposed activity will be less than minor or transitory on the Antarctic environment.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, done at Madrid October 4, 1991, and all annexes thereto which are in force for the United States.

This part means 40 CFR part 8.

§ 8.4 Preparation of environmental documents, generally.

(a) *Basic information requirements.* In addition to the information required pursuant to other sections of this part, all environmental documents shall contain the following:

(1) The name, mailing address, and phone number of the operator;

(2) The anticipated date(s) of departure of each expedition to Antarctica;

(3) An estimate of the number of persons in each expedition;

(4) The means of conveyance of expedition(s) to and within Antarctica;

(5) Estimated length of stay of each expedition in Antarctica;

(6) Information on proposed landing sites in Antarctica; and

(7) Information concerning training of staff, supervision of expedition members, and what other measures, if any, that will be taken to avoid or minimize possible environmental impacts.

(b) *Preparation of an environmental document.* Unless an operator determines and documents that a proposed activity will have less than a minor or transitory impact on the Antarctic environment, the operator will prepare an IEE or CEE in accordance with this part. In making the determination what level of environmental documentation is appropriate, the operator should consider, as applicable, whether and to what degree the proposed activity:

(1) Has the potential to adversely affect the Antarctic environment;

(2) May adversely affect climate or weather patterns;

(3) May adversely affect air or water quality;

(4) May affect atmospheric, terrestrial (including aquatic), glacial, or marine environments;

(5) May detrimentally affect the distribution, abundance, or productivity of species, or populations of species of fauna and flora;

(6) May further jeopardize endangered or threatened species or populations of such species;

(7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic, or wilderness significance;

(8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or

(9) Together with other activities, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(c) *Type of environmental document.* The type of environmental document required under this part depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. A PERM must be prepared by the operator to document the conclusion of the operator's preliminary environmental review that the impact of a proposed activity on the Antarctic environment will be less than minor or transitory. (See § 8.6.) An IEE must be prepared by the operator for proposed activities which may have at least (but no more than) a minor or transitory impact on the Antarctic environment. (See § 8.7.) A CEE must be prepared by the operator if an IEE indicates, or if it is otherwise determined, that a proposed activity is likely to have more than a minor or transitory impact on the Antarctic environment (See § 8.8.)

(d) *Incorporation of information, consolidation of environmental documentation, and multi-year environmental documentation.* (1) An operator may incorporate material into an environmental document by referring to it in the document when the effect will be to reduce paperwork without impeding the review of the environmental document by EPA and other federal agencies. The incorporated material shall be cited and its content briefly described. No material may be incorporated by referring to it in the document unless it is reasonably available to the EPA.

(2) Provided that environmental documentation complies with all applicable provisions of Annex I to the Protocol and this part and is appropriate in light of the specific circumstances of the operator's proposed expedition or expeditions, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator provided that the environmental document indicates the names of each operator for which the environmental documentation is being submitted pursuant to obligations under this part.

(e) *Multi-year environmental documentation.* (1) Provided that environmental documentation complies with all applicable provisions of Annex I to the Protocol and this part, an operator may submit environmental documentation for proposed expeditions for a period of up to five consecutive austral summer seasons, provided that the conditions described in the multi-year environmental document, including the assessment of cumulative impacts, are unchanged and meets the provisions of paragraphs (e)(1)(i) through (iii) of this section.

(i) The operator shall identify the environmental documentation submitted for multi-year documentation purposes in the first year it is submitted. If the operator, or operators, fail to make this initial identification to EPA, this provision shall not be in effect although subsequent years' submissions by the operator, or operators, may use this environmental documentation as provided in paragraphs (d) (1) and (2) of this section.

(ii) In subsequent years, up to a total maximum of five years, the operator, or operators, shall reference the multi-year documentation identified initially if it is necessary to update the basic

information requirements listed in paragraph (a) of this section.

(iii) An operator, or operators, may supplement a multi-year environmental document for an additional activity or activities by providing information regarding the proposed activity in accordance with the appropriate provisions of this part. The operator, or operators, shall identify this submission as a proposed supplement to the multi-year documentation in effect. Addition of the supplemental information shall not extend the period of the multi-year environmental documentation beyond the time period associated with the documentation as originally submitted.

(2) Multi-year environmental documentation may include more than one proposed expedition within the environmental document and the multi-year environmental document may also be used to address expeditions being carried out by more than one operator provided that the environmental document indicates the names of each operator for which the environmental documentation is being submitted pursuant to obligations under this part.

(3) The schedules for multi-year environmental documentation depend on the level of the environmental document and shall be the same as the schedules for comparable environmental documentation submitted on an annual basis; *e.g.,* a multi-year PERM shall comply with the schedule in § 8.6, a multi-year IEE shall comply with the schedule in § 8.7, and a multi-year CEE shall comply with the schedule in § 8.8. These schedules apply to the operator's submission of the initial multi-year environmental document; the operator's subsequent annual submissions pursuant to paragraphs (e)(1) (ii) and (iii) of this section; EPA's review, in consultation with other interested federal agencies, and comment on the multi-year environmental documentation and subsequent annual submissions; and a finding the EPA may make, with the concurrence of the National Science Foundation, that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part.

§ 8.5 Submission of environmental documents.

(a) An operator shall submit environmental documentation to the EPA for review. The EPA, in consultation with other interested federal agencies, will carry out a review to determine if the submitted environmental documentation meets the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. The EPA will provide its comments, if any, on the environmental documentation to the operator and will consult with the operator regarding any suggested revisions. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part, the operator will have no further obligations pursuant to the applicable requirements of this part provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity. Alternatively, following final response from the operator, the EPA, in consultation with other federal agencies and with the concurrence of the National Science Foundation, will inform the operator that EPA finds that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. If the operator then proceeds with the expedition without fulfilling the requirements of this part, the operator is subject to enforcement proceedings pursuant to sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

(b) The EPA may waive or modify deadlines pursuant to this part where EPA determines an operator is acting in good faith and that circumstances outside the control of the operator created delays, provided that the environmental documentation fully meets deadlines under the Protocol.

§ 8.6 Preliminary environmental review.

(a) Unless an operator has determined to prepare an IEE or CEE, the operator shall conduct a preliminary environmental review that assesses the potential direct and reasonably foreseeable indirect impacts on the Antarctic environment of the proposed expedition. A Preliminary Environmental Review Memorandum (PERM) shall contain sufficient detail to assess whether the proposed activity may have less than a minor or transitory impact, and shall be submitted to the EPA for review no less than 180 days before the proposed departure of the expedition. The EPA, in consultation with other interested federal agencies, will review the PERM to determine if it is sufficient to demonstrate that the activity will have less than a minor or transitory impact or whether additional environmental documentation, *i.e.,* an IEE or CEE, is required to meet the obligations of Article 8 and Annex I of the Protocol. The EPA will provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator shall have seventy-five (75) days to prepare a revised PERM or an IEE, if necessary. Following the final response from the operator, EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If EPA does not provide such notice within thirty (30) days, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(b) If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period, it will be reviewed under the time frames set out for an IEE in § 8.7. If EPA recommends a CEE and one is prepared, it will be reviewed under the time frames set out for a CEE in § 8.8.

§ 8.7 Initial environmental evaluation.

(a) *Submission of IEE to the EPA.* Unless a PERM has been submitted pursuant to § 8.6 which meets the environmental documentation requirements under Article 8 and Annex I to the Protocol and the provisions of this part or a CEE is being prepared, an IEE shall be submitted by the operator to the EPA no fewer than ninety (90) days before the proposed departure of the expedition.

(b) *Contents.* An IEE shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact on the Antarctic environment and shall include the following information:

(1) A description of the proposed activity, including its purpose, location, duration, and intensity; and

(2) Consideration of alternatives to the proposed activity and any impacts that the proposed activity may have on the Antarctic environment, including consideration of cumulative impacts in light of existing and known proposed activities.

(c) *Further environmental review.* (1) The EPA, in consultation with other interested federal agencies, will review an IEE to determine whether the IEE meets the requirements under Annex I to the Protocol and the provisions of this part. The EPA will provide its comments to the operator within thirty (30) days of receipt of the IEE, and the

operator will have forty-five (45) days to prepare a revised IEE, if necessary. Following the final response from the operator, EPA may make a finding that the documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If such a notice is required, EPA will provide it within fifteen (15) days of receiving the final IEE from the operator or, if the operator does not provide a final IEE, within sixty (60) days following EPA's comments on the original IEE. If EPA does not provide notice within these time limits, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(2) If a CEE is required, the operator must adhere to the time limits applicable to such documentation. (See: § 8.8.) In this event EPA, at the operator's request, will consult with the operator regarding possible changes in the proposed activity which would allow preparation of an IEE.

§ 8.8 Comprehensive environmental evaluation.

(a) *Preparation of a CEE.* Unless a PERM or an IEE has been submitted and determined to meet the environmental documentation requirements of this part, the operator shall prepare a CEE. A CEE shall contain sufficient information to enable informed consideration of the reasonably foreseeable potential environmental effects of a proposed activity and possible alternatives to that proposed activity. A CEE shall include the following:

(1) A description of the proposed activity, including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;

(2) A description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;

(3) A description of the methods and data used to forecast the impacts of the proposed activity;

(4) Estimation of the nature, extent, duration and intensity of the likely direct impacts of the proposed activity;

(5) A consideration of possible indirect or second order impacts from the proposed activity;

(6) A consideration of cumulative impacts of the proposed activity in light of existing activities and other known planned activities;

(7) Identification of measures, including monitoring programs, that could be taken to minimize or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;

(8) Identification of unavoidable impacts of the proposed activity;

(9) Consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;

(10) An identification of gaps in knowledge and uncertainties encountered in compiling the information required under this section;

(11) A non-technical summary of the information provided under this section; and

(12) The name and address of the person or organization which prepared the CEE and the address to which comments thereon should be directed.

(b) *Submission of Draft CEE to the EPA and Circulation to Other Parties.* (1) Any operator who plans a nongovernmental expedition that would require a CEE must submit a draft of the CEE by December 1 of the preceding year. Within fifteen (15) days of receipt of the draft CEE, EPA will: send it to the Department of State which will circulate it to all Parties to the Protocol and forward it to the Committee for Environmental Protection established by the Protocol, and publish notice of receipt of the CEE and request for comments on the CEE in the **Federal Register**, and will provide copies to any person upon request. The EPA will accept public comments on the CEE for a period of ninety (90) days following notice in the **Federal Register**. The EPA, in consultation with other interested federal agencies, will evaluate the CEE to determine if the CEE meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part and will transmit its comments to the operator within 120 days following publication in the **Federal Register** of the notice of availability of the CEE.

(2) The operator shall send a final CEE to EPA at least seventy-five (75) days before commencement of the proposed activity in the Antarctic Treaty area. The CEE must address and must include (or summarize) any comments on the draft CEE received from EPA, the public, and the Parties. Following the final response from the operator, the EPA will inform the operator if EPA, with the concurrence of the National Science Foundation, makes the finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This notification will occur within fifteen (15) days of submittal of the final CEE by the operator if the final CEE is submitted by the operator within the time limits set out in this section. If no final CEE is submitted or the operator fails to meet these time limits, EPA will provide such notification sixty (60) days prior to departure of the expedition. If EPA does not provide such notice, the operator will be deemed to have met the requirements of this part provided that procedures, which include appropriate monitoring, are put in place to assess and verify the impact of the activity. The EPA will transmit the CEE, along with a notice of any decisions by the operator relating thereto, to the Department of State which shall circulate it to all Parties no later than sixty (60) days before commencement of the proposed activity in the Antarctic Treaty area. The EPA will also publish a notice of availability of the final CEE in the **Federal Register**.

(3) No final decision shall be taken to proceed with any activity for which a CEE is prepared unless there has been an opportunity for consideration of the draft CEE by the Antarctic Treaty Consultative Meeting on the advice of the Committee for Environmental Protection, provided that no expedition need be delayed through the operation of paragraph 5 of Article 3 to Annex I of the Protocol for longer than 15 months from the date of circulation of the draft CEE.

(c) *Decisions based on CEE.* The decision to proceed, based on environmental documentation that meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part, rests with the operator. Any decision by an operator on whether to proceed with or modify a proposed activity for which a CEE was required shall be based on the CEE and other relevant considerations.

§ 8.9 Measures to assess and verify environmental impacts.

(a) The operator shall conduct appropriate monitoring of key environmental indicators as proposed in the CEE to assess and verify the potential environmental impacts of activities which are the subject of a CEE. The operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE has been prepared.

(b) All proposed activities for which an IEE or CEE has been prepared shall include procedures designed to provide a regular and verifiable record of the impacts of these activities, in order, *inter alia,* to:

(1) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(2) Provide information useful for minimizing and mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation, or modification of the activity.

§ 8.10 Cases of emergency.

This part shall not apply to activities taken in cases of emergency relating to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this part. Notice of any such activities which would have otherwise required the preparation of a CEE shall be provided within fifteen (15) days to the Department of State, as provided in this paragraph, for circulation to all Parties to the Protocol and to the Committee on Environmental Protection, and a full explanation of the activities carried out shall be provided within forty-five (45) days of those activities. Notification shall be provided to: The Director, The Office of Oceans Affairs, OES/OA, Room 5805, Department of State, 2201 C Street, NW, Washington, DC 20520–7818.

§ 8.11 Prohibited acts, enforcement and penalties.

(a) It shall be unlawful for any operator to violate this part.

(b) An operator who violates any of this part is subject to enforcement, which may include civil and criminal enforcement proceedings, and penalties, pursuant to sections 7,8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

§ 8.12 Coordination of reviews from other Parties.

(a) Upon receipt of a draft CEE from another Party, the Department of State shall publish notice in the **Federal Register** and shall circulate a copy of the CEE to all interested federal agencies. The Department of State shall coordinate responses from federal agencies to the CEE and shall transmit the coordinated response to the Party which has circulated the CEE. The Department of State shall make a copy of the CEE available upon request to the public.

(b) Upon receipt of the annual list of IEEs from another Party prepared in accordance with Article 2 of Annex I and any decisions taken in consequence thereof, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of the list of IEEs prepared in accordance with Article 2 and any decisions taken in consequence thereof available upon request to the public.

(c) Upon receipt of a description of appropriate national procedures for environmental impact assessments from another Party, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of these descriptions available upon request to the public.

(d) Upon receipt from another Party of significant information obtained, and any action taken in consequence therefrom from procedures put in place with regard to monitoring pursuant to Articles 2(2) and 5 of Annex I to the Protocol, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of this information available upon request to the public.

(e) Upon receipt from another Party of a final CEE, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy available upon request to the public.

[FR Doc. 01–30268 Filed 12–5–01; 8:45 am]

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Federal Register

Thursday,
December 6, 2001

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 107 and 108

Criminal History Records Checks; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. FAA–2001–10999; Amdt. Nos. 107–14 and 108–19]

RIN 2120–AH53

Criminal History Records Checks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule requires each airport operator and aircraft operator that has adopted a security program under part 107 or part 108, respectively, to conduct fingerprint-based criminal history record checks (CHRC's) for individuals if they have not already undergone CHRC's. The rule applies to those who either have, or apply for: Unescorted access authority to the Security Identification Display Area (SIDA) of an airport; authority to authorize others to have unescorted access; and screening functions. The rule is needed because the FAA has determined that the current employment investigation method is not adequate. The rule will ensure that individuals in these positions do not have disqualifying criminal offenses.

DATES: This rule is effective December 6, 2001. Submit comments by January 7, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA–2001–10999 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard. You may also submit comments through the Internet to *http://dms.dot.gov.*

You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone 202–267–3413.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

See **ADDRESSES** above for information on how to submit comments.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the Office of the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

Abbreviations And Terms Used In This Document

AIR–21—Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
ASIA 1990—Aviation Security Improvement Act of 1990
ASIA 2000—Airport Security Improvement Act of 2000
ATSA—Aviation and Transportation Security Act
CHRC—Criminal history records check
Reauthorization Act—Federal Aviation Reauthorization Act of 1996
SIDA—Security Identification Display Area

Background

In the wake of the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and southwest Pennsylvania, the potential for additional terrorist attacks exists. Those responsible for the attacks are believed to be affiliated with an organization possessing a near-global terrorist network. The leaders of the groups constituting this organization have publicly stated they will attack the United States for incarcerating their members and are vehemently opposed to U.S. foreign policy and presence in the Middle East. They retain a capability and willingness to conduct airline bombings, hijackings, and suicide attacks against U.S. targets. These attacks also indicate that the terrorists are willing to use aircraft as weapons to inflict significant damage on persons and property in the United States. Given the resources and reach of the organization, it is likely that it has sought or will seek to place members in

positions at airports to facilitate future attacks, or that it will attempt to co-opt individuals already in such positions. It should be underscored that, although other potential threats to U.S. civil aviation may be overshadowed at present, they have not disappeared. The uncertain course of the Middle East peace process involving Israel and the Palestinians, negative reactions to the U.S.-led military campaign in Afghanistan, and Iraqi opportunism in response to continued United Nations sanctions are among the developments that could give rise to attacks by groups or individuals not linked to the September 11 atrocities.

Since 1996, the FAA has required airport operators and aircraft operators to conduct checks on certain individuals to prevent individuals from working in those positions if they have a history of certain criminal convictions. See 14 CFR 107.31 and 108.33 (1997). Most of these checks include a 10-year employment investigation. If the employment investigation reveals one of four triggers listed in the rules, such as a 12-month gap in employment that is not satisfactorily explained, the investigation must include a Federal Bureau of Investigation (FBI) criminal history records check (CHRC) that is based on fingerprints of the individual. If the employment investigation or CHRC reveals a conviction in the 10 years before the investigation for one or more of the crimes listed in the regulations, the individual may not serve in the specified positions.

As discussed below, the Administrator has determined that the current employment investigation method is not adequate. This rule requires that all employees in the specified positions undergo a CHRC based on their fingerprints.

Title 14 of the Code of Federal Regulations (CFR) part 107 prescribes security requirements for airport operators that must adopt and carry out an FAA-approved security program. The airport operators' responsibilities include the security of the Security Identification Display Area (SIDA). The SIDA is an area of an airport in which individuals who have unescorted access authority must display approved identification media (ID). It includes the areas near the terminal where aircraft taxi, and other areas as necessary for security. See 14 CFR 107.3. The approved ID usually is issued by the airport operator, but in some cases is issued by the aircraft operator. In this preamble, the term ''airport operator'' refers to airport operators that hold security programs under part 107.

Title 14 CFR part 108 prescribes security rules for U.S. aircraft operators that must adopt and carry out an FAA-approved security program. Aircraft operators are responsible for screening passengers and property that are carried on their aircraft. They also have responsibilities for the security of the SIDA. As used in this document, the term ''aircraft operator'' refers to U.S. aircraft operators conducting operations under security programs under part 108.

History

Section 105 of the Aviation Security Improvement Act of 1990 (ASIA 1990), Pub. L. 101–604, added a new provision that is now codified at 49 U.S.C. 44936. It directed the FAA to ''issue regulations to require individuals employed in, and individuals applying for, [certain positions] to be subjected to such employment investigations, including criminal history records check, as the Administrator determines necessary to ensure air transportation security.'' The positions covered were those in which the individual has unescorted access authority to aircraft operator or foreign air carrier aircraft, or to secured areas of airports serving aircraft operators or foreign air carriers.

The FAA issued rules to carry out ASIA 1990. *See* 60 FR 51854 (October 3, 1995). The rules, §§ 107.31 and 108.33 (1997), require each airport operator and aircraft operator to conduct a 10-year employment history investigation for each individual applying for certain positions on or after the effective date, January 31, 1996. These employment checks must be performed for individuals who are granted unescorted access authority to a SIDA and individuals who authorize others to have unescorted access authority (together referred to in this preamble as individuals with ''unescorted access authority''). If the employment investigation reveals one of four conditions (triggers) listed in the rules the investigation must include a CHRC. The rule lists crimes that disqualify the individual from a position with unescorted access authority if the conviction occurred during the 10 years ending on the date of the investigation. Individuals who had unescorted access authority before the effective date were not subject to the rule. In the preamble to the rule the FAA stated that it would continue to evaluate the civil aviation security system to determine if further changes were warranted.

Effective November 14, 2001, § 107.31 was renumbered as § 107.209, and § 108.33 was renumbered as § 108.229, in connection with comprehensive revisions of those parts, Amendments 107–13 and 108–18. *See* 66 FR 37274 and 37330 (July 17, 2001).

Section 304 of the Federal Aviation Reauthorization Act of 1996, Pub. L. 104–264, directs the FAA to expand the checks to individuals who screen passengers and property that will be carried in an aircraft cabin in air transportation or intrastate air transportation and to supervisors of individuals with authority to perform screening functions (together referred to in this preamble as ''individuals with authority to perform screening functions''). The act specifically requires that an employment investigation be performed for each individual hired to be a screener, and that a CHRC be done where the employment investigation reveals one of the four triggers.

The FAA amended § 108.33 to carry out the Reauthorization Act. See 63 FR 18076 (September 24, 1998). The amendment requires each aircraft operator to conduct a 10-year employment history investigation for individuals applying for positions as individuals with authority to perform screening functions on or after the effective date, November 23, 1998. It applies the same scheme as that for individuals with unescorted access authority, that is, a 10-year employment history investigation, with a CHRC if one of the four triggers exists.

Section 508 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181, gave the Administrator additional authority as to checks on individuals with authority to perform screening functions. In addition to the four triggers that provide a basis for a CHRC, it provided that a CHRC shall be done in any case in which ''the Administrator decides it is necessary to ensure air transportation security with respect to passenger, baggage, or property screening at airports.'' See 49 U.S.C. 44936(a)(1)(C)(v).

Section 2 of the Airport Security Improvement Act of 2000 (ASIA 2000), Pub. L. 106–528, expands the use of CHRC's. It requires that, as of the effective dates, each individual applying for a position with unescorted access authority, or applying for a position as a screener, must undergo a CHRC. This is sometimes is referred to as ''100% fingerprinting of applicants.'' The effective date is December 23, 2000, for individuals at airports defined as a Category X airport by the FAA. The effective date is November 23, 2003, for individuals at other airports. These requirements are self-executing. That means that the FAA did not need to

issue a rule to make 100% fingerprinting of applicants effective on December 23, 2000, at Category X airports, and does not need to issue a rule to make 100% fingerprinting of applicants effective on November 23, 2003, at non-Category X airports.

ASIA 2000 also added crimes that disqualify an individual from a position with unescorted access authority or as a screener. This provision is self-executing and became effective on December 23, 2000, for individuals at all airports.

In sum, there are some individuals who have had neither an employment investigation nor a CHRC, some individuals who have had employment investigations only, and some individuals who have had CHRC's, as follows:

Individuals with unescorted access authority—

- At all airports, individuals who were in positions before January 31, 1996, did not undergo an employment investigation or a CHRC.
- At Category X airports, individuals applying for positions on or after January 31, 1996, and before December 23, 2000, underwent an employment investigation, and only underwent a CHRC if one of the four triggers existed.
- At Category X airports, all individuals applying for positions on or after December 23, 2000, through the present, undergo a CHRC.
- At other airports, individuals applying for positions on or after January 31, 1996, through the present, undergo an employment investigation, and a CHRC only if one of the four triggers exists.

Individuals with authority to perform screening functions—

- At all airports, individuals who were in positions before November 23, 1998, did not undergo an employment investigation or a CHRC.
- At Category X airports, individuals applying for positions on or after November 23, 1998, and before December 23, 2000, underwent an employment investigation, and only underwent a CHRC if one of the four triggers existed.
- At Category X airports, all individuals applying for positions on or after December 23, 2000, through the present, undergo a CHRC.
- At other airports, individuals applying for positions on or after January 31, 1996, through the present, undergo an employment investigation, and a CHRC only if one of the four triggers exists.

While the FAA has not before required CHRC's for all covered individuals, the statute provides authority to do so. Further, section 138 of the Aviation Transportation Security Act (ATSA) provides that a new background check, including a criminal history record check, shall be required for individuals with unescorted access authority and individuals with authority to perform screening functions. This rulemaking accomplishes that requirement.

There may be some individuals who now are in the covered positions who will be disqualified under these new checks. For instance, there may be individuals who underwent an employment history investigation only before December 23, 2000, and did not have a history of a crime that was disqualifying at the time. If that individual has a disqualifying criminal offense for one of the crimes added in ASIA 2000, he or she will be disqualified. The legislative history for ASIA 2000 recognizes that this provision ''may cause a few individuals to be removed from their jobs or prevent others from being hired. However, the number of people affected (convicted felons) will be few, and such actions will be taken to increase air travel security.'' S. Rep. No. 106–388, 106th Cong., 2nd Sess. 3 (2000), reprinted in 2000 U.S.C.C.A.N. 2252, 2254.

Note that individuals subject to §§ 107.209 and 108.229 have been required to report if they were convicted of a disqualifying crime after the initial investigation. See §§ 107.31 (l) and 108.33 (h) of the 1996 rule, and §§ 107.31 (l)(1) and 108.33 (l)(1) of the 1998 rule. The CHRC's conducted under this rule may reveal some individuals who did not report convictions that occurred after their original investigation. These individuals will no longer be able to have unescorted access authority or to perform screening functions.

ATSA also requires that additional background checks be done on both current employees and applicants for covered positions to the extent practicable. The additional checks include such things as a review of records of other governmental and international agencies. This rulemaking, which was written before ATSA was enacted, does not cover the additional background checks. They will be developed and adopted in the future.

Inadequacy of the Current Rules

In the past year the FAA has conducted nationwide assessments of aircraft operator and airport operator compliance with the regulatory requirements for employment history investigations. While the FAA has found numerous properly completed employment history investigations, it has also discovered serious problems with the use of employment history investigations as a means for determining when a CHRC must be accomplished.

Under current regulations, the applicant provides a 10-year employment history. The airport operator, aircraft operator, or designee verifies the most recent 5 years of that history, for example, by calling prior employers to verify employment. An airport operator or aircraft operator may only request a CHRC if one of four triggers exists, such as an unexplained gap of 12 months or more in the 10-year employment history. The determination of whether a trigger exists depends almost entirely on information provided by the applicant. This process has proven to be insufficiently reliable and subject to abuse.

In its review of hundreds of employment history investigations, the FAA has found many instances where gaps in employment greater than 12 months were accounted for by a friend or family member, or by third party firm in the United States that claimed to know the whereabouts of an applicant while he or she was living in a foreign country. While the FAA regards such information as unsatisfactory to account for a period of unemployment, screening companies, on behalf of aircraft operators, routinely accept this information as sufficient under the regulations. Accordingly, applications that the FAA considers to reveal a trigger, and therefore require a CHRC, have not been regarded as such by an aircraft operator.

Furthermore the FAA has found several cases where it appears that an applicant has provided false information of employment and another person to provide a false reference for time periods greater than 12 months. In these cases, the screening company may be duped when verifying the information, because the false reference is a co-conspirator in the applicant's falsification of his or her employment history. In other cases, the screening company may have been unable to contact the reference, therefore may have been unable to verify prior employment, but nonetheless did not request a CHRC. In either instance, the applicant has successfully avoided undergoing a CHRC.

Even when an employment history is complete and an investigation of that history is properly conducted, the FAA is concerned that the four triggers do not always identify applicants with disqualifying criminal histories. For instance, during an October 2001 audit,

the FAA and the Department of Transportation found that some current employees had disqualifying criminal convictions. For at least one such employee, the employment history investigation appears to have been properly completed, but it revealed no triggers that would have required a CHRC.

Accordingly, the Administrator has determined that the employment history and verification procedure in the current rule is inadequate to determine whether the individual has a history of a disqualifying crime.

In addition to the changes in this rulemaking, the FAA continues to review pertinent information and determine whether additional requirements are needed to enhance the background checks for individuals in various positions that affect security.

Section-by-Section Analysis

These amendments reflect the new requirements in ASIA 2000, which provides additional disqualifying crimes and 100% fingerprinting of applicants at Category X airports. These amendments also require 100% fingerprinting of all applicants at Category I through IV airports, and 100% fingerprinting of all current employees with unescorted access authority and all current employees with authority to perform screening functions who have not been subject to a CHRC under current rules.

In this preamble, references to ''current'' rules mean §§ 107.209 and 108.229 as they became effective on November 14, 2001, 66 FR 37274 and 37330 (July 17, 2001). References to ''new'' rules mean amendments made in this rulemaking.

Section 107.209 Fingerprint-Based Criminal History Records Checks (CHRC)

This section amends § 107.209, Employment history, verification, and criminal history records checks. It applies to airport operators and others.

Paragraph (a), Scope, sets out the scope of the section. It is essentially unchanged, except that the section now covers individuals not only applying for unescorted access authority, but also those who currently have unescorted access authority. This section does not apply to individuals with authority to perform screening functions because airport operators are not responsible for screening.

Paragraph (b), Individuals seeking unescorted access authority, states the basic requirement for CHRC's for individuals seeking unescorted access authority. This paragraph provides that the airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense. There are exceptions to this paragraph in paragraph (m).

Paragraph (c), Individuals who have not had a CHRC, states the requirements for individuals who currently have unescorted access authority. The airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority unless the airport operator has obtained and submitted a fingerprint under part 107. This means that if the individual who currently has unescorted access authority was subject to a fingerprint-based CHRC under part 107 in the past, the individual does not need to undergo another CHRC. If the individual underwent only an employment history verification under part 107, or no check, the individual must now be fingerprinted and undergo a CHRC. There are exceptions to this paragraph in paragraph (m).

Paragraph (c)(2) provides that when a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by reason of insanity was in the 10 years before December 6, 2001, the airport operator must immediately suspend that individual's authority. This is similar to current § 107.209 (l)(2), which in part provides that if the airport operator confirms that the individual has a disqualifying conviction the airport operator must withdraw any authority granted to that individual. An individual who believes that the CHRC is incorrect may seek to correct the record in accordance with paragraph (h).

Paragraph (d), Disqualifying criminal offenses, states what a disqualifying criminal offense is under the rule. A criminal offense is disqualifying if it meets several conditions: The individual must have been either convicted or found not guilty by reason of insanity; the crime must be listed in this section; and the conviction or finding must have occurred either during the 10 years before the date of the CHRC or while the individual has unescorted access authority. The disqualifying crimes are the crimes listed in current § 107.209 (b)(2), plus the crimes added in ASIA 2000. Further, 18 U.S.C. 37, Violence at international airports, is added.

The statute provides that the Administrator may make any other felony a disqualifying crime if she determines that the crime indicates a propensity for placing contraband aboard an aircraft in return for money. See 49 U.S.C. 44936(b)(1)(B)(xiv)(IX). If the Administrator determines that an additional crime should be disqualifying, these rules will be amended to so provide.

Paragraph (e), Fingerprint application and processing, describes how the airport operator obtains and processes the fingerprint. Paragraph (e)(1) describes the application. The application must contain only the items in this paragraph, for reasons discussed for paragraph (e)(1)(iii). The application must have the disqualifying criminal offenses described in paragraph (d). This will give the individual the opportunity to determine whether he or she is not qualified and to stop the application process at that point. The application must have a statement that the individual signing the form does not have a disqualifying criminal offense. The application must contain a statement informing the individual that he or she must advise the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while the individual has unescorted access authority. This is a notification to the individual of his or her responsibility under paragraph (l)(2).

Under paragraph (e)(1)(iii) the application also must have a statement that the individual signing the application may be subject to prosecution under title 18 of the United States Code if he or she knowingly and willfully provides false information on the application. This will inform the individual of the serious nature of the application and the need to be truthful. This statement applies to information that the government determines is material for governmental purposes. Other information that the airport operator may want to have to make employment decisions, such as the individual's wages and duties in prior employment, is not material to the government for this purpose and cannot be subject to the warning regarding title 18 of the United States Code. For this reason the application may contain only the information in this paragraph.

The application must have a line for the printed name of the individual. Finally, the application must a line for the individual's signature and date of signature.

Paragraph (e)(2) provides that the individual must complete and sign the application prior to submitting his or her fingerprints.

Before the fingerprints are taken the airport operator must verify the identity of the individual with two forms of identification (ID). At least one ID must

have been issued by a government authority and at least one must include a photograph of the individual. One ID may satisfy the two latter requirements, together with one other ID. For instance, an individual may present one state driver's license with a photograph (which is both a government ID and an ID with a photograph) plus one other ID that is not issued by the government and does not have a photograph. This is a small expansion of the current rule. Current § 107.209 (e)(3) requires two forms of ID, at least one of which has a photo. The requirement for a government ID means that at least one of the ID's is from an official source.

Paragraph (e)(4) requires the airport operator to advise the individual that a copy of the criminal record received from the FBI will be provided to the individual if requested in writing. This is in current § 107.209 (g)(1). This paragraph also requires the airport operator to advise the individual that the Airport Security Coordinator is the point of contact for questions, as in current § 107.209 (d).

Under paragraph (e)(5) the airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the airport operator or a law enforcement officer. These are essentially in current § 107.209 (e)(1) and (e)(2).

Paragraph (e)(6) makes clear that fingerprints may be either obtained and processed electronically, or on fingerprint cards approved by the FBI and distributed by the FAA for that purpose. Current § 107.209 (e)(1) provides only for obtaining fingerprints on cards. However, there now are electronic means of collecting fingerprints in use at a number of airports.

Paragraph (e)(7) provides that the fingerprints must be submitted in a manner specified by the Administrator, similar to current § 107.209 (e)(4).

Under paragraph (f), Fingerprint fees, the airport operator must pay for all fingerprints in a form and manner approved by the FAA. Current § 107.209 (e)(5) provides only for payment by corporate check, cash, or money order, due upon application. However, electronic fund transfers now are accepted, and credit cards and escrow accounts will be accepted in the future. This paragraph ensures that there is flexibility to develop new payment procedures for the efficiency of both the industry and the government. The rule specifically provides that individual personal checks are not acceptable. The FAA simply cannot handle checks from each individual who submits fingerprints.

Paragraph (g), Determination of arrest status, states that the airport operator must investigate arrests recorded in the CHRC for individuals seeking unescorted access authority and for individuals with unescorted access authority. This is essentially the same as current § 107.209 (f), except that this paragraph also expressly states that—

- The airport operator must determine that the arrest of an individual seeking unescorted access authority did not result in a disqualifying offense before granting the individual that authority.
- When a CHRC on an individual with unescorted access authority discloses an arrest for a disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's authority within 45 days of obtaining the CHRC, unless the arrest did not result in a disqualifying criminal offense. This rule does not require immediate suspension of the individual's unescorted access authority. The CHRC may not be complete. For instance, the charges might have been withdrawn or there could have been a conviction for a crime that is not disqualifying. The 45-day period provides an opportunity to obtain current information on disposition of the arrest.
- The airport operator only makes this determination for individuals for whom it is issuing or has issued unescorted access authority, and who are not covered by a certification from the aircraft operator under paragraph (n). The airport operator may not make this determination for individuals described in § 108.229 (a).

Paragraph (h), Correction of FBI records and notification of disqualification, states the airport operator's duty to advise the individual about a disqualifying criminal offense in the CHRC received from the FBI, provide a copy of the record, and notify the individual of a final decision. This paragraph is essentially the same as current § 107.209 (g)(2) and (3), except that the new section also covers individuals who already have unescorted access authority, as well as those seeking authority.

Paragraph (i), Corrective action by the individual, describes how the individual may correct his or her record. Paragraph (i)(1) describes the action the individual may take to correct an inaccurate CHRC. It is similar to current § 107.209 (h) with some additions. The current rule provides that the FBI record must be revised, but this may take undue time. New paragraph (i)(1)(i) permits the airport operator to accept a certified true copy of the record from the appropriate court. For example, if the FBI record indicates that the individual was convicted, but does not also show that the conviction was reversed on appeal, the individual may obtain a certified true copy of the court record of that ruling. Certified true copies of court records may be obtained from the clerk of the court. This paragraph makes clear that the airport operator may either obtain the copy of the record itself, or accept a copy from the individual.

Paragraph (i)(2) provides a similar procedure for individuals who have unescorted access authority on December 6, 2001. If the individual corrects the information on the CHRC or provides a certified true copy of the information from the appropriate court, the individual's authority may be reinstated.

Paragraph (j), Limitations on dissemination of results, describes the limitations on disseminating the CHRC results. It is largely the same as current § 107.209 (i). This paragraph now expressly states that the CHRC may only be used to determine the appropriateness of granting unescorted access authority under this section. It also expressly states that the CHRC may be given to other airport operators who are determining whether to grant unescorted access to the individual under this part. It also states the information may be given to aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under part 108. If an individual has a need for unescorted access at two airports, for instance, one airport may conduct the CHRC and share the results with the second airport, so the individual only is fingerprinted once.

Paragraph (k), Recordkeeping, states the airport operator's duties to maintain records, and is essentially the same as current § 107.209 (k).

Paragraph (l), Continuing responsibilities, describes the continuing responsibilities of individuals, airport operators, and airport users regarding disqualifying criminal offenses occurring after the initial investigation. Paragraph (l)(1) addresses all individuals who currently have unescorted access authority. It requires them to report any disqualifying criminal offenses that have occurred in the 10 years before December 6, 2001. This applies to those who never underwent a background check under part 107 because they had unescorted access authority before the

1996 rule, to those who underwent an employment verification only under the 1996 rule, and to those who underwent a CHRC under the 1996 rule. This ensures that individuals who currently hold unescorted access authority are required to report offenses that are now listed in (d) and that disqualify them from continuing to serve in such a position.

Paragraphs (l)(2) and (l)(3) essentially repeat the current provisions of § 107.209 (l)(1) and (l)(2).

Paragraph (m), Exceptions, states the exceptions to this rule. Government employees, crewmembers of foreign air carriers and individuals who were previously employed in a position requiring a CHRC need not be fingerprinted under this rule, as described in this section. These exceptions are the same as in current § 107.209 (m). There are two changes to current paragraph (m). First, new paragraph (m) does not contain the exemption for certain individuals who were given access authority to U.S. Customs' secured areas before November 23, 1998. Section 138 of ATSA removes the exemption for the individuals with access to U.S. Customs' secured areas. Second, new paragraph (m) permits individuals who have unescorted access authority or authority to perform screening functions and who already have been subject to an FAA fingerprint-based CHRC to move to another employer or airport without being subject to another CHRC, provided that they have been continuously employed.

Paragraph (n), Certification by aircraft operators, states when the airport operator may accept a certification from an aircraft operator. Paragraph (n) permits the airport operator to accept a certification from an aircraft operator that it has complied with the requirements of the aircraft operator's rule, similar to current § 107.209 (n). This paragraph clarifies that if the airport operator accepts a certification from the aircraft operator, the airport operator may not also require a copy of the CHRC. If the airport operator is accepting a certification, it does not have a need for the CHRC.

Paragraph (o), Airport operator responsibilities, describes airport operator responsibilities, corresponding to current § 107.209 (o).

Paragraph (p), Airport user responsibility, states the airport user's responsibilities, similar to current § 107.209 (p).

Section 108.229 Fingerprint-Based Criminal History Records Checks (CHRC)

This section amends § 108.229, Employment history, verification, and criminal history records checks. It applies to aircraft operators and others.

Paragraph (a), Scope, sets out the scope of this section. Paragraph (a)(1) covers individuals applying for unescorted access or to have authority to perform screening functions on and after the December 6, 2001. Paragraph (a)(1)(i) covers each employee or contract employee covered under a certification made to an airport operator, pursuant to new § 107.209 (n), on and after December 6, 2001. These are employees who receive their unescorted access authority from the airport operator, based on the CHRC conducted by the aircraft operator. Paragraph (a)(ii) covers each individual, on and after December 6, 2001, issued aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access within a SIDA. Finally, paragraph (a)(1)(iii) covers each individual, on and after December 6, 2001, granted authority to perform certain screening functions within the United States. These functions are screening passengers or property that will be carried in a cabin of an aircraft, and serving as an immediate supervisor (checkpoint security supervisor (CSS)), or the next supervisory level (shift or site supervisor), to those individuals (referred to as individuals authorized to perform screening functions).

Paragraph (a)(2) covers individuals who were employed before the December 6, 2001. Paragraph (a)(2)(i) covers each employee or contract employee covered under a certification made to an airport operator pursuant to § 107.31 (n) as it existed before November 14, 2001, or pursuant to § 107.209 (n) before December 6, 2001. Paragraph (a)(2)(ii) covers individuals with unescorted access authority based on an aircraft operator identification media, and paragraph (a)(2)(iii) covers individuals authorized to perform screening functions.

Paragraph (b), Individuals seeking unescorted access authority or authority to perform screening functions, states the basic requirement for CHRC's for individuals identified in paragraph (a)(1). This paragraph provides that the aircraft operator must ensure that each individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense before making a certification to an airport operator regarding that individual, issuing an aircraft operator identification media to that individual, or authorizing that individual to perform a screening function.

Paragraph (c), Individuals who have not had a CHRC, states the requirements for individuals who currently have unescorted access authority or who perform screening functions. Under paragraph (c), such individuals may not retain their unescorted access authority, and may not perform screening functions, after one year after the December 6, 2001, unless a CHRC has been conducted. Paragraph (c)(2) is essentially the same as current § 107.209 (c)(2).

Paragraph (d), Disqualifying criminal offenses, states what a disqualifying criminal offense is under the rule. It is essentially the same as new § 107.209 (d), discussed above, and corresponds to current § 108.229 (d).

Paragraph (e), Fingerprint application and processing, describes how the aircraft operator obtains and processes the fingerprints. It is essentially the same as new § 107.209 (f).

Paragraph (f), Fingerprint fees, describes the fees for fingerprinting, essentially the same as new § 107.209 (g). It corresponds to current § 108.29 (e)(5).

Paragraph (g), Determination of arrest status, requires the aircraft operator to investigate arrests recorded in the CHRC. It is essentially the same as new § 107.209 (g), and corresponds to current § 108.229 (f). The paragraph states that—

- When a CHRC on an individual described in paragraph (a)(1) discloses an arrest for a disqualifying criminal offense and does not indicate a disposition, an aircraft operator may not grant that individual unescorted access authority, either by making a certification to an airport operator or issuing identification media that is accepted by airport operators for unescorted access, or authority to perform screening functions.
- When a CHRC on an individual described in paragraph (a)(2) discloses an arrest for a disqualifying criminal offense and does not indicate a disposition, an aircraft operator must suspend the individual's unescorted access authority or authority to perform screening functions within 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense.
- An aircraft operator may only make this determination for individuals described in paragraph (a).

Paragraph (h), Correction of FBI records and notification of

disqualification, states the aircraft operator's duty to advise the individual about a disqualifying criminal offense in the CHRC, provide a copy of the record, and notify the individual of a final decision. It is essentially the same as new § 107.209 (h) and current § 108.229 (g).

Paragraph (i), Corrective action by the individual, describes the action the individual may take to correct an inaccurate CHRC. It is essentially the same as new § 107.209 (i) and current § 108.229(h).

Paragraph (j), Limits on dissemination of results, describes the limitations on disseminating the CHRC results. It is essentially the same as new § 107.209 (j) and current § 108.229(i). Paragraph (j)(2) clarifies that an aircraft operator may not provide CHRC results to an airport operator if the aircraft operator is providing a certification under part 107. In such a case, the airport operator does not have a need to see the CHRC under these rules. This is consistent with new § 107.209 (n).

Paragraph (k), Recordkeeping, states the airport operator's duties to maintain records, and is essentially the same as new § 107.209 (k) and current § 108.229 (k).

Paragraph (l), Continuing responsibilities, states the continuing responsibilities of the aircraft operator, each person with unescorted access authority, and each person performing screening functions, corresponding to new § 107.209 (l) and current § 108.229 (l).

Paragraph (m), Aircraft operator responsibility, states the aircraft operator responsibility corresponding to new § 107.209 (o) and current § 108.229 (m).

Compliance Dates

This rule becomes effective on December 6, 2001. On that date each airport operator and each aircraft operator may begin submitting fingerprints to complete the CHRC's required under this rule.

The compliance date for individuals seeking unescorted access authority, and for individuals seeking authority to perform screening functions, at non-Category X airports is December 6, 2001. On and after that date each individual seeking such authority must undergo a CHRC as provided in this rulemaking.

Under § 107.209 (c) and § 108.229 (c) the compliance date for submitting fingerprints for individuals who now have unescorted access authority and individuals who now have authority to perform screening functions is one year after the December 6, 2001. By that date, each airport operator and each aircraft operator must have submitted fingerprints for all such individuals.

The FAA considers it critical to promptly address the deficiencies in the current employment investigations described above. Based on discussions with the industry, the FAA believes that these dates can be met. Indeed, a number of airport operators agree that all covered individuals should be fingerprinted and are ready to undertake that task as soon as possible, and expect to complete it much sooner than one year.

Good Cause for Immediate Adoption

This action is necessary to prevent a possible imminent hazard to aircraft and persons and property within the United States. Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective less than 30 days after publication in the **Federal Register**.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this rule.

Paperwork Reduction Act

This emergency rule contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In accordance with section 3507 (j)(1)(B) of that statute, the FAA requested the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package that was submitted. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The collection of information was approved and assigned OMB Control Number 2120–0673. Following is a summary of the information collection activity.

Need: This rule requires information to be collected on individuals who perform, or seek to perform, security-related functions at domestic airports. The rule covers individuals at all categories of airports who were not subject to a fingerprint-based CHRC before December 6, 2001. Under current FAA rules and statutes, fingerprint-based criminal history record checks are conducted on applicants at Category X airports for employment as screeners and for positions with access to secured areas of the airport. At non-Category X airports criminal history record checks are done only in limited circumstances, that is, when a verification of their prior employment reveals certain triggers, such as an unexplained gap in employment of 12 months. No individual with access to secured areas had a background check before 1996, and no screener had a background check before 1998. Only limited numbers of individuals hired since 1996 and 1998 respectively have been subjected criminal history checks. The new rules will require that all individuals with access to secured areas and all screeners be fingerprinted and a criminal history check conducted if it has not been done in the past. The rules are an essential part of the response to the current threat of terrorist activity.

Description of Respondents: All new and existing personnel who have unescorted access authority to the security identification display area of an airport, individuals who authorize others to have unescorted access authority, individuals who screen passengers and property that will be carried in an aircraft cabin in air transportation or intrastate air transportation, and supervisors of screeners. The FAA estimates that there will be 1.06 million respondents during the first year.

Estimated Burden: This rule will constitute a recordkeeping burden for certificate holders operating under parts 107 and 108. All personnel will need to be fingerprinted. In the first year of this rule, 1.06 million employees will need to be processed; in subsequent years, it will average about 275,000 employees. The total ten-year burden for the estimated 3.52 million employees is 1,234,711 hours at a cost of $27,833,525. The annual burden sums to 123,471.1 hours at a cost of $2,783,352.50.

Economic Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory

analysis or evaluation accompanies this rule. The FAA has not assessed of whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule. The FAA recognizes that this rule will impose significant costs on airport operators and aircraft operators. The current security threat requires, however, that operators take all necessary measures to ensure the safety and security of their operations.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

Based on the FAA's rough initial estimates the FAA does not believe that the rule will result in such a mandate. The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when no notice of proposed rulemaking has first been published, however. Accordingly, the FAA has not prepared a statement under the Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 107

Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 108

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

The Amendments

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as set forth below:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

2. Revise § 107.209 to read as follows:

§ 107.209 Fingerprint-based criminal history records checks (CHRC).

(a) *Scope.* The following persons are within the scope of this section—

(1) Each airport operator and airport user.

(2) Each individual currently having unescorted access to a SIDA, and each individual with authority to authorize others to have unescorted access to a SIDA (referred to as unescorted access authority).

(3) Each individual seeking unescorted access authority.

(4) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, or § 107.31 (n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). An airport user, for the purposes of this section only, is any person other than an aircraft operator subject to § 108.229 of this chapter making a certification under this section.

(b) *Individuals seeking unescorted access authority.* Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section.

(c) *Individuals who have not had a CHRC.* (1) Except as provided in paragraph (m) of this section, each airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority, unless the airport operator has obtained and submitted a fingerprint under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by reason of insanity was on or after December 6, 1991, the airport operator must immediately suspend that individual's authority.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty of by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority, or while the individual has unescorted access authority. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.
(16) Sedition.
(17) Kidnapping or hostage taking.
(18) Treason.
(19) Rape or aggravated sexual abuse.
(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
(21) Extortion.
(22) Armed or felony unarmed robbery.
(23) Distribution of, or intent to distribute, a controlled substance.
(24) Felony arson.
(25) Felony involving a threat.
(26) Felony involving—
(i) Willful destruction of property;
(ii) Importation or manufacture of a controlled substance;
(iii) Burglary;
(iv) Theft;
(v) Dishonesty, fraud, or misrepresentation;
(vi) Possession or distribution of stolen property;
(vii) Aggravated assault;
(viii) Bribery; or
(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.
(27) Violence at international airports; 18 U.S.C. 37.
(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—
(i) The disqualifying criminal offenses described in paragraph (d) of this section.
(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.
(iii) A statement informing the individual that Federal regulations under 14 CFR 107.209 (l) impose a continuing obligation to disclose to the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority.
(iv) A statement reading, ''The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)''
(v) A line for the printed name of the individual.
(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.
(3) The airport operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.
(4) The airport operator must advise the individual that:
(i) A copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and
(ii) The ASC is the individual's point of contact if he or she has questions about the results of the CHRC.
(5) The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.
(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by the FAA for that purpose.
(7) The fingerprint submission must be forwarded to the FAA in the manner specified by the Administrator.

(f) *Fingerprinting fees.* Airport operators must pay for all fingerprints in a form and manner approved by the FAA. The payment must be made at the designated rate (available from the local FAA security office) for each set of fingerprints submitted. Information about payment options is available though the designated FAA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual seeking unescorted access authority discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the airport operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting that authority.
(2) When a CHRC on an individual with unescorted access authority discloses an arrest for any disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's unescorted access authority not later than 45 days after obtaining the CHRC unless the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense.
(3) The airport operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority, and who are not covered by a certification from an aircraft operator under paragraph (n) of this section. The airport operator may not make determinations for individuals described in § 108.229 of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny unescorted access authority to an individual described in paragraph (b) of this section, the airport operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.
(2) The airport operator must notify an individual that a final decision has been made to grant or deny unescorted access authority.
(3) Immediately following the suspension of unescorted access authority of an individual, the airport operator must advise him or her that the FBI criminal record discloses information that disqualifies him or her from retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—
(1) For an individual seeking unescorted access authority on or after December 6, 2001, the following applies:
(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority.
(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the airport operator may make a final determination to deny unescorted access authority.

(2) For an individual with unescorted access authority before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and § 108.229 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of other airport operators who are determining whether to grant unescorted access to the individual under this part.

(3) Aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under part 108 of this chapter.

(4) Others designated by the Administrator.

(k) *Recordkeeping.* The airport operator must maintain the following information.

(1) *Investigations conducted before December 6, 2001.* The airport operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, or the appropriate certifications, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* Except when the airport operator has received a certification under paragraph (n) of this section, the airport operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct airport operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Certification on or after December 6, 2001.* The airport operator must maintain the certifications provided under paragraph (n) of this section.

(4) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(5) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's unescorted access authority. When files are no longer maintained, the criminal record must be destroyed.

(l) *Continuing responsibilities.* (1) Each individual with unescorted access authority on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) Each individual with unescorted access authority who has a disqualifying criminal offense must report the offense to the airport operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access authority has a disqualifying criminal offense, the airport operator must determine the status of the conviction. If a disqualifying offense is confirmed the airport operator must immediately revoke any unescorted access authority.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access authority:

(1) An employee of the Federal, state, or local government (including a law enforcement officer (LEO)) who, as a condition of employment, has been subjected to an employment investigation which includes a criminal records check.

(2) A crewmember of a foreign air carrier covered by an alternate security arrangement in the foreign air carrier's approved security program.

(3) An individual who has been continuously employed in a position requiring unescorted access authority by another airport operator, airport user, or aircraft operator, provided the grant for his or her unescorted access authority was based upon a fingerprint-based CHRC through the FAA.

(4) An individual who has been continuously employed by an aircraft operator, in a position with authority to perform screening functions, provided the grant for his or her authority to perform screening functions was based upon a fingerprint-based CHRC through the FAA.

(n) *Certifications by aircraft operators.* An airport operator is in compliance with its obligation under paragraph (b) or (c) of this section when the airport operator accepts, for each individual seeking unescorted access authority, certification from an aircraft operator subject to part 108 of this chapter indicating it has complied with § 108.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted access authority. If the airport operator accepts a certification from the aircraft operator, the airport operator may not require the aircraft operator to provide a copy of the CHRC.

(o) *Airport operator responsibility.* The airport operator must—

(1) Designate the ASC, in the security program, or a direct employee if the ASC is not a direct employee, to be responsible for maintaining, controlling, and destroying the criminal record files when their maintenance is no longer required by paragraph (k) of this section.

(2) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access authority of their intent to seek correction of their FBI criminal record.

(3) Audit the employment history investigations performed by the airport operator in accordance with this section and § 107.31 as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), and those investigations conducted by the airport users who provided certification to the airport operator. The audit program must be set forth in the airport security program.

(p) *Airport user responsibility.* (1) The airport user must report to the airport operator information, as it becomes available, that indicates an individual with unescorted access authority may have a disqualifying criminal offense.

(2) The airport user must maintain and control, in compliance with paragraph (k) of this section, the employment history investigation files for investigations conducted before December 6, 2001, unless the airport operator decides to maintain and control the employment history investigation file.

(3) The airport user must provide the airport operator with either the name or title of the individual acting as custodian of the files described in this paragraph, the address of the location where the files are maintained, and the phone number of that location. The airport user must provide the airport operator and the FAA with access to these files.

PART 108—AIRCRAFT OPERATOR SECURITY

3. The authority for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

4. Revise § 108.229 to read as follows:

§ 108.229 Fingerprint-based criminal history records checks (CHRC).

(a) *Scope.* The following persons are within the scope of this section—

(1)(i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to § 107.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 107.205 of this chapter (referred to as unescorted access authority).

(iii) Each individual, on or after December 6, 2001, granted authority to perform the following screening functions at locations within the United States (referred to as authority to perform screening functions)—

(A) Screening passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(1)(iii)(A) of this section.

(2)(i) Each employee or contract employee covered under a certification made to an airport operator pursuant to § 107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or pursuant to § 107.209(n) of this chapter before December 6, 2001.

(ii) Each individual who holds on December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 107.205 of this chapter.

(iii) Each individual who is performing on December 6, 2001, a screening function identified in paragraph (a)(1)(iii) of this section.

(b) *Individuals seeking unescorted access authority or authority to perform screening functions.* Each aircraft operator must ensure that each individual identified in (a)(1) of this section has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section, before—

(1) Making a certification to an airport operator regarding that individual;

(2) Issuing an aircraft operator identification medium to that individual; or

(3) Authorizing that individual authority to perform screening functions.

(c) *Individuals who have not had a CHRC.* (1) Each aircraft operator must ensure that, on and after December 6, 2002:

(i) No individual retains unescorted access authority, whether obtained as a result of a certification to an airport operator under § 107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under § 107.209(n) of this chapter before December 6, 2001, or obtained as a result of the issuance of an aircraft operator's identification media, unless the individual has been subject to a fingerprint-based CHRC for unescorted access authority under this part.

(ii) No individual continues to have authority to perform screening functions described in paragraph (a)(1)(iii) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after December 6, 1991, the aircraft operator must immediately suspend that individual's unescorted access authority or authority to perform screening functions.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority or authority to perform screening functions, or while the individual has unescorted access authority or authority to perform screening functions. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the aircraft operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 14 CFR 108.229 impose a continuing obligation to disclose to the aircraft operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority.

(iv) A statement reading, ''The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)''

(v) A line for the printed name of the individual.

(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The aircraft operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The aircraft operator must:

(i) Advise the individual that a copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) Identify a point of contact if the individual has questions about the results of the CHRC.

(5) The aircraft operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the aircraft operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by the FAA for that purpose.

(7) The fingerprint submission must be forwarded to the FAA in the manner specified by the Administrator.

(f) *Fingerprinting fees.* Aircraft operators must pay for all fingerprints in a form and manner approved by the FAA. The payment must be made at the designated rate (available from the local FAA security office) for each set of fingerprints submitted. Information about payment options is available though the designated FAA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual described in paragraph (a)(1) of this section discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting unescorted access authority or authority to perform screening functions.

(2) When a CHRC on an individual described in paragraph (a)(2) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual's unescorted access authority or authority to perform screening functions not later than 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense.

(3) The aircraft operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority; individuals for whom it is issuing, or has issued, authority to perform screening functions; and individuals who are covered by a certification from an aircraft operator under § 107.209 (n) of this chapter. The aircraft operator may not make determinations for individuals described in § 107.209 (a) of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny authority to an individual described in paragraph (a)(1) of this section, the aircraft operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority or authority to perform screening functions and provide the individual with a copy of the FBI record if he or she requests it.

(2) The aircraft operator must notify an individual that a final decision has been made to grant or deny unescorted access authority or authority to perform screening functions.

(3) Immediately following the suspension of unescorted access authority or authority to perform screening functions, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her authority, and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority or authority to perform screening functions on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority or authority to perform screening functions.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny unescorted access authority or authority to perform screening functions.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority or authority to perform screening functions.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and § 107.209 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of airport operators who are determining whether to grant

unescorted access to the individual under part 107 of this chapter when the determination is not based on the aircraft operator's certification under § 107.209 (n) of this chapter.

(3) Other aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under this part.

(4) Others designated by the Administrator.

(k) *Recordkeeping.* The aircraft operator must maintain the following information.

(1) *Investigation conducted before December 6, 2001.* The aircraft operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(4) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's unescorted access authority or authority to perform screening functions. When files are no longer maintained, the criminal record must be destroyed.

(l) *Continuing responsibilities.* (1) Each individual with unescorted access authority or the authority to perform screening functions on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the aircraft operator and surrender the SIDA access medium to the issuer and cease performing screening functions, as applicable.

(2) Each individual with unescorted access authority or authority to perform screening functions who has a disqualifying criminal offense must report the offense to the aircraft operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the aircraft operator indicating that an individual with unescorted access authority or authority to perform screening functions has a possible conviction for any disqualifying criminal offense in paragraph (d) of this section, the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed the aircraft operator must immediately revoke any unescorted access authority and authority to perform screening functions.

(m) *Aircraft operator responsibility.* The aircraft operator must—

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigations for those whom the aircraft operator has made a certification to an airport operator under § 107.209 (n) of this chapter, and for those whom the aircraft operator has issued identification media that are airport-accepted. The aircraft operator must designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the employment history investigations of individuals with authority to perform screening functions whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) at appropriate locations to serve as the contact to receive notification from individuals seeking unescorted access authority or authority to perform screening functions of their intent to seek correction of their FBI criminal record.

(4) Audit the employment history investigations performed in accordance with this section and § 108.33 as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). The aircraft operator must set forth the audit procedures in its security program. Section 138 of ATSA removes the exemption for the individuals with access to U.S. Customs' secured areas.

Issued in Washington, DC on December 3, 2001.

Jane F. Garvey,

Administrator.

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Vol. 66, No. 235

Thursday, December 6, 2001

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

60139–62906 3
62907–63148 4
63149–63306 5
63307–63486 6

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations
7507 62907
7508 62909
7509 62911
7510 63149

5 CFR

6001 60139

7 CFR

301 63151
Proposed Rules:
352 63005
1410 63339

9 CFR

94 62913

12 CFR

5 62914
Proposed Rules:
Ch. IX 63008

14 CFR

39 ..... 60140, 60143, 60144, 60145, 62915, 63154, 63157, 63159, 63307
73 63433
93 63294
107 63474
108 63474
Proposed Rules:
39 ..... 63009, 63010, 63341
71 60162

18 CFR

381 63162

20 CFR

655 63298

21 CFR

510 ..... 63163, 63164
520 ..... 63165, 63166
524 63164
556 62916
558 62916

24 CFR

30 63436

26 CFR

Proposed Rules:
1 63203

30 CFR

256 60147
944 62917

33 CFR

117 ..... 62935, 62936, 62938, 62939, 62940
165 ..... 60151, 62940

34 CFR

Proposed Rules:
Ch. VI 63203

37 CFR

201 62942

38 CFR

17 ..... 63446, 63449
20 60152

40 CFR

8 63454
52 63311
62 63311
63 63313
70 ..... 62945, 62946, 62949, 62951, 62954, 62961, 62967, 62969, 63166, 63168, 63170, 63175, 63180, 63184, 63188, 63318
180 63192
261 ..... 60153, 62973
271 63331
Proposed Rules:
52 ..... 63204, 63343
80 60153

42 CFR

411 60154
1001 62980

43 CFR

3600 63334
3610 63334
3620 63334
3800 63334

44 CFR

Proposed Rules:
61 60176

47 CFR

1 62992
73 ..... 60156, 60157, 63199
76 62992
Proposed Rules:
73 63209

48 CFR

202 63334
212 63335
215 63334
217 63336
237 63335
242 63334
Proposed Rules:
235 63348

49 CFR

571 60157

Proposed Rules:
107.....63096
171.....63096
172.....63096
173.....63096
177.....63096
178.....63096
180.....63096

50 CFR

17.....62993
600.....63199
622.....60161
635.....63003
648.....63003
660.....63199

Proposed Rules:
17.....63349
21.....63349
648.....63013

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 6, 2001

DEFENSE DEPARTMENT

Acquisition regulations:

Multiyear contracting; published 12-6-01

Performance-based contracting; published 12-6-01

Technical amendments; published 12-6-01

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; published 12-6-01

Hazardous waste program authorizations:

Indiana; published 12-6-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Criminal history records checks; published 12-6-01

Airworthiness directives:

Boeing; published 11-1-01

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Inpatient hospital care and outpatient medical care; copayments; published 12-6-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant pest regulations; comments due by 12-10-01; published 10-9-01 [FR 01-25229]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant Protection and Quarantine Treatment Manual; incorporation by reference:

Limes; hot water treatment; comments due by 12-10-01; published 11-8-01 [FR 01-28065]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

King and tanner crab; comments due by 12-10-01; published 11-30-01 [FR 01-29772]

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 12-14-01; published 11-29-01 [FR 01-29640]

Domestic fisheries; exempted fishing permit applications; comments due by 12-14-01; published 11-29-01 [FR 01-29641]

International fisheries regulations:

Fraser River sockeye and pink salmon; inseason orders; comments due by 12-12-01; published 11-27-01 [FR 01-29495]

Marine mammals:

Atlantic Large Whale Take Reduction Plan; comments due by 12-13-01; published 11-28-01 [FR 01-29601]

CONSUMER PRODUCT SAFETY COMMISSION

Flammable Fabrics Act:

Mattresses/bedding; open flame ignition; flammability standard; comments due by 12-10-01; published 10-11-01 [FR 01-25442]

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Testimony by employees and production of official records in legal proceedings; comments due by 12-14-01; published 11-14-01 [FR 01-28543]

EDUCATION DEPARTMENT

Postsecondary education:

Higher Education Act Title IV program issues; negotiated rulemaking committees; intent to establish; comments due by 12-14-01; published 12-5-01 [FR 01-30260]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Wisconsin; comments due by 12-10-01; published 11-8-01 [FR 01-27829]

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste management system:

RCRA hazardous waste management facilities; standardized permit, corrective action, and financial responsibility; comments due by 12-11-01; published 10-12-01 [FR 01-24204]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Sethoxydim; comments due by 12-10-01; published 10-10-01 [FR 01-25021]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 12-10-01; published 11-8-01 [FR 01-27831]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 12-10-01; published 11-8-01 [FR 01-27832]

Water programs:

Pollutants analysis test procedures; guidelines—

Mecury; measurement method; comments due by 12-10-01; published 10-9-01 [FR 01-24886]

Water supply:

Underground injection control program—

Texas; Class I, III, IV, and V injection wells; comments due by 12-10-01; published 11-8-01 [FR 01-27835]

Texas; Class III brine mining injection wells; comments due by 12-10-01; published 11-8-01 [FR 01-27836]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Mississippi; comments due by 12-14-01; published 10-26-01 [FR 01-26943]

Practice and procedure:

Satellite Digital Audio Radio Service; terrestrial repeater networks authorization; comments due by 12-14-01; published 11-23-01 [FR 01-29328]

Radio stations; table of assignments:

Florida; comments due by 12-10-01; published 11-9-01 [FR 01-28205]

Missouri; comments due by 12-10-01; published 10-31-01 [FR 01-27348]

Texas; comments due by 12-10-01; published 10-31-01 [FR 01-27347]

FEDERAL COMMUNICATIONS COMMISSION

Television stations; table of assignments:

Florida; comments due by 12-13-01; published 11-5-01 [FR 01-27639]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Imported food products of animal origin; drug residue tolerances; comments due by 12-10-01; published 8-10-01 [FR 01-20161]

HEALTH AND HUMAN SERVICES DEPARTMENT

Grants:

Substance Abuse and Mental Health Service Administration; mental health and substance abuse emergency response criteria; comments due by 12-10-01; published 10-11-01 [FR 01-25451]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Practice and procedure:

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac)—

Corporate governance; comments due by 12-13-01; published 11-9-01 [FR 01-28214]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Light goose populations; harvest management; comments due by 12-11-01; published 10-12-01 [FR 01-25612]

Correction; comments due by 12-14-01; published 11-7-01 [FR 01-27940]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:

Tetrahydrocannabinols; placement into Schedule I

Clarification; comments due by 12-10-01; published 10-9-01 [FR 01-25023]

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Foreign language alien broadcasters; special fourth preference immigrant visas; comments due by 12-10-01; published 10-11-01 [FR 01-25478]

LABOR DEPARTMENT

Employment and Training Administration

Disaster unemployment assistance program; eligibility clarification due to September 11 terrorist attacks; comments due by 12-13-01; published 11-13-01 [FR 01-28412]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 12-14-01; published 11-14-01 [FR 01-28511]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 12-14-01; published 11-14-01 [FR 01-28512]

SMALL BUSINESS ADMINISTRATION

Business loans:

Loan guaranty and amounts, minimum guaranteed dollar amount of 7(a) loans, financing percentages, etc.; comments due by 12-14-01; published 11-14-01 [FR 01-28371]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Pennsylvania; comments due by 12-10-01; published 10-10-01 [FR 01-25425]

Vessel documentation:

Coastwise trade vessels; foreign ownership; ''sold foreign'' interpretation; comments due by 12-11-01; published 9-12-01 [FR 01-22815]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 12-14-01; published 11-19-01 [FR 01-28794]

Bell; comments due by 12-11-01; published 10-12-01 [FR 01-25695]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell; comments due by 12-14-01; published 10-15-01 [FR 01-25692]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 12-10-01; published 10-24-01 [FR 01-26713]

General Electric Co.; comments due by 12-10-01; published 10-10-01 [FR 01-25400]

Pilatus Britten-Norman Ltd.; comments due by 12-10-01; published 11-7-01 [FR 01-27653]

Sikorsky; comments due by 12-11-01; published 10-12-01 [FR 01-25696]

SOCATA-Groupe AEROSPATIALE; comments due by 12-12-01; published 11-14-01 [FR 01-28420]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Side impact protection and fuel system integrity—

Radial tires instead of bias ply tires used on moving barriers; comments due by 12-10-01; published 10-10-01 [FR 01-25428]

Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act; implementation:

Foreign safety recalls and campaigns related to potential defects; information reporting; comments due by 12-10-01; published 10-11-01 [FR 01-25429]

TREASURY DEPARTMENT

Thrift Supervision Office

Savings and loan holding companies:

Authority to engage in financial activities; comments due by 12-10-01; published 11-8-01 [FR 01-27889]

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:

Prepurchase counseling requirements; comments due by 12-10-01; published 10-11-01 [FR 01-25459]

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)

Last List November 23, 2001

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