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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–2 IFR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2002 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the production cap for the 2002 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields.

DATES: Effective March 18, 2002. Comments received by April 1, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the production cap for the 2002 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields. This action was recommended by the RAC at a meeting on November 13, 2001.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase,

distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in an RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in an RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in an RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on November 13, 2001, and recommended reducing the production cap from 2.75 to 2.0 tons per acre. With 2001 raisin-type variety grape production down by 31 percent, according to the California Agricultural Statistics Service, the RAC recommended reducing the production cap by about 30 percent to reflect 2001 crop yields. Paragraph (t) in § 989.156 of the order's rules and regulations is revised accordingly.

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projects a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the 2002 RDP. Of the 45,182 tons, 40,182 tons will be made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who plan to remove vines receiving priority over those who plan to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons will be made available to approved producers who submit applications to the RAC from December 21, 2001, through May 1, 2002, and plan to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(t) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in an RDP. This rule reduces the cap from 2.75 to 2.0 tons per acre to accurately reflect 2001 crop yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2002 RDP will have the opportunity to earn some income for not harvesting a 2002–03 crop. Producers will sell the certificates to handlers next fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest

costs for the 2002 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2001–02 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this rule. A 15-day comment period is deemed appropriate because producer applications were due to the RAC by December 20, 2001, and therefore the 2.0 tons per acre production cap should be in place as soon as possible.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The submission deadline for producer applications for the 2002 RDP was December 20, 2001; (2) producers are aware of this action which was recommended by the RAC at a public meeting; (3) the program is voluntary, and any producer can choose to produce a raisin crop for delivery in 2002; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989 — RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1.The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (t) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(t) Pursuant to § 989.56(a), the production cap for the 2002 raisin diversion program for the Natural (sun-dried) Seedless varietal type is 2.0 tons of raisins per acre.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6143 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 161

[Docket No. 99–053–2]

Origin Health Certificates for Livestock Exported From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to animal exports and the standards for accredited veterinarians to allow origin health certificates for animals intended for export from the United States to be valid for more than 30 days in some cases, depending on the testing requirements of the country of destination. This change will align our requirements for export origin health certificates with the testing requirements of importing countries. This action will eliminate the need for exporters to obtain another certificate when animals arrive at the port of embarkation after more than 30 days have elapsed, thereby reducing costs and delays for U.S. livestock exporters who ship animals to certain countries. This change will not increase the risk of infected or exposed animals being exported, since all animals are inspected an additional time before leaving the United States.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Bokma, Coordinator, Americas Region, National Center for Import and

Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8066.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, referred to below as the regulations, prescribe conditions for exporting animals from the United States. Among other things, § 91.3(a) provides that all animals intended for exportation be accompanied from the State of origin to the port of embarkation or border by an origin health certificate issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian. Origin health certificates attest that the animals in a shipment were inspected prior to export and were found free from any evidence of or exposure to communicable disease. The certificates also include identifying information pertaining to the individual animals in the shipment, as well as all test results, certifications, or other statements required by the country of destination.

The regulations in § 91.3(c) further require that all samples for tests be taken by an APHIS inspector or accredited veterinarian in the State of origin of the export movement and that, with certain exceptions, such sampling and testing be conducted within 30 days prior to the date of the export movement. Exceptions include cases in which the country of destination requires testing more than 30 days prior to the date of export. The regulations in 9 CFR part 161 contain requirements and standards for accredited veterinarians. Accredited veterinarians are authorized by APHIS to perform various types of work such as testing and inspecting animals for and issuing origin health certificates—on behalf of the Federal Government. Section 161.3, paragraph (b), states the length of time that certificates and other documents issued by an accredited veterinarian shall be valid. Prior to this final rule, the timeframe was 30 days from the date of inspection of the animal identified on the document, without exception. This meant that animals intended for export had to be inspected for purposes of the origin health certificate within 30 days prior to the date of export, even when sampling and testing could be conducted earlier.

On April 17, 2000, we published in the **Federal Register** (65 FR 20384–20387, Docket No. 99–053–1) a proposal to amend § 91.3(a) to allow animals intended for exportation to be inspected for origin health certificates more than 30 days prior to the date of export, in accordance with the testing requirements of the country of destination. In conjunction with this proposed action, we also proposed to amend the language in § 91.3(c) to provide that sampling and testing may be conducted more than 30 days prior to the date of export in instances where a receiving country allows rather than just requires, as the regulations previously stated this to occur. In addition, we proposed replacing the phrase ''the date of the movement of the animals for export'' with ''the date of export'' in both 91.3(a) and (c). We proposed this change to clarify that animals must be tested and inspected for origin health certificates 30 days or more, if the receiving country requires or allows it prior to the date they are actually exported, rather than 30 days from the date the animals started in transit to the port of embarkation or border. We further proposed to amend § 161.3(b) to allow origin health certificates issued by accredited veterinarians to be valid for more than 30 days in cases where the Administrator allows the animals identified on the document to be inspected more than 30 days prior to the date of export.

We solicited comments concerning our proposal for 60 days ending June 16, 2000. We received five comments by that date—four from livestock exporters, and one from a representative of a livestock export industry association. All supported the proposed rule, stating that, among other things, the proposed changes would improve their efficiency, eliminate costly delays, and help expedite livestock shipments.

However, two of the commenters indicated that, while our action was a step in the right direction, we did not go far enough. These commenters asserted that APHIS should change the validity timeframe of all U.S. origin health certificates and test results from 30 days to 45 days, unless otherwise required by the importing country. These commenters stated that 30 days is an insufficient amount of time to address the numerous problems that may arise during the export process; for example, if reactor animals need to be retested, or if mistakes or delays occur at the diagnostic laboratory. One of these commenters also asserted that extending the validity of origin health certificates for another 15 days would, in serious outbreak situations, give exporters time to avoid flight cancellation fees imposed by the airlines, and give importers time to reschedule quarantine space without incurring penalties. Moreover, this commenter stated that such a change would give APHIS' National Veterinary Services Laboratories (NVSL) more time to perform the necessary export tests.

One of the commenters also objected to our proposal to change the phrase ''date of movement for export'' in the regulations to ''date of export.'' This commenter stated that the ''previous interpretation'' that tests and origin health certificates remained valid if the animals had started in transit to the port of embarkation or border prior to 30 days from the date of the first test or the date of issuance of the certificate had assisted in facilitating livestock shipments on many occasions. The commenter also asserted that this change would likely contribute to the time problems faced by exporters.

We are making no changes to the final rule based on these comments. We agree that 30 days can be a short amount of time in which to complete the numerous steps involved in the export certification process. More to the point, however, the countries of destination—not APHIS— determine and enforce their own import health requirements, including the timeframes within which test results and export origin health certificates are considered valid.

As stated previously, while we recognize that problems and delays can occur with regard to obtaining the necessary tests, inspection, and other documentation required to certify animals for export, our experience shows that 30 days is not an unreasonable amount of time in most cases to complete the steps involved. For example, it typically takes only about 7 to 10 days to obtain test results for brucellosis, as well as for many of the other diseases of concern to importing countries. Nevertheless, APHIS' NVSL has undertaken a number of initiatives to improve its ability to provide efficient and expeditious service to exporters and other customers. For example, NVSL officials have developed guidelines that address the specific test requirements for exporting swine to China. NVSL officials have also developed a booklet that contains information about all currently available tests and reagents, including the length of time required to conduct each test. This document is available on the NVSL website at *http://www.aphis.usda.gov/vs/nvsl.* To avoid delays in processing the diagnostic tests necessary for export health certification, exporters are also encouraged to contact NVSL and/or the APHIS area veterinarian in charge in the State of origin to make arrangements for testing well in advance of planned shipping dates. Advance notification is particularly important for tests that are not run on a routine basis, such as those

for diseases like *Salmonella abortus-equi.*

It is ultimately the exporters' responsibility to ensure that he or she complies with all requirements for testing and obtaining the appropriate health certification for animals intended for export. Accordingly, while we recognize that flight and quarantine space cancellations caused by delays in completing the steps involved in the export process can be costly to both exporters and importers, such issues are beyond the scope of APHIS' jurisdiction and this rulemaking action. Finally, it was always our intent that the actual date of export—not the date when animals start in transit to the port of embarkation or border—determine the timeframe within which origin health certificates and test results are deemed valid.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. By extending the validity for origin health certificates issued for animals being exported to certain countries, this rule will make the export process less time consuming and expensive for livestock exporters and marketers. We have determined that approximately 2 weeks are needed to ensure that APHIS field personnel receive official notice of this change in the regulations. Therefore, the Administrator of APHIS has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations in 9 CFR part 91 to allow animals to be inspected for an origin health certificate as early as the country of destination allows or requires sampling or testing to be performed. We are also amending 9 CFR part 161 to allow an origin health certificate to be valid for more than 30 days when animals are allowed to be inspected more than 30 days prior to the date of movement for export in accordance with § 91.3.

Costs

Formerly, exporters who had their animals inspected and obtained an origin health certificate more than 30 days prior to the date of export had to obtain a new origin health certificate when the animals arrived at the port of embarkation or the border. On average, it costs $150 per shipment to have a veterinarian inspect animals for export and issue an origin health certificate. When this final rule becomes effective, the original origin health certificate will still be valid when the animals arrive at the port of embarkation or the border, and the exporter will not incur the costs of obtaining an additional origin health certificate.

Live Animal Exports

United Nations trade data show that U.S. exports of live animals are worth more than $½ billion dollars a year (see tables 1 and 2). On average, U.S. exports of live animals from 1993 through 1999 were distributed as follows: More than 40 percent went to Mexico and Canada, approximately 13.5 percent went to Japan, 2 percent went to Brazil, 1.1 percent went to the Republic of Korea (South Korea), and less than 1 percent went to Turkey, Egypt, or Taiwan. Of these countries, Brazil, Egypt, Japan, South Korea, Taiwan, and Turkey provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin.

TABLE 1.—U.S. EXPORTS OF LIVE ANIMALS

[In $1,000]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey	Rest of the world	Total
1993	$108,679	$127,058	$12,339	$1,337	$39,667	$4,777	$3,116	$2,339	$219,615	$518,927
1994	149,747	146,578	12,415	2,800	47,516	6,740	3,496	1,136	216,924	587,352
1995	31,409	124,974	14,179	2,196	110,646	8,856	2,791	7,689	216,502	519,242
1996	81,119	105,130	10,598	6,362	103,228	7,412	3,236	9,307	206,141	532,533
1997	210,013	111,446	13,691	2,261	109,123	8,060	2,495	2,042	235,965	695,096
1998	138,117	135,328	9,969	5,614	72,758	3,709	1,923	9,623	302,825	679,866
1999	103,681	180,262	9,863	4,115	74,766	6,866	2,882	4,276	271,306	658,017

TABLE 2.—U.S. EXPORTS OF LIVE ANIMALS

[As a percentage of total U.S. exports]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey
1993	20.9	24.5	2.4	0.3	7.6	0.9	0.6	0.5
1994	25.5	25.0	2.1	0.5	8.1	1.1	0.6	0.2
1995	6.0	24.1	2.7	0.4	21.3	1.7	0.5	1.5
1996	15.2	19.7	2.0	1.2	19.4	1.4	0.6	1.7
1997	30.2	16.0	2.0	0.3	15.7	1.2	0.4	0.3
1998	20.3	19.9	1.5	0.8	10.7	0.6	0.3	1.4
1999	15.8	27.4	1.5	0.6	11.4	1.0	0.4	0.6

Kazakhstan, Turkmenistan, and Uzbekistan also provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin. These three Central Asian countries imported relatively few live animals from 1993 through 1998 and none from the United States; 1999 import data are not currently available. Table 3 shows the value of live animals imported into these three countries and

the rest of the world, based on United Nations data.

TABLE 3.—IMPORTS OF LIVE ANIMALS

[In $1,000]

Year	Kazakhstan	Turkmenistan	Uzbekistan	All countries
1993	$600	$551		$8,965,958
1994	29		$400	9,556,484
1995	427		200	10,020,452
1996	137		200	9,925,704
1997	231		200	8,991,483
1998	433		200	8,991,071
1999				

This final rule will facilitate live animal exports from the United States to Brazil, Egypt, Japan, Kazakhstan, Korea, Taiwan, Turkey, Turkmenistan, Uzbekistan, and other countries that may allow or require animals to be tested, or samples to be taken for testing, more than 30 days prior to export from the United States. Approximately 17.5 percent of live animal exports from the United States went to these countries in the years 1993 through 1999. We do not know how many of these shipments were made by small entities. However, all U.S. entities, including small entities, who export live animals to these countries will benefit from this rule, albeit in a relatively small way, by not having to bear the costs of an additional origin health certificate, estimated at approximately $150 per shipment.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we are amending 9 CFR parts 91 and 161 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 1343f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 3901 and 3902; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.4.

2. In § 91.3, paragraph (a) and the second sentence in paragraph (c) are revised to read as follows:

§ 91.3 General export requirements.

(a) All animals intended for exportation to a foreign country, except by land to Mexico or Canada, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation by land to Mexico or Canada must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30 days prior to the date of export, except as follows: When the Administrator allows sampling or testing to be done more than 30 days prior to the date of export, in accordance with paragraph (c) of this section, then the animals also may be inspected within that same time period, and the origin health certificate will remain valid for that time period. The origin health certificate must certify that the animals were found upon inspection to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be endorsed by an authorized APHIS veterinarian in the State of origin and must include any test results added by the authorized APHIS veterinarian pursuant to § 161.3(k) of this chapter (any added test results must be initialed by the authorized veterinarian). The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings. The origin health certificate must include all test results, certifications, or other statements required by the country of destination.

* * * * *

(c) * * * The samples must be taken and tests must be made within the 30 days prior to the date of export, except that the Administrator may allow such sampling or testing to be conducted more than 30 days prior to the date of export if required or allowed by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of export. * * *

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.22, 2.80, and 371.4.

4. In § 161.3, the last two sentences in paragraph (b) are revised to read as follows.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(b) * * * Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document, except that origin health certificates may be valid for a longer period of time as provided in § 91.3(a) of this chapter. The accredited veterinarian must distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 11th day of March 2002 .

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6266 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–028–2]

Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. In the interim rule, we also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Senior Staff Officer, Invasive Species Team, Animal Health Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093.

SUPPLEMENTARY INFORMATION:

Background

Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula that causes extensive damage to livestock and other warmblooded animals. The adult female screwworm typically lays her eggs in open wounds on warmblooded host animals. Screwworm larvae hatch in as little as 12 hours and begin to feed on the flesh of the host animal; they are fully grown within 5 to 7 days after hatching. The fully grown larvae then drop from the host and tunnel into the soil, where they form protective cases to house themselves while they pupate. Adult screwworm flies emerge from these pupal cases and are ready to mate again within 3 to 5 days.

Screwworm was eradicated from the United States in 1966. However, in July of 1999, and again in February and March of 2000, screwworm larvae were found in horses that were imported into the United States from Venezuela and Argentina.

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively.

In an interim rule effective and published in the **Federal Register** on November 13, 2000 (65 FR 67617–67624, Docket No. 00–028–1), we amended the regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. We also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

We solicited comments concerning the interim rule for 60 days ending January 12, 2001. We received five comments by that date. They were from foreign and State governments, a trade association, and a U.S. veterinary medical association. We have carefully considered all of the comments we received. They are discussed below by topic.

Note: As explained below, we are amending the regulations in this final rule to require that horses that are imported from screwworm-affected regions must be tranquilized or sedated, rather than anesthetized, for the final examination so that the veterinarian performing that examination can thoroughly examine the horses' external genitalia. We are also amending the regulations to clarify that only male horses must be tranquilized or sedated for the purposes of the final examination. For consistency's sake, in the preamble of this final rule, we use the terms ''sedate or tranquilize'' in place of ''anesthetize'' in discussing the comments submitted by the public when it is consistent with the intent of the issues raised.

Anesthetization Requirement

In the interim rule, we set out inspection and treatment requirements for horses, ruminants, swine, and dogs imported from any region of the world where screwworm is considered to exist. Among other requirements, the interim rule established that horses that are imported from screwworm-affected regions be quarantined for a minimum of 7 days upon arrival in the United States at an Animal and Plant Health Inspection Service (APHIS) animal import center. On the seventh day of quarantine, prior to a horse's release, a veterinarian must examine the horse for screwworm at the expense of the owner or broker. For this final examination, the interim rule provided that the veterinarian must anesthetize the horse so that he or she can thoroughly examine the horse's external genitalia. If screwworms are found during this examination, the horse must be held in quarantine and treated until free.

Several commenters took issue with requiring that horses imported from screwworm-affected regions be anesthetized for the final examination. These commenters stated that anesthesia is unnecessary and that tranquilization or sedation will be sufficient in order to perform the final examination. Two of these commenters expressed concern over the physical risk associated with the use of anesthetics. One commenter recommended that if APHIS finds it necessary to examine the horses for screwworm during quarantine, then that examination could be performed on the final day of quarantine without anesthetization. This commenter suggested that if the veterinarian performing the final examination determined that further examination requiring anesthetization was necessary, then the horse could be held and examined at a later point in time.

We agree with these commenters that sedating or tranquilizing the horses will

be sufficient so that the veterinarian performing the final examination can thoroughly examine the horses' external genitalia. Many of the horses imported into or entering the United States from screwworm-affected regions are valuable purebred horses. Tranquilizing or sedating the male horses will help to ensure the safety of the horses and the veterinarian during the examination. Therefore, we are amending the regulations to require that horses that are imported from screwworm-affected regions be tranquilized or sedated, rather than anesthetized, for the final examination so that the horses' external genitalia can be thoroughly examined by the veterinarian.

Horses Subject to the Sedation or Tranquilization Requirement

One commenter stated that, while it has been assumed that the tranquilization or sedation requirement applies only to male horses because of the difficulties in examining their external genitalia, the interim rule does not specify only male horses are subject to this requirement. This commenter recommended that we specify that male horses must be tranquilized or sedated for the final examination.

We appreciate this commenter's suggestion. The interim rule required that horses be tranquilized or sedated for the final examination so that the external genitalia of the horses can be thoroughly examined. However, we did not state that this requirement only pertains to male horses. For greater clarity, we are amending the regulations in § 93.301(j)(7) in this final rule to specify that only male horses are subject to this requirement.

Different Examination Requirements for Horses Than for Ruminants and Swine

Two commenters questioned the rationale for requiring the tranquilization or sedation of only horses for the final examination; both commenters noted that there is no similar requirement for ruminants or swine. One of these commenters asked if APHIS had determined that tranquilizing or sedating ruminants and swine is unnecessary to thoroughly examine their external genitalia, or if APHIS had gathered information from other countries confirming that screwworm infestations are not found on the prepuce of ruminants and swine. Another commenter stated that if horses are tranquilized or sedated for the final examination so that the veterinarian can thoroughly examine the horses' external genitalia, then the genitals of all species should be examined because screwworm infestations do not occur exclusively on the prepuce of horses. This commenter also stated that, because of the final examination requirement and extended quarantine period for horses that are imported from screwworm-affected regions, the interim rule placed a greater regulatory burden on the horse industry than on importers of other species mentioned in the rule.

Protocol requirements for ruminants and swine are the same as for horses, other than for the 7-day quarantine and final examination of the tranquilized or sedated animal. Due to the life cycle of screwworm, a minimum quarantine period of 7 days is necessary to ensure the detection of screwworm infestations in animals that were infested just prior to their export to the United States. Because ruminants and swine are already required under the regulations to be quarantined for at least 7 days, it was not necessary to adjust the length of time those animals must be held in quarantine. It was necessary, however, to extend to 7 days the length of time that horses, when imported from screwworm-affected regions, must be held in quarantine, given the life cycle of the pest.

After hatching, screwworm larvae are fully grown within 5 to 7 days. Because horses are released from quarantine close to the time that any screwworm infestations that may have occurred just prior to export would mature and become visible upon inspection, it is necessary to perform an examination on the final day of quarantine to ensure that any infestations are detected and eliminated. Due to the difficulties in examining the external genitalia of male horses, those animals must be tranquilized or sedated for that examination so that the veterinarian can thoroughly examine the external genitalia while ensuring his or her own safety, as well as the safety of the horses.

Screwworm infestations can be detected on the prepuce of ruminants and swine. However, except for those ruminants imported from Central America and the West Indies, ruminants and swine are already required under §§ 93.411 and 93.510 of the regulations to be quarantined for 15 and 30 days, respectively. During this period, the animals are observed for disease or infestation with animal pests. These quarantine and inspection requirements provide ample time and opportunity to detect and eliminate any screwworm infestations on these animals. Therefore, a final examination for these animals is unnecessary.

Ruminants from Central America and the West Indies are subject to different importation requirements than ruminants from all other regions. Out of those countries and regions that constitute Central America and the West Indies, only Panama is affected by screwworm. Panama does not have a history of ruminant exports to the United States; within the last 10–15 years, only one ruminant, a prized bull, was imported from Panama into the United States. In the event that ruminants were imported from Panama, or in the event that ruminants were imported from any other region in Central America or the West Indies that becomes affected by screwworm, the ruminants are required under § 93.423 to be quarantined for 7 days upon arrival in the United States, during which time they are subject to dippings and blood tests or other tests necessary to determine if these animals are free from communicable diseases. We believe that these requirements are sufficient to prevent the introduction of screwworm from ruminants imported from those regions.

Treatment Protocols

Several commenters questioned the need to quarantine horses for 7 days before performing the final examination for screwworm infestation and recommended alternative treatment protocols. One of these commenters suggested that if ivermectin was administered at recommended doses 2 weeks prior to export and again 24 hours prior to export, there would be sufficient tissue concentration of the drug to ensure that any larvae present are killed. Another commenter questioned whether the 7-day quarantine could be cut to 5 days with a second administration of ivermectin upon arrival in the United States.

Research has shown that ivermectin is effective within 3 to 5 days after treatment against the early stages of screwworm infestation, which are difficult to observe during visual inspection of the animals. Screwworm larvae hatch in as little as 12 hours and are fully grown within 5 to 7 days after hatching. Although additional doses of ivermectin administered just prior to export or upon arrival in the United States would reduce the risk of the horses becoming infested with screwworm, a 7-day quarantine is necessary to allow time for any screwworms that infested the animals just prior to export to the United States to mature and for any infestations to become visible upon inspection.

Cancellation of Reservations at APHIS Quarantine Facilities

One commenter expressed concern over the cancellation policy for

reservations at quarantine facilities maintained by APHIS. This commenter stated that reservation fees should not be forfeited if services provided by carriers are unavailable within the required period because of unforseen circumstances. In particular, this commenter was concerned that transportation services for livestock from Argentina to the United States are unreliable due to a limited number of regularly scheduled flights and frequent, unscheduled delays that exceed 24 hours.

The regulations in § 93.304(a)(3) set out the reservation fee requirements for securing space at quarantine facilities for horses. The importer or importer's agent must pay or ensure payment of a reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. With certain exceptions, reservation fees will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made. The reservation system is necessary in order to ensure that there is sufficient space in the quarantine facilities and that APHIS recovers its expenses for providing these services. Because this system is necessary and applies to all horses quarantined at an APHIS quarantine facility, not just those horses imported from screwworm affected regions, and because the interim rule did not make any changes to the reservation system, this comment falls outside the scope of this rulemaking. Therefore, we are not making any changes to the rule as a result of this comment.

Exemptions for the 7-Day Quarantine Requirement

One commenter requested that APHIS consider allowing registered thoroughbred horses imported temporarily into the United States and registered thoroughbred horses returning to the United States from screwworm-affected regions to enter the United States without meeting the extended 7-day quarantine requirement. This commenter argued that the risk of screwworm being introduced into the United States would be negligible provided that these horses are kept under intensely managed and controlled conditions while in the screwworm-affected region.

We are not making changes in this final rule as a result of this comment. We do not currently have an assessment of the risk associated with the importation of horses under the conditions described by the commenter and, therefore, cannot confirm that importing horses under those conditions would ensure against the further introduction of screwworm into the United States. However, we may consider amending the regulations in future rulemaking to address the issues raised by this commenter.

Approved 7-Day Quarantine Facilities

Two commenters expressed concern over the lack of space in, and the limited numbers of, APHIS animal import centers approved as 7-day quarantine facilities. One of these commenters was concerned that, because the quarantine facility located at Hollywood Park, CA, is not approved as a 7-day quarantine center, horses entering the United States to race at Hollywood Park from screwworm-affected countries must be quarantined at another facility approved as a 7-day quarantine facility. The other commenter argued that no scientific rationale supports limiting approved quarantine centers to APHIS-owned facilities. This commenter requested that APHIS consider authorizing those public or private quarantine facilities that are equipped to undertake the required inspection and testing protocols for screwworm as approved 7-day quarantine centers.

Authorizing public or private quarantine facilities as approved 7-day quarantine centers is outside the scope of this rulemaking. Therefore, we are not making any changes to the rule based on this comment. However, because recent demand for quarantine services for horses has exceeded the space available at existing facilities, we are considering developing standards for allowing the establishment of permanent, privately owned quarantine facilities.

Increases in User Fees for Quarantine Services

In a final rule published in the **Federal Register** on August 28, 2000 (65 FR 51997–52010, Docket No. 97–058–2), we changed our user fees for import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors. That final rule increased user fees for quarantine services, among other services, for fiscal years 2001 through 2004. One commenter requested that APHIS review those increases in user fees for quarantine services in light of the increased costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected countries.

The annual increases in user fees for quarantine services set out in the August 2000 final rule mentioned above reflect standard annual increases in expenses and are necessary for APHIS to recover the anticipated cost of providing those services each year. Because the user fees must be adjusted annually for APHIS to recover its expenses, and because the interim rule did not make any changes to the user fees, reviewing or making changes to the user fees charged for quarantine services falls outside the scope of this rulemaking.

Emergency Action and Opportunity to Comment on Rulemaking

One commenter objected to the issuance of an interim rule ''without sufficient time to consider the issues.'' This commenter stated that, at the time of publication, the United States was not facing such emergency conditions that would have warranted an interim rule.

We disagree with this comment. Screwworm was eradicated from the United States in 1966. However, in July 1999, and again in February and March 2000, screwworm larvae were found in horses imported into the United States from Argentina and Venezuela. The Administrator of APHIS determined that immediate action was necessary to prevent further introductions of screwworm into the United States. Prior notice was impracticable and contrary to public interest under these circumstances. The preembarkation requirements for ruminants, swine, and dogs and preembarkation and postarrival requirements for horses imported from any region of the world where screwworm is considered to exist were considered necessary on an emergency basis to safeguard the United States from screwworm.

Economic Effects

One commenter stated that the economic information presented in the interim rule underestimated the number of horses exported from the United Arab Emirates to the United States between 1995 and 1998. In the interim rule, we stated that, out of those screwworm-affected regions where other diseases that would require at least a 7-day quarantine are not known to exist, only Argentina is a significant source of horses imported into the United States. To support this point, we stated that China, the Philippines, Taiwan, and the United Arab Emirates also exported horses to the United States during the period 1995–1998, but collectively they exported only 5 horses in 1995, 9 horses in 1996, 14 horses in 1997, and 13 horses in 1998. The commenter stated that the number of horses exported from the United Arab Emirates alone in each of those years exceeded the collective

number of horses exported from China, the Phillippines, Taiwan, and the United Arab Emirates cited in the interim rule.

This commenter is indeed correct; while the interim rule's economic analysis accurately estimated the number of horses imported permanently into the United States from those regions, it did not account for horses imported under temporary permits, such as competition or race horses. Out of all breeding, commercial, competition, purebred, and race horses imported, both permanently and temporarily, from screwworm-affected regions, Argentina accounted for 83 percent (1,730 of 2,094) of horses imported between 1996 and 2001. The United Arab Emirates supplied 14 percent (299 of 2,094) of horses imported from affected regions during the same 6-year period. The remaining 3 percent of horses imported from screwworm-affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand. However, because only 2 percent (1,952 of 94,729) of all horses imported into the United States between 1996 and 2001 were from screwworm-affected regions, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

Several commenters expressed concern that the economic effects of the interim rule on the horse industry were underestimated in the interim rule's economic analysis. Several commenters stated that the costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected regions will have a significant impact on the U.S. horse industry, especially in light of the increase in quarantine fees at APHIS quarantine facilities. Several commenters also opposed the additional inspection and quarantine requirements because the resulting cost increases, along with reservation deposits, time away from training for horses, additional post-quarantine time to allow for drug residues to be eliminated prior to competition, and any potential complications, will inhibit the movement of foreign horses to and from the United States. For example, one commenter stated that these costs alone exceed the value of a green polo pony from Argentina.

The additional inspection requirement for horses contained in the interim rule affects only those importers moving horses into the United States from regions of the world where screwworm is considered to exist. In addition, the quarantine period is extended to 7 days only for those horses that are imported from screwworm-affected regions where other diseases that require at least a 7-day quarantine are not known to exist. These requirements affect a limited number of regions. As mentioned above, Argentina and the United Arab Emirates accounted for 83 percent and 14 percent, respectively, of horses imported from regions subject to these requirements during the period 1996–2001. The remaining 3 percent of horse imports from affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand during that same 6-year period. Furthermore, the additional costs borne by importers moving horses into the United States from screwworm-affected regions as a result of the additional inspection and treatment requirements are small when compared to the import value of the horses. For example, the average value of purebred horses imported from screwworm-affected countries in the Western Hemisphere, excluding Argentina, between 1998 and 2000 was $10,697. The costs for the preembarkation inspection of and treatment for screwworm represent 1 to 2 percent of this average value.

For horses imported from screwworm-affected regions that are not already affected by other diseases that require at least a 7-day quarantine, the additional cost will have a larger impact. Between 1998 and 2000, the average value of purebred horses imported from Argentina was $6,625; the preembarkation inspection and treatment costs for screwworm, as well as the 4 additional days in quarantine, are about 13 to 14.6 percent of the average value of these horses.[1] However, a relatively small percentage of horses imported into the United States are expected to be affected. Out of 94,729 horses imported into the United States between 1996 and 2001, only 2 percent (1,952 of 94,729) were from screwworm-affected regions.

As only a small percentage of horses are imported into the United States from screwworm-affected regions, it can be concluded that the additional requirements set out in the interim rule will not significantly impact the entire U.S. horse industry nor inhibit the movement of foreign horses to and from the United States. The largest impact will be borne by the importers of horses from Argentina and other countries that must quarantine their animals for 4 additional days. Nonetheless, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

In addition to the changes mentioned above, we are adding, to §§ 93.301, 93.405, 93.505, and 93.600, the Office of Management and Budget control numbers assigned to the information collection requirements associated with the interim rule, as required by the Paperwork Reduction Act.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on November 13, 2000. This rule provides that horses that are imported from regions of the world where screwworm is considered to exist must be sedated or tranquilized, rather than anesthetized, for the purposes of the examination on the seventh day of quarantine. In addition, this rule specifies that only male horses must be sedated or tranquilized during that examination. Immediate action is necessary to provide for the use of an appropriate level of chemical restraint and clarify that female horses do not require such restraint. These changes are, therefore, necessary to relieve requirements that we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR part 93 that was published at 65 FR 67617–67624 on November 13, 2000, is adopted as a final rule with the following changes:

[1] The cost estimates quoted in the interim rule for horse imports have been updated here to incorporate up-to-date import figures for 1999 through 2001 and reflect the annual cost increases in user fees for quarantine services provided by APHIS.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.301, paragraph (j)(7) is revised to read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(j) * * *

(7) Horses must be held at the animal import center for a minimum of 7 days. On day 7, prior to the horses' release, the horses must be examined by a veterinarian at the expense of the owner or broker. For this examination, male horses must be tranquilized or sedated so that the external genitalia of the horses can be thoroughly examined. If screwworm is found during this examination, the horses must be held in quarantine and treated until free of infestation. (Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)

§ 93.405 [Amended]

3. Section 93.405 is amended by revising the OMB control number citation at the end of the section to read as follows: ''(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)''.

§ 93.505 [Amended]

4. Section 93.505 is amended by adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0165)''.

§ 93.600 [Amended]

5. Section 93.600 is amended by adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0165)''.

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6268 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 01–125–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Inez D. Hockaday, Acting Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of the Animal and Plant Health Inspection Service's Veterinary Services (VS) program on a Sunday, holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. The new allowance is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

The number of requests for overtime services of a VS employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not

intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, we are amending 9 CFR part 97 as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 280, and 371.4.

2. In § 97.2, the table is amended by revising, under the State of Washington, the entry for Sumas to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* * *	*	*
Washington:			
* * *	* * *	*	*
Sumas	Blaine		2
Do	Olympia		6
Do	Seattle		6
* * *	* * *	*	*

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6269 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment 2 to Certificate of Compliance (CoC) Number 1025. This amendment will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: The final rule is effective May 29, 2002, unless significant adverse comments are received by April 15, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No.

ML013480571. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

CoC No. 1025, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment 2, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail *RWB@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444) that approved the NAC–MPC cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1025.

Discussion

NAC International, the certificate holder for CoC No. 1025, submitted an application to the NRC to amend the CoC on May 19, 2000; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. The applicant requested an amendment to permit a part 72 licensee to store a new type of fuel in the NAC–MPC. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. No other changes to the NAC–MPC cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–MPC cask design listing in § 72.214 by adding Amendment 2 to CoC No. 1025. The amendment includes a revision of the TS in their entirety to revise the format of the TS and to include specifications for the new type of fuel and new operational limits. Details on specific changes to the TS are discussed in the SER.

The redesigned NAC–MPC cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

§ 72.214 List of approved spent fuel storage casks.

Certificate No. 1025 is revised by adding the effective date of Amendment 2.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility

Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–MPC cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–MPC cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC cask design by adding it to the list of NRC-approved cask designs in § 72.214. On May 19, 2000, the certificate holder, NAC International, submitted an application to the NRC to amend CoC No. 1025; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small

Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.
Initial Certificate Effective Date: April 10, 2000.
Amendment Number 1 Effective Date: November 13, 2001.
Amendment Number 2 Effective Date: May 29, 2002.
SAR Submitted by: NAC International.
SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).
Docket Number: 72–1025.
Certificate Expiration Date: April 10, 2020.
Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6228 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB88

Reporting Levels for Large Trader Reports; Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its rules to establish reporting levels for security features products (SFPs) traded on designated contract markets and notice-designated contract markets. The reporting levels are 1000 contracts for an SFP involving an individual security and 200 contracts for an SFP involving a narrow-based index of equity securities.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [*GMartinaitis@cftc.gov*] or [*NYanofsky@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. 106–554, which extensively revised the Commodity Exchange Act (Act). Among other things, the CFMA removed the restriction in the Act on the trading of futures contracts on individual equity securities and narrow-based indices of equity securities.[1] Under the revised law, these products are now referred to as ''security futures products'' (SFPs)[2] and may be traded on designated contract markets, notice-designated contract markets and registered derivatives transaction execution facilities.

SFPs, like all other commodities traded on Commission-designated markets, will be subject to the Commission's large trader reporting rules. Those rules require futures commission merchants, clearing members and foreign brokers to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set for individual futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures

[1] *See* section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the Act.

[2] The term ''security futures product'' is defined in section 1a(32) of the Act to mean ''a security future or any put, call straddle, option, or privilege on any security future.'' The term ''security future'' is defined in section 1a(31) of the Act; it generally means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except exempted securities (with the exclusion of municipal securities) and certain agreements, contracts, or transactions excluded from the Act. Because the CFMA provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be made available for trading during the next two years.

markets and other matters of public interest. Generally, large trader reports are filed by the firm carrying the reportable trader's position.[3]

Based upon its experience in administering the large trader reporting system, the Commission proposed establishing a reporting level of 1000 contracts for SFPs involving an individual security[4] and 200 contracts for SFPs involving a narrow-based index of securities.[5] 66 FR 64383 (December 13, 2001). In its proposal, the Commission stated its intent to review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether these levels are too high or too low for effective market surveillance.

The Commission noted in its proposal that the rules require the reporting of positions in SFPs on notice-designated contract markets. Notice-designated contract markets are entities that are otherwise regulated by the Securities and Exchange Commission (such as registered national securities exchanges and registered national securities associations) that apply for and, pursuant to a notice-filing procedure, become designated as contract markets by the Commission for the limited purpose of trading SFPs.[6] The Act and the Commission's regulations exempt notice-designated contract markets from certain provisions of the Act and the Commission's regulations; these trading facilities, however, are subject to the Commission's large trader reporting system.[7] Thus, futures commission merchants (whether registered under a full or a notice filing-procedure under rule 3.10[8]), clearing members, foreign brokers and others who have reporting and other obligations under parts 15 through 21 of the Commission's rules will have concomitant obligations with respect to SFPs traded on notice-designated contract markets.

The Commission received two comment letters on its proposal—one from a contract market, the Chicago Mercantile Exchange (CME), and one from a national securities exchange that, in connection with listing and trading SFPs, is required to become a notice-designated contract market, the American Stock Exchange (AMEX). Both the CME and the AMEX generally supported the reporting levels. The CME specifically noted that the levels appropriately balance the protection of market integrity with administrative burdens. AMEX commented that, based on actual trading experience, the Commission may in the future need to establish higher reporting levels. AMEX also suggested that it may be appropriate for the Commission to tier reporting levels to take into account capitalization, trading volume and/or public float of the underlying security.[9]

The Commission is adopting the reporting levels as proposed. As stated in the proposal, and consistent with the comments, the Commission will review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether the levels are too high or too low for effective market surveillance. While the Commission does not anticipate tiered reporting levels, due to the administrative difficulties inherent in such a system, the Commission has not ruled out such an approach and will consider it, as appropriate.[10]

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 66 FR at 64384. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules with their comment letters. The Commission has considered the two comment letters received, neither of which specifically addressed the Commission's analysis of the costs and benefits of the proposed rules.

The Commission has considered the costs and benefits of the proposed rules and has decided to adopt the rules as discussed above.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that federal agencies, in proposing rules, consider the impact of those rules on small

[3] Generally, parts 17 and 18 of the regulations, 17 CFR parts 17 and 18, require reports from firms and traders, respectively, when a trader holds a ''reportable position.'' A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and part 150.

The firms which carry accounts for traders holding ''reportable positions'' are required to identify those accounts by filing a CFTC Form 102 and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[4] Based on staff discussions with industry participants, the Commission understands that futures contracts on individual securities will specify 100 shares of the underlying security.

[5] This number corresponds to the current reporting level for security options.

[6] *See* section 5f of the Act, 7 U.S.C. 7f.

[7] *See* section 4f(a)(4) of the Act, 7 U.S.C. 6f(a)(4); 17 CFR 41.34. The Commission discussed the application of its large trader reporting system to notice-designated contract markets when it adopted its rules governing these markets. *See* 66 FR 44960 (Aug. 27, 2001).

[8] *See* 66 FR 43080 (Aug. 17, 2001).

[9] AMEX also noted its intent to use its current reporting level of 200 (which applies to options positions on stocks, shares of exchange-traded funds and stock indexes) for SFPs.

[10] AMEX noted that some firms are considering submitting their reports through the Security Industry Automation Corporation (SIAC). The Commission and the exchanges are working with SIAC to facilitate this. Whether or not the reports are filed through SIAC, the reporting firm remains responsible for the filing of the report.

entities. The Commission has previously determined that large traders and FCMs are not ''small entities'' for purposes of the RFA.[11] The amendment to reporting requirements primarily impacts FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.,* large positions. The Commission invited comments from any firm believing that these rules would have a significant economic impact on its operations. No comments were received in response to that invitation,

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes that the rule amendment does not contain information requirements which require the approval of the Office of Management and Budget. The purpose of this rule is to establish a specific reporting level for security futures products.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 4g, 4i, 5, 5a and 8a of the Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a, as amended, the Commission hereby proposes to amend Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is amended by revising paragraph (b) to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Index of Equity Securities	100
All Other Commodities	25

Issued in Washington, DC, this 11th day of March, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–6288 Filed 3–14–02; 8:45 am]

BILLING CODE 6351–01–M

[11] 47 FR 18618–20 (Apr. 30, 1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 96P–0460]

Topical Antifungal Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 8, 2002 (67 FR 5942). The document amended the final monograph for over-the-counter (OTC) topical antifungal drug products to add the ingredient clotrimazole as generally recognized as safe and effective for the treatment of athlete's foot, jock itch, and ringworm. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 02–3079, appearing on page 5942 in the **Federal Register** of Friday, February 8, 2002, the following correction is made:

1. On page 5942, in the first column, ''[Docket No. 99N–4063]'' is corrected to read ''[Docket No. 96P–0460]''.

Dated: March 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6180 Filed 3–14–02; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in April 2002. Interest assumptions are also published on the PBGC's Web site *(http://www.pbgc.gov).*

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during April 2002, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during April 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during April 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 5.50 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 4.25 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*		*	*	*	*	*	
102	4–1–02 ...	5–1–02 ...	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
102	4–1–02	5–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
*	*	*	*	*	*	
April 2002	.0550	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6427 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA79

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is amending the regulation governing the Treasury Tax and Loan (TT&L) program, to provide the Secretary greater flexibility to adjust the rate of interest we charge on funds loaned through the existing TT&L investment option. In addition, Treasury is making regulatory changes that will allow us to test the feasibility of a new investment option known as the term investment option. The term investment option would provide financial institutions participating in the TT&L investment program with another option for borrowing Treasury funds. Under the term investment option, Treasury may invest excess balances with TT&L participants at a market based rate of interest for a predetermined period of time.

DATES: This final rule is effective April 15, 2002.

ADDRESSES: You can download this final rule at the following web site: *http://www.fms.treas.gov/eftps.* You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or *walt.henderson@fms.treas.gov;* Ellen Neubauer, Senior Attorney, at (202) 874–6680 or *ellen.neubauer@fms.treas.gov;* or John Galligan, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or *john.galligan@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background on the Treasury Tax and Loan Program

The Treasury Tax and Loan (TT&L) program, 31 CFR part 203 (part 203), encompasses two separate components—a depositary component through which we collect Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which we invest short-term operating balances not needed for immediate cash outlays.

Through the TT&L depositary component, which comprises nearly 10,000 commercial financial institutions and Federal Reserve Banks (FRBs), we collected over $1.6 trillion in Fiscal Year 2001, representing approximately 80 percent of the total Federal annual tax receipts, from approximately 5 million business taxpayers.

Nearly 1,400 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed under this Part, participating depositaries borrow Treasury funds in the form of a note secured with collateral pledged to Treasury and pay interest to the Treasury on these balances. In Fiscal Year 2001, we earned nearly $1 billion in interest income through the TT&L investment component.

The Secretary is required to consider the prevailing market in prescribing the rate of interest. (31 U.S.C. 323) In 1978 when the interest rate formula was implemented, the overnight repurchase agreement market was not mature and a published rate was not available. Thus, the TT&L rate was set as an approximation of an overnight repurchase agreement rate. At that time, it was generally believed that the Federal funds rate averaged twenty-five basis points above the volume-weighted average interest rate from overnight repurchase agreements secured by Treasury securities and select Agency securities, and executed by the Federal Reserve Bank of New York for its monetary operations. Historically, the overnight repurchase agreement rate and the Federal funds rate generally have moved broadly in tandem.

On July 30, 1999, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) at 64 FR 41748. The NPRM proposed a change to the interest rate we charge on funds loaned through the TT&L program, including funds loaned through the direct investment and special direct investment programs, from the Federal funds rate less twenty-five basis points to an overnight repurchase agreement rate. The closing date for submission of comments was September 28, 1999. Copies of the comments are available on the Financial Management Service's (FMS) web site at *http://www.fms.treas.gov/eftps.* Based on the comments we received, we have reconsidered that change. Instead, we are amending Part 203 to allow the Secretary the flexibility to adjust the rate of interest, taking into consideration prevailing market conditions.

The NPRM also sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. Given the level of interest expressed for this concept, Treasury is considering offering an investment option which incorporates a term feature. Amending Part 203 will enable us to proceed with the design and testing of this option. The new TT&L investment option under consideration is called the term investment option and will be designed so that the Treasury may earn a market based rate of return on investments with a fixed term. The term investment option will provide an additional investment option for current TT&L participants and may also increase participation in the TT&L program. Treasury expects that the rate of interest earned on term investments will reflect a market rate of return for similar funds.

At a later date, Treasury will also be publishing an NPRM for Part 203 to reflect terminology changes brought about by the October 2000 implementation of the Treasury Investment Program (TIP), the component of the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure invested funds and public money.

Comments on the Proposed Rule

By the close of the comment period on September 28, 1999, we received comment letters on the NPRM from 56 financial institutions and 3 industry trade associations. Following is a discussion of the issues:

Reaction to a Change in the Treasury Tax and Loan Rate of Interest

All of the commenting financial institutions and one industry trade association opposed the change in the TT&L rate of interest proposed in the NPRM. All commenting financial institutions stated that the proposed rate change (from the Federal funds rate less twenty-five basis points to a rate based on the overnight repurchase agreement rate) would decrease the level of participation in the TT&L program. Several financial institutions, including the largest TT&L investment program participants, commented that the proposed TT&L rate of interest did not take into account certain characteristics of the program such as Treasury's ability to place or call funds with little or no notice and prescribed collateral requirements, both of which should be factored into the rate. Also, many commenting financial institutions expressed concerns about the source and availability of the overnight repurchase agreement rate and the lack of historical data associated with this rate.

Adjusting the TT&L Rate of Interest

We agree with the respondents that a TT&L rate based on the overnight repurchase agreement rate does not adequately take into consideration the embedded option to place or call funds with little or no advance notice, nor the administrative costs associated with posting and transferring TT&L collateral. Thus, the proposed rate does not meet our goal of establishing a rate reflective of the prevailing market for a transaction with characteristics economically similar to the TT&L investment program. We have therefore deleted those provisions of the NPRM that would change the TT&L rate of interest to an overnight repurchase rate.

Nevertheless, we have determined that the best way to ensure that the Treasury continues to earn the prevailing market rate of return is to periodically review the TT&L rate of interest and make any necessary adjustments as market conditions dictate. The final rule therefore allows the Secretary to periodically adjust the rate taking into consideration the prevailing market for a transaction with characteristics similar to the TT&L investment program. This will provide Treasury greater flexibility in earning a market based rate of return on investments. The rate will be established through *TT&L Special Notices to Depositaries* and will be published in the **Federal Register** and on the FMS web site. A *TT&L Special Notice to Depositaries* is included herein establishing the TT&L rate of interest as the Federal funds rate less twenty-five basis points.

Obtaining Funds for a Predetermined Period of Time

The NPRM sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. The majority of commenters noted that the call feature associated with TT&L funds made participation in the program less desirable for financial institutions. Of the 15 commenters who specifically commented on their interest in obtaining TT&L funds for a predetermined period of time, 11 expressed some interest in the concept. In further discussions with financial institutions regarding the benefits of holding funds for a predetermined period of time, financial institutions again generally reacted favorably to the concept. Based upon these comments, we are considering a new investment component of TT&L, referred to as the term investment option.

Description of the Term Investment Option

The term investment option would provide Treasury with an option to invest excess operating funds with participating financial institutions for a predetermined period of time. This option is in the early stages of development and we anticipate that it will be offered initially on a pilot basis. Under this option, Treasury will determine the rate of interest taking into consideration the prevailing market and will either establish a predetermined rate based on a benchmark or establish the rate of interest based on the results of a bidding process. The term investment option may be offered by the Treasury at any time there are excess operating funds, providing an additional cash management tool for placing excess funds. The addition of this option may

also expand the total capacity within the TT&L program by providing an additional investment option for financial institutions, and may encourage greater participation. This rule is being amended to give us the flexibility to offer this option on a pilot basis and, after evaluating the pilot, on an ongoing basis if warranted. Additional details regarding the term investment option will be published in procedural instructions provided to financial institutions.

Summary of Changes

Definitions

Main note balance—the phrase main note balance has been added to section 203.2 of the final rule to describe the existing open-ended note balance maintained by financial institutions currently participating in the TT&L investment program. This phrase has been added as a means of differentiating between the existing open-ended note balance and the new *term note balance.* The phrase main note balance is used in §§ 203.3; 203.13; 203.19; 203.21; and 203.23 as necessary to clarify that certain features of the existing investment program, such as how funds move in and out of the main note balance, are not applicable to the new term investment option. The features of the existing investment program are unchanged. Where the phrase note balance is used, it is intended to refer to both the main note balance and the term note balance as, for example, in § 203.24 (g).

Term investment option—the phrase *term investment option* has been added to § 203.2 of the final rule to describe the new investment option introduced in this rule. Through the term investment option, financial institutions will have the ability to hold excess Treasury operating funds for a predetermined period of time. Section 203.23 (f) describes the features of this option.

Term note balance—the phrase *term note balance* has been added to § 203.2 of the final rule to describe the note balance maintained by financial institutions participating in the term investment option.

Treasury Tax and Loan rate of interest—the definition of Treasury Tax and Loan (TT&L) rate of interest has been changed in § 203.2 of the final rule to clarify that the phrase TT&L rate of interest refers only to the rate of interest charged on the main note balance. The phrase TT&L rate of interest does not describe the rate of interest charged on the term note balance which is addressed in § 203.23. The definition of the TT&L rate of interest has also been changed to give the Secretary greater flexibility to change the TT&L rate of interest when market conditions warrant.

Collateral requirements. Section 203.24 (b) describes the collateral requirements for the term note balance. Financial institutions participating in the term investment option will be required to pledge collateral sufficient to cover the total term note balance prior to the time the term investment is placed. Collateral will be pledged in the same manner as collateral for the main note balance, although specific collateral requirements may differ. As with main note balances, types and valuations of acceptable collateral for the term note balance will be published on the Bureau of the Public Debt's web site at www.publicdebt.treas.gov.

TT&L Special Notice to Depositaries

This is notice to Treasury Tax and Loan (TT&L) depositaries regarding the rate of interest the Department of the Treasury charges on TT&L main note balances, including funds invested through the direct investment and special direct investment programs. Effective April 15, 2002, the TT&L rate of interest is the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System less twenty-five basis points.

Executive Order 12866

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is herein certified that this final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this final rule does not require any actions on the part of or impose any new requirements on small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic fund transfers, Taxes.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR part 203 is amended as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

2. Amend § 203.2 by revising paragraph (g); redesignating paragraphs (w) through (dd) and (ee) through (kk) as paragraphs (x) through (ee) and (hh) through (nn), respectively; adding new paragraph (w); revising newly redesignated paragraphs (x) and (dd); adding new paragraphs (ff) and (gg); and revising newly redesignated paragraph (nn) to read as follows:

§ 203.2 Definitions.

* * * * *

(g) *Direct investment* means placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance.

* * * * *

(w) *Main note balance* means an open-ended interest-bearing note balance maintained at the FRB of the district.

(x) *Note option* means that program available to a TT&L depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by interest-bearing note balances maintained at the FRB of the district.

* * * * *

(dd) *Special direct investment* means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance, where the investment specifically is identified as a ''special direct investment'' and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.24(c)(2)(i).

* * * * *

(ff) *Term investment option* means the program available to financial institutions that offers the ability to borrow excess Treasury operating funds for a predetermined period of time.

(gg) *Term note balance* means an interest-bearing note balance maintained at the FRB of the district for a predetermined period of time.

* * * * *

(nn) *Treasury Tax and Loan (TT&L) rate of interest* means the interest charged on the main note balance. The TT&L rate of interest is the rate prescribed by the Secretary taking into

consideration prevailing market interest rates. The rate and any rate changes will be announced through a *TT&L Special Notice to Depositaries* and will be published in the **Federal Register** and on a web site maintained by Treasury's Financial Management Service at http://www.fms.treas.gov.

3. Amend § 203.3 to revise paragraph (c) to read as follows:

§ 203.3 Financial institution eligibility for designation as a Treasury Tax and Loan depositary.

* * * * *

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, note option depositaries shall possess either general or specific authority permitting the maintenance of a note balance. In the case of note option depositaries maintaining main note balances, the authority shall permit the maintenance of a main note balance which is payable on demand without previous notice of intended withdrawal.

4. Amend § 203.13 to revise paragraphs (b), (c)(1), and (d) (1) to read as follows:

§ 203.13 Same-day reporting and payment mechanisms.

* * * * *

(b) *Fedwire value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's main note balance.

(c) * * *

(1) For a note option depositary using a Fedwire non-value transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

(d) * * *

(1) For a note option depositary using a Direct Access transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

5. Revise § 203.19 to read as follows:

§ 203.19 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the main note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the main note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the main note balance on the business day following the receipt of the tax payment.

6. Revise § 203.21 to read as follows:

§ 203.21 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting main note balances under the various payment methods; debiting main note balances; maintaining term note balances; and pledging collateral security.

7. Amend section 203.22 to remove ''and'' at the end of paragraph (b), revise paragraph (c) and add paragraph (d) to read as follows:

§ 203.22 Sources of balances.

* * * * *

(c) Direct investments and special direct investments pursuant to subpart D of this part; and

(d) Other excess Treasury operating funds.

8. Amend § 203.23 by revising paragraphs (a)(1), (a)(2), (c), (d), and (e); and adding paragraph (f) to read as follows:

§ 203.23 Note balance.

(a)* * *

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its main note balance as stated in § 203.19(b).

(2) *EFTPS*—(i) *ACH debit and ACH credit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its main note balance for the value of the transactions on the date that an exchange of funds is reflected on the books of the Federal Reserve Bank of the district. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the main note balance.

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its main note balance and debit its customer's account for the value of the transactions on the date ETA receives and processes the transactions.

* * * * *

(c) *Main note balance withdrawals.* The amount of the main note balance shall be payable on demand without prior notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A main note balance shall bear interest at the TT&L rate. Such interest is payable by a charge to the Federal Reserve account of the depositary or its designated correspondent in the manner prescribed in the procedural instructions.

(e) *Maximum balance*—(1) *Note option depositaries.* A depositary selecting the note option shall establish a maximum for its main note balance by providing notice to that effect in writing to the FRB of the district. The maximum balance is the amount of funds for which a main note option depositary is willing to provide collateral in accordance with § 203.24(c)(1). The depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance unless it is a reduction resulting from a collateral re-evaluation as determined by the depositary's FRB. That portion of any advice of credit or EFTPS tax payment, which, when posted at the FRB, would cause the main note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A main note option depositary that participates in direct investment shall set a maximum for its main note balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow. The direct investment note option depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance.

(3) *Special direct investment depositaries.* Special direct investments,

when credited to the main note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

(f) *Term investment option.* Treasury may, from time to time, invest excess operating funds in obligations of depositaries selecting the term investment option. Such obligations shall be in the form of interest-bearing notes payable upon a predetermined period of time not to exceed 90 days. Such notes shall bear interest at a rate prescribed by the Secretary by auction or otherwise taking into consideration prevailing market interest rates.

9. Amend § 203.24 to revise paragraph (a); redesignate paragraphs (b) through (f) as paragraphs (c) through (g), respectively; add a new paragraph (b); and revise newly redesignated paragraph (d)(1) to read as follows:

§ 203.24 Collateral security requirements.

* * * * *

(a) *Note option—main note balance*—(1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (d)(1), (e), and (f) of this section in an amount that is sufficient to cover the pre-established maximum balance for the main note balance, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in direct investment is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each note option depositary participating in direct investment shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (d)(1), (e), and (f) of this section to cover the total main note balance including those funds received through direct investment. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's main note balance, the note option depositary shall pledge collateral security, in accordance with the requirements of paragraphs (d)(2) and (f) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Note option—term note balance.* Each note option depositary participating in the term investment program shall pledge, prior to the time the term investment is placed, collateral in accordance with paragraphs (d) (1), (e), and (f) of this section sufficient to cover the total term note balance.

* * * * *

(d) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), (b), and (c) of this section shall be deposited with the FRB of the district, or, where appropriate, with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

* * * * *

Dated: October 26, 2001.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 02–5918 Filed 3–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–162]

RIN 2115–AA97, 2115–AA97, and 2115–AA98

Anchorages, Regulated Navigation Areas, Safety and Security Zones; Boston Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising a temporary final rule (§ 165.T01–171) published September 27, 2001. This change will extend the effective period for four temporary safety and security zones in this rule until June 30, 2002, allowing us adequate time to conduct a rulemaking to make these four safety and security zones permanent. The anchorage area restrictions (§ 110.T01–162) and regulated navigation areas (§ 165.T01–162) created by the rule published September 27, 2001 will expire as provided in that rule on March 16, 2002.

DATES: Section 165.T01–171 is revised effective March 15, 2002 and will remain effective until June 30, 2002.

ADDRESSES: MSO Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Maritime Security Operations, MSO Boston, at 617–223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rulemaking is urgently required to prevent future terrorist strikes within and adjacent to waters within the areas protected by these safety and security zones. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent area vulnerable to subversive activity, sabotage or terrorist attack.

Background and Purpose

On September 27, 2001, we published a temporary final rule creating anchorage area restrictions, three regulated navigation areas and five safety and security zones in the Boston Marine Inspection Zone and Captain of the Port Zone. (66 FR 49280). One of the safety and security zones, § 165.T01–171 (a)(4), for Pilgrim Nuclear Power Plant has been removed by a different temporary final rule (67 FR 1607, January 14, 2002), which was followed by an NRPM for a permanent rule (67 FR 4218, January 29, 2002).

We have determined that the anchorage area restrictions and three regulated navigation areas will not be

needed after their current expiration date, March 16, 2002.

As indicated by an NPRM we published last month, and in the reasons supporting our finding of good cause, we do see a need to continued the four remaining safety and security zones in temporary 33 CFR 165.T01–171. (67 FR 8915, February 27, 2002). We are extending the effective period of these zones until June 30, 2002, to allow us to issue a supplemental NPRM with a longer comment period on the proposal to make these safety and security zones permanent.

Safety and Security Zones

The rule extends the effective period for four distinct safety and security zones, having identical boundaries. Three of these zones are being established by reference to a radius around a particular coordinate or easily identifiable landmark. One zone is being established by reference to readily identifiable boundaries. All of the zones are being established in order to protect the waterfront facilities, terminals, power plants, as well as persons and vessels from subversive or terrorist acts. No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port.

The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around some of the safety and security zones in Boston Harbor and the zone in Salem Harbor; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential impacts, the Coast Guard still deems that these safety and security zones are need to protect the ports of Boston and Salem and the public.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston and Salem Harbor in which entry would be prohibited by safety or security zones.

This rule does not have a significant impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the Port of Boston are deemed to be low.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry, Maritime Security Operations, Marine Safety Office Boston, at 617–223–3030.

Collection of information

This rule does not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

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

List of Subjects 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.T01–171 published at 66 FR 49283–49284 to read as follows:

§ 165.T01–171 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following are established as safety and security zones:

(1) All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA.

(2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the North Jetty and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(3) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(4) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

(b) *Effective dates.* This section is effective from September 18, 2001 until June 30, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

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

Dated: March 12, 2002.

G. N. Naccara,

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

[FR Doc. 02–6459 Filed 3–13–02; 3:48 pm]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

National Primary and Secondary Ambient Air Quality Standards

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 2001, on page 62, in Part 50 Appendix H, under the third heading, the fifth paragraph is amended by correcting the formula to read as follows:

Appendix H to Part 50—Interpretation of the 1–Hour Primary and Secondary National Ambient Air Quality Standards for Ozone

* * * * *

3. Estimating the Number of Exceedances for a Year

* * * * *

$$e = v + [(v/n) * (N\text{-}n\text{-}z)] \qquad (1)$$

* * * * *

[FR Doc. 02–55506 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 150–1150; FRL–7158–6]

Approval of Operating Permit Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing its approval of the amendments to the Iowa Title V operating permit program. EPA announced its proposed approval of these amendments on January 11, 2002. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

DATES: This rule is effective on April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?

What is the Federal approval process for the Part 70 operating permit program?

What does Federal approval of a state operating permit program mean to me?

What is being addressed in this document?

Have the requirements for approval of a revision to the operating permit program been met?

What action is EPA taking?

What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed

in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

What Is the Federal Approval Process for the Part 70 Operating Permit Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Program.''

What Does Federal Approval of a State Operating Permit Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to follow the matrix which is found in appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes. EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. EPA reserves our authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

On January 11, 2002, we proposed to approve this rule revision. In the proposal, EPA expressly stated its understanding that IDNR retained authority to establish periodic monitoring on a case-by-case basis, and also stated that it retained authority to object to periodic monitoring which did not meet the requirements of the CAA (67 FR 1432). The public comment period was open through February 11, 2002. No comments were received.

This **Federal Register** document takes final action to approve the amendments to Iowa's Title V operating permit program to incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

EPA is hereby approving amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

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). This action 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 CAA. 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 Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. 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. 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 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, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

William Rice,

Acting Regional Administrator, Region 7.

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

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding under ''Iowa'' paragraph (d) to read as follows:

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

* * * * *

Iowa

* * * * *

(d) The Iowa Department of Natural Resources (IDNR) submitted amendments to Iowa Rule, 567 Iowa Administrative Code (IAC) 22.108(3), as a revision to the Iowa Title V operating permits program on August 31, 2001, effective August 15, 2001. The amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements. The IDNR submitted a supplement regarding these amendments on November 7, 2001, clarifying IDNR's authority to establish periodic monitoring on a case-by-case basis. This revision to the Iowa program is effective April 15, 2002.

* * * * *

[FR Doc. 02–6272 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

Organization and Delegation of Powers and Duties, Update of Secretarial Delegation to the Administrator, Federal Motor Carrier Safety Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to the Administrator of the Federal Motor Carrier Safety Administration in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Section 1012 of the USA PATRIOT ACT amends the United States Code by adding a new section relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. By this action, the Secretary delegates the authority to carry out this provision to the FMCSA Administrator.

EFFECTIVE DATE: This final rule is effective on March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Burke, Office of the Chief Counsel, MC–CC, (202) 366–0834, Federal Motor Carrier Safety Administration, U.S. Department of

Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, (Public Law 107–56, 115 Stat. 272 at 396, (October 26, 2001)), amends chapter 51 of title 49 United States Code, by adding a new section 5103a, relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. The new provision is best administered by the FMCSA, which is responsible for the commercial driver's license (CDL) program. This delegation broadens the FMCSA Administrator's delegated authority relating to hazardous materials transportation programs.

This final rule updates the delegations of authority from the Secretary to the FMCSA Administrator to reflect the organizational posture of the Department. As such, the final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public. Also, this final rule expedites the Department of Transportation's ability to implement section 1012 of the USA PATRIOT ACT. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a delegation of authority from the Secretary to the FMCSA Administrator, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–56, 115 Stat. 396.

2. In § 1.73, revise paragraph (d)(2) to read as follows:

§ 1.73 Delegation to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(d) * * *

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5103a relating to limitations on issuance of licenses to operate motor vehicles transporting hazardous materials in commerce; 49 U.S.C. 5112 relating to highway routing of hazardous materials; 49 U.S.C. 5109 relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5113 relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 49 U.S.C. 5105(e) relating to inspections of motor vehicles carrying hazardous material; and 49 U.S.C. 5119 relating to uniform forms and procedures.

* * * * *

Issued in Washington, DC on March 7, 2002.

Norman Y. Mineta,

Secretary.

[FR Doc. 02–6123 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 244 and 1106

[FRA Docket No. 1999–4985, Notice No. 4]

Surface Transportation Board

[STB Ex Parte No. 574]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCIES: Federal Railroad Administration (FRA), Surface Transportation Board (STB), DOT.

ACTION: Final rules.

SUMMARY: The Federal Railroad Administration (''FRA'') and the Surface Transportation Board (''STB'' or ''Board''), working in conjunction with each other, hereby issue joint final rules establishing procedures for the development and implementation of safety integration plans (''SIPs'' or ''plans'') by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same.

Under FRA's final rule, Class I railroads seeking to consummate a covered transaction must file a proposed SIP with FRA after they seek authority for the transaction from the Board. (A SIP is a written document explaining how each step in implementing a contemplated transaction would be performed safely.) FRA then reviews the proposed SIP and advises the Board as to whether it provides a reasonable assurance of safety for the transaction. The rule further requires that, once the STB has approved a transaction, a railroad must operate over property subject to the transaction in compliance with a SIP approved by FRA, and authorizes FRA to exercise its full enforcement remedies should a railroad fail to implement the terms of an approved plan. Finally, the rule provides that FRA will consult with the STB at all appropriate stages of SIP implementation, assuming FRA approves the SIP and the STB approves the transaction.

Under the STB's final rule, rail carriers seeking to carry out a regulated transaction are required to file a proposed SIP with FRA and the Board 60 days after they seek authority for the transaction. FRA will review the proposed SIP and file written comments with the Board's Section of Environmental Analysis (''SEA''), which is responsible for preparing the Board's environmental documents. SEA will then include the proposed SIP, FRA's written comments on the proposed SIP, and any additions or revisions based on continued discussions with FRA in the Board's draft environmental documentation. After reviewing the proposed SIP, SEA's analysis, and comments provided by interested persons during the STB's environmental review process, the Board will then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction and adopt the SIP, it will require compliance with the SIP as a condition to its approval. FRA then will oversee the implementation of the SIP, consult with the Board at all appropriate stages of implementation, and advise the Board when the proposed integration has been safely completed.

The final rules are designed to enable the Board and FRA to ensure adequate and coordinated consideration of safety integration issues in covered rail transactions while minimizing the burdens on the applicants. FRA and the STB believe that the joint rules will serve the public interest in promoting safety in the railroad industry, consistency in decisions, and efficiency in compliance, enabling the agencies to employ their areas of expertise to fulfill their respective statutory objectives in a complementary manner.

DATES: *Effective Date:* The final rules become effective on April 15, 2002.

ADDRESSES: Petitions for reconsideration of FRA's rule should be submitted to Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590. Petitions for reconsideration of the STB's rule should be submitted to Office of the Secretary, STB, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: jonathan.kaplan@fra.dot.gov); and Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, NW., Washington, DC 20423–0001 (telephone: (202) 565–1563 and e-mail: kitaye@stb.dot.gov). (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION:

Joint FRA/STB Introduction

On December 31, 1998, FRA and the STB issued a joint notice of proposed rulemaking (''NPRM'') establishing procedures for developing and implementing SIPs by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. 63 FR 72225, Dec. 31, 1998. FRA's proposed rule would have required railroads seeking to consummate any mergers, acquisitions, or consolidations of property involving (i) Class I railroads, (ii) Class II railroads when the railroads would directly interchange freight with each other, (iii) transactions in which the consummation of operations would produce revenue in excess of the Class I threshold, (iv) a passenger railroad (intercity or commuter) with another passenger railroad, a Class I railroad, or a Class II railroad; or (v) start-up operations on a rail line or lines in which the commencement of operations would either involve passenger service or produce revenue in excess of the Class II threshold, to file a proposed SIP for the agency's review and approval. (Class I railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, in excess of $250 million per year for a period of three successive years. Class II railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, between $20 million and $250 million.) Concurrently, the STB's proposed rule would have required railroads seeking to engage in all transactions addressed in FRA's NPRM other than start-up operations to file a SIP with the Board for its review and approval.

The proposed rules set out specific procedures governing the development, approval, and implementation of SIPs, and explained that FRA and the Board are jointly responsible for promoting a safe rail transportation system. Under FRA's proposed rules, railroads seeking to consummate a covered transaction would be required to file a proposed SIP with FRA contemporaneously with the filing of the SIP with the STB. FRA would review the proposed SIP and advise the Board as to whether it provides a reasonable assurance of safety for the transaction. The proposed rule required a railroad to have a SIP approved by FRA before it could execute operations over property subject to the transaction. Where the Board has been involved in authorizing the transaction, FRA would consult with the Board at all appropriate stages of implementation.

Likewise, under the STB's proposed rules, rail carriers seeking to carry out a transaction within the Board's jurisdiction that would require a SIP would file their SIP with the Board and FRA. FRA would review the SIP and file written comments with the Board's SEA. After reviewing the SIP, SEA's analysis, and comments provided by interested persons during the Board's environmental review process, the Board would then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction, the railroads would coordinate with FRA in implementing the SIP, including any amendments made to the plan, and FRA would monitor the implementation process and apprise the Board about the railroad's progress in carrying out the plan until FRA advised the Board that the proposed integration had been safely completed. Both FRA and the Board

would be authorized to exercise their full independent enforcement remedies should either FRA or the Board reject the proposed SIP or a railroad fail to implement the terms of an approved SIP.

FRA and the STB received written comments on the proposal from 11 entities and conducted a joint public hearing at the request of one of the commenters in Washington, D.C., on May 4, 1999. Based on the comments received, the testimony at the public hearing, and further analysis of the rules proposed, FRA and the Board now publish these joint final rules. As will be discussed below, both agencies underscore the importance of SIPs when Class I railroads seek to engage in mergers, consolidations, or acquisitions. These are railroads transporting large volumes of freight, frequently including hazardous materials. Given the size and complexity of their operations, careful advance planning is critical to ensure that safety is maintained as the transactions are implemented.

The agencies, however, agree with certain of the comments that the final rules should be limited to consolidations, mergers, or acquisitions of control involving either two or more Class I railroads or a Class I railroad and a Class II railroad with which it proposes to ''amalgamate operations'' as defined by FRA at 49 CFR 244.9. (*See also* the STB's final rule at 49 CFR 1106.2.) Only the complexity and difficulty of these very large transactions are now believed to present sufficient dangers to merit a SIP under these rules. This substantially comports with the recommendations of some commenters.

In its final rule, FRA has modified the subject matter areas to be addressed in a SIP to cover those disciplines that a regulated transaction affects, and has decided not to require an applicant to file a SIP when a transaction does not involve an amalgamation of operations. In response to the comments, FRA and the Board have ''fine tuned'' their respective procedures governing the filing, review, and approval of a SIP, and their oversight of an approved plan. The final rules also clarify the respective roles of the two agencies. It is made clearer that (i) the STB is regulating the economic transaction and, in the course of doing so, fulfilling its responsibility to assess environmental impacts, as required by the National Environmental Policy Act (''NEPA''), 42 U.S.C. 4321 *et seq.*, and promote a safe transportation system, and (ii) FRA is regulating the safety of the implementation of any transaction the STB may approve, just as FRA regulates all other aspects of railroad safety. FRA is not approving or disapproving the transaction in any respect, and both agencies state explicitly that FRA has no ''veto power,'' either explicit or implicit as some commenters alleged, over transactions regulated by the STB. If the STB approves a transaction, a railroad must conduct operations over properties that are part of the transaction in compliance with a SIP approved by FRA, just as it must conduct those operations in compliance with the railroad safety statutes and implementing regulations administered by FRA.

Discussion of Comments and Conclusions

FRA and the STB received written comments from various railroads and their representative organizations, labor organizations, and public service organizations. The railroad interests were represented by the Association of American Railroads (''AAR''), American Short Line and Regional Railroad Association (''ASLRRA''), National Railroad Passenger Corporation (''Amtrak''), Guilford Transportation Industries (''GTI''), and the Wheeling & Lake Erie Railway Company (''W&L''). The American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (''ATDD''), Transportation Trades Department, American Federation of Labor-Congress of Industrial Organizations (''TTD''), Brotherhood of Railway Carmen Division of the Transportation Communications International Union (''BRC''), and Brotherhood of Maintenance of Way Employes (''BMWE'') represented the interests of rail labor. The public service organizations were represented by the American Public Transit Association, now the American Public Transportation Association (''APTA''), and the Oklahoma Department of Transportation (''OK DOT''). At the public hearing held on May 4, 1999, two organizations participated: the TTD and the AAR. The commenters raised questions about the proposal itself, suggested alternative language to some of the proposed rule text, and requested clarification about the meaning and application of certain proposed rules. The discussion that follows highlights the principal issues advanced by the commenters and explains how the final rules reflect the comments received. Because many of the comments focus on the rules proposed by one agency and not the other, FRA and the Board present separate sections addressing the comments and each agency's conclusions.

A. FRA's Response to Comments Concerning the Need To Require SIPs for Mergers, Consolidations, and Acquisitions of Control

Several comments addressed the types of transactions that warrant preparation of a SIP under these rules. The ATDD and TTD, for instance, endorsed the breadth of FRA's proposed rule, asserting that that type of rule is necessary to ensure the safety of railroad employees and the public. The ATDD commented that operational changes, *i.e.*, changes in traffic volume and traffic patterns, timetable schedules, and labor reductions, needed to be evaluated for safety concerns. The TTD added that the rulemaking action should be transferred to FRA's Railroad Safety Advisory Committee (''RSAC'') to secure fuller labor input in the development of FRA's final rule. Amtrak also supported the proposition of the SIP rules, agreeing that ''mega-mergers'' present unique safety issues that should be identified and addressed at the application stage to enable FRA and the Board to handle proposed transactions as safely as possible.

GTI disagreed with the premise of the SIP rules. Specifically, GTI claimed that FRA need not issue any regulations governing mergers, consolidations, or acquisitions of control because the agency already has the regulations necessary to ensure safe operations subject to a proposed regulated transaction. GTI further postulated that FRA is without expertise in regulating these transactions and that self-regulation was most appropriate in this instance because merging railroads recognize that unsafe operations lead to increased costs and decreased returns on an investment. In other words, GTI recommended that the agencies terminate this rulemaking action and apply the existing regulations that govern regulated transactions.

The AAR argued that SIPs should be limited to consolidation, merger, and acquisition of control proceedings involving at least two Class I railroads and not to other less complex proceedings. The AAR also argued that only the Board should have approval authority over SIPs and that FRA's role should be limited to advising the Board. According to the AAR, any regulations purporting to vest FRA with authority to approve a SIP would be contrary to law and in derogation of the Board's ''exclusive'' authority to approve merger transactions under 49 U.S.C. 11321.

FRA strongly endorses the concept of the SIP rules and their importance in

regulating the complex railroad transactions involving mergers, consolidations, and acquisitions of large railroads where operations are amalgamated. As the agencies explained in the NPRM, acquisitions, consolidations, and mergers must be carefully planned and implemented to maintain safety. *See* 63 FR 72226–27. Transactions involving Class I railroads significantly change the carrier landscape and raise potential safety issues relating to integrating operations, facilities, personnel, safety practices, and corporate cultures. The NPRM noted FRA's concerns regarding safety problems that resulted from inadequate safety planning before implementation of the merger of the Union Pacific Railroad Company (''UP'') and the Southern Pacific Transportation Company (''SP'') (collectively referred to as ''UP/SP'') and the merger of the Burlington Northern Railroad Company (''BN'') and the Atchison, Topeka and Santa Fe Railway Company (''ATSF'') (collectively referred to as ''BNSF''). *See* 63 FR 72227. The chief executive officers of the Norfolk Southern Railway Company and CSX Transportation, Incorporated, which acquired and divided Consolidated Rail Corporation (''Conrail''), amplified this point when they testified before the STB about the operational and safety difficulties they encountered in implementing their respective transactions, even with the planning and experiences of earlier mergers to guide them and having prepared SIPs. *See Public Views on Major Rail Consolidations,* STB Ex Parte No. 582, slip op. at 4–5 (STB served Mar. 17, 2000).

FRA believes that the final SIP rules accomplish the objective of ensuring safe railroad operations during and after implementation of an approved transaction. First, the regulations set out subject matter areas that are critical to railroad safety that an applicant must address in a proposed SIP. These requirements address safety issues unique to the amalgamation of large, complex railroad operations that are not covered in any existing Federal regulations, necessitating their issuance here. Second, FRA has the necessary expertise in railroad safety to review, analyze, approve, and oversee the implementation of a proposed SIP. FRA has officials and inspectors with knowledge, training, and experience in five railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that cover the ambit of railroad operations. Therefore, the final rules provide for FRA a mechanism to evaluate and approve SIPs and monitor their implementation if the transactions to which they relate are approved by the Board. As discussed in greater detail below, FRA is regulating the safety aspects of how a railroad implements a transaction permitted by the Board and not whether the railroad is permitted to consummate the transaction or on what economic terms. FRA concludes that the SIP rules are a step forward in providing railroad safety and therefore adopts these final rules. Although FRA entertained TTD's suggestion to add this proceeding to those addressed by FRA's RSAC, the agency decided that a joint rulemaking with the Board, using the complementary authority of both agencies, would be the best way to proceed.

B. FRA's Views on Jurisdiction of FRA and the STB To Issue the Final Rules

The AAR and GTI commented that the STB and not FRA is authorized to issue any regulations governing acquisitions, consolidations, and mergers. Relying on statutory authority, 49 U.S.C. 11321, and decisional law, *Schwabacher* v. *United States,* 334 U.S. 182, 197 (1948); *Norfolk & Western Rwy.* v. *ATDA,* 499 U.S. 117, 127–34 (1991); and *City of Auburn* v. *United States,* 154 F.3d 1025 (9th Cir. 1998), *cert. denied,* 527 U.S. 1022 (1999), the AAR claims that the Board is vested with exclusive authority to issue regulations that are within the STB's jurisdictional purview. GTI echoed the AAR's position, maintaining that an application to consummate an acquisition, consolidation, or merger is an economic transaction, which is fully within the Board's authority.

FRA agrees that the Board has sole authority to regulate the economic transactions, but disagrees with these commenters that issuance of FRA's final rule trespasses upon that jurisdiction. FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out. *Tyrrell* v. *Norfolk Southern Rwy. Co.*, 248 F.3d 517, 523 (6th Cir. 2001) (FRA's and the STB's ''complementary exercise of their statutory authority accurately reflects Congress's intent for the (Interstate Commerce Commission Termination Act) and the (Federal Railroad Safety Act) to be construed *in pari materia*''). The Supreme Court provides that ''it is a cardinal principle of construction that * * * when there are two acts upon the same subject, the rule is to give effect to both.'' *United States* v. *Borden Co.*, 308 U.S. 188, 198 (1939). Congressional intent behind one Federal statute should not be thwarted by the application of another Federal statute if it is possible to give effect to both laws, *id.*, and courts should ''construe the relevant statutes in a manner that most fully effectuates the policies to which Congress was committed.'' *Commonwealth of Pennsylvania* v. *Lynn*, 501 F.2d 848, 857 (D.C. Cir. 1974); *see also Food and Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 134 (2000) (a reviewing court should ''examin[e] a particular statutory provision * * * (in) context and with a view to [its] place in the overall statutory scheme''); *Blanchette* v. *Connecticut General Ins. Corp.*, 419 U.S. 102, 133–34 (1974) (statutory repeals by implication are disfavored). The agencies have done so in a manner entirely consistent with the cases cited by the commenters. *Tyrrell*, 248 F.3d at 523 (''while recognizing their joint responsibility for promoting rail safety in their 1998 Safety Integration Plan rulemaking, FRA exercised primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*, while the STB handled economic regulation and environmental impact assessment(,)'' citing the NPRM at n.2).

As FRA and the Board explained in the NPRM:

FRA and STB are jointly responsible for promoting a safe rail transportation system.

Under Federal law, primary jurisdiction, expertise and oversight responsibility in rail safety matters are vested in the Secretary of the Department of Transportation, and delegated to the Federal Railroad Administrator. 49 U.S.C. 20101 *et seq.*; 49 CFR 1.49. FRA has authority to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. FRA has exercised its jurisdiction to protect the safety of railroad operations through the issuance and enforcement of regulations, partnering with railroad labor organizations and management of particular railroads to identify and develop solutions to safety problems, actively participating in STB rail proceedings, and monitoring railroad operations during the implementation of STB-approved transactions.

The Board is also responsible for promoting a safe rail transportation system. The rail transportation policy (RTP), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), establishes the basic policy directive against which all of the statutory provisions the Board administers must be evaluated. The RTP provides, in relevant part, that, ''(i)n regulating the railroad industry, it is the policy of the United States

Government * * * to promote a safe and efficient rail transportation system'' * * * (by allowing rail carriers to) ''operate transportation facilities and equipment without detriment to the public health and safety * * * .'' 49 U.S.C. 10101(8). The rail transportation policy applies to all transactions subject to the Board's jurisdiction.

Thus, both FRA and STB are vested with authority to ensure safety in the railroad industry. Each agency, however, recognizes the other agency's expertise in regulating the industry. FRA has expertise in the safety of all facets of railroad operations. Concurrently, the Board has expertise in economic regulation and assessment of environmental impacts in the railroad industry. Together, the agencies appreciate that their unique experience and oversight of railroads complement each other's interest in promoting a safe and viable industry.

63 FR 72225–26. FRA believes that each agency's interpretation of its statute is reasonable, reflects a plausible construction of the plain language of the statutes, and gives effect to Congress' expressed intent. *Tyrrell*, 248 F.3d at 523 (statutory construction that FRA has primary authority over national rail safety policy and STB is responsible for encouraging ''safe and suitable working conditions'' properly reflects Congress's purpose in enacting the Federal railway laws).

FRA has ''primary jurisdiction, expertise and oversight responsibility in rail safety matters' under 49 U.S.C. 20101 *et seq.*, as delegated by the Secretary of Transportation to the Federal Railroad Administrator at 49 CFR 1.49, and has the authority ''to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries'' under 49 U.S.C. 20101 and 20102. 63 FR 72225. Specifically, 49 U.S.C. 20103 confers authority on FRA to ''prescribe regulations'' ''for every area of railroad safety,'' 49 U.S.C. 20103(a), and ''in prescribing regulations[,]'' FRA ''shall consider existing relevant safety information and standards.'' 49 U.S.C. 20103(c). Congress intended that FRA would possess the authority to regulate ''all those means of rail transportation as are commonly included within the term * * * in addition to those areas currently regulated.'' H.R. No. 91–1194, Federal Railroad Safety and Hazardous Materials Transportation Control Act of 1970, Pub. L. 91–458, *reprinted in* 1970 USCCAN 4104, 4114 (1970). In other words, Congress authorized FRA to promulgate regulations to ensure railroad safety after analyzing safety data.

A key element in the argument of the AAR and other commenters is that, by approving a SIP, FRA is encroaching upon the STB's jurisdiction, supposedly because approving a SIP is equated with approving a transaction and because the NPRM states that the railroad resulting from a covered transaction ''shall have an FRA approved Safety Integration Plan before changing its operations to implement a proposed transaction * * *.'' *See* proposed 49 CFR 244.21(a) at 63 FR 72241. These commenters have misinterpreted both FRA's intentions and the meaning of the text. FRA has amended the text to eliminate the possibility of interpreting it as giving FRA authority to approve a transaction, and to clarify FRA's intentions. *See* the discussion of § 244.21(a) below. This change makes clear that FRA has no intention of approving or disapproving or vetoing a transaction covered by this part. FRA agrees that approving or disapproving a transaction covered by this part is wholly within the jurisdiction of the STB. FRA's role in the STB's process is an advisory one, providing expert advice to the STB on safety issues presented by a transaction. As the STB said in the NPRM, it relies upon FRA's safety expertise, and it is clearly in the public interest that FRA make its expertise available to the STB.

On the other hand, regulation of ''every area of railroad safety'' is FRA's jurisdiction. In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad implements a transaction permitted by the STB and *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the ''plenary safety authority with respect to the safety of rail operations—before, during, and after a transaction,'' which the AAR acknowledges that FRA enjoys. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction. The commenters' view would require a repeal by implication of some portion of the Federal railroad safety laws (''safety laws''), 49 U.S.C. 5101 *et seq.* and 20101 *et seq.*, to except from them railroad operations conducted during implementation of transactions approved by the STB. Such repeals by implication are strongly disfavored. *See Tyrrell*, 248 F.3d at 523. Here, there is obviously no need to infer any such repeal.

In FRA's view, it is necessary for safety purposes for the agency to approve or disapprove SIPs to provide a baseline for enforcement. First, FRA approval or disapproval denotes whether a railroad has submitted a proposed SIP meeting the requirements of the rule. Upon disapproval of a proposed SIP, FRA can take enforcement action if the railroad does not change its SIP to bring it into compliance with the law. Upon approval of a SIP, FRA can take enforcement action if the railroad fails to implement the SIP. Absent FRA approval, it is hard to see how FRA could take enforcement action in this arena.

FRA believes that the suggestion that FRA could veto a transaction by disapproving a proposed SIP is a red herring because only the STB can approve and veto a transaction. In any event, the standard set by the rule for approval of a proposed SIP can easily be met by any Class I or Class II railroad, and FRA cannot arbitrarily or capriciously reject a SIP that meets the standard. If FRA disapproves a proposed SIP because it fails to be thorough, complete, or clear, FRA must articulate to the railroad what is missing or unclear. If FRA disapproves a proposed SIP because it fails to describe a logical and workable transition or because it is insufficiently detailed, FRA must articulate how the proposed SIP is illogical or unworkable or lacking in detail. In either of those cases, upon receiving FRA's reasons for disapproval, a railroad can readily remedy its submission. In practice, FRA will continue to work informally with railroads proposing a covered transaction to assure that their proposed SIPs comply. It should be easy for applicants to secure FRA approval of their proposed SIPs in time for the Board's SEA to include the proposed SIP in the draft environmental documentation for the STB proceeding. FRA has no interest in blocking transactions and has a powerful interest in seeing that transactions are implemented safely.

The text also makes clear that FRA is not prescribing any particular way to implement covered transactions. Instead, FRA is requiring the railroads involved to be thorough and logical, and to maintain a reasonable assurance of safety at every step of the proposed transaction.

Correspondingly, FRA recognizes that the STB is also vested with authority to promote a safe rail transportation system in determining whether a

proposed transaction should be permitted and, if so, on what economic terms. As discussed in *Tyrrell* and in the NPRM, the rail transportation policy (''RTP''), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the Interstate Commerce Commission Termination Act of 1995 (''ICCTA''), Pub. L. 104–88, 109 Stat. 803 (1995), provides the foundation for which all of the statutory provisions the Board administers must be analyzed. *See Tyrrell*, 248 F.3d at 522–23. The RTP provides, in relevant part, that, ''(i)n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system'' * * * (by allowing rail carriers to) ''operate transportation facilities and equipment without detriment to the public health and safety * * *.'' 49 U.S.C. 10101(8). The STB applies the RTP to all transactions within its jurisdiction, authorizing it to consider the impact a merger, consolidation, or acquisition of control has on safety of railroad operations. *See Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 5 (STB served Mar. 31, 2000) (49 U.S.C. 10101, in part, directs the Board to ensure that safety concerns are addressed in railroad merger cases).

FRA submits that the cases AAR cited are misplaced. Read together, *Schwabacher, ATDA*, and *City of Auburn* stand for the proposition that the STB and its predecessor, the Interstate Commerce Commission, have exclusive authority to examine, condition, and approve mergers, consolidations, or acquisitions of control. The statute at issue, 49 U.S.C. 11321 (formerly, 49 U.S.C. 11341), specifically exempts a railroad from complying with all other laws to the extent ''necessary to (let that railroad) carry out an approved transaction,'' *ATDA*, 499 U.S. at 134, thereby preempting any Federal or state law remedies. *City of Auburn*, 154 F.3d at 1030. FRA's SIP rule will not impede or restrict the Board in approving or rejecting a proposed transaction and, since the STB contemplates requiring a SIP when it approves covered transactions, a railroad could not logically assert that an exemption from FRA's rule would be ''necessary to carry out an approved transaction.'' Instead, the rule provides that FRA will determine whether a SIP provides a reasonable assurance of safety for the subject transaction and provide expert advice to the STB on safety issues presented by a proposed transaction. The Board, in turn, will rule on the application based in part on FRA's recommendations. This process employs FRA's plenary authority over railroad safety and respects and complements the Board's role of determining whether a transaction should be approved. At bottom, FRA believes that it and the Board each are fully exercising their respective statutory authorities by examining a transaction for its safety aspects (FRA), and the impact that safety has on an application as a whole (STB).

In FRA's view, the final SIP rule fulfills this objective. The rule responds to critical safety shortcomings and errors in planning and implementation of significant transactions that may have occurred in the past where no SIP was prepared. FRA documented its concerns in the NPRM by examining the difficulties of the BNSF and UP/SP mergers. *See* 63 FR 72227–28. To illustrate, after the UP/SP merger, five employees were killed in accidents during the Summer of 1997, and employee injuries rose nine percent in 1998. FRA determined that the BNSF and UP/SP mergers faced significant challenges in harmonizing information systems; training dispatchers; modifying operational practices and procedures; implementing personnel policies directed toward safety; determining appropriate staffing requirements; and providing adequate rail facilities, infrastructure and rolling stock and equipment.

Likewise, FRA identified serious safety shortcomings in CSX Transportation, Incorporated's (''CSXT''), and the Norfolk Southern Railway Company's (''NS'') initial filings in the *Conrail Acquisition* [1] proceeding before the Board. The agency determined that the railroads had not articulated a detailed plan explaining the manner in which they individually and collectively intended to implement the transaction, and thus they had not thoroughly assessed the safety impacts of the proposed acquisition. As a result, FRA requested that the Board require the carriers to provide information detailing how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction. The Board agreed with FRA's suggestion and directed the applicants to file detailed SIPs pursuant to guidelines developed by FRA.[2] The railroads complied with the STB's order and after FRA approved the respective SIPs, the Board, concluding that applicants had satisfactorily addressed the safety implementation concerns presented by the transaction to date, approved the transaction in 1998. Nevertheless, FRA, while monitoring the railroads' implementation of their respective SIPs,[3] has concluded that more needs to be done, and that, among other things, the railroads should address information technology problems resulting in a lack of hazardous materials documentation on trains, and conduct more advanced safety training of supervisory and operating personnel at designated terminals to ensure adequate staffing and retention of institutional knowledge. *See Conrail Merger Surveillance: NS, CSXT, and CRCX Second Safety Integration Plan/ Safety Update, pp. 1–3 (June 23, 2000) (hereinafter ''SIP Update*''). In short, FRA believes, based on its experience in recent cases, that ''mega-mergers,'' consolidations, or acquisitions of control present safety challenges during implementation, which are best remedied by requiring SIPs for these complex transactions. FRA concludes that SIPs achieve a safety purpose within the purview of 49 U.S.C. 20103, and thus are within FRA's rulemaking authority. *Tyrrell*, 248 F.3d at 523 (FRA's responsibility in the SIP joint rulemaking action focuses on rail safety matters); *see also Brown & Williamson*, 529 U.S. at 134 (''if Congress has not specifically addressed the (precise question at issue), a reviewing court must respect the agency's construction of the statute so long as it is permissible''); *accord Oklahoma Natural Gas Company v. Federal Energy Regulatory Comm'n*, 28 F.3d 1281, 1283–84(D.C. Cir. 1994) (agency is afforded *Chevron* [4] deference in interpreting its statutory authority); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1171 (D.C. Cir. 2000) (judicial review of agency's statutory jurisdiction is premised on *Chevron* standards);

[1] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter ''*Conrail Acquisition*'').

[2] *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997.

[3] A detailed explanation of the SIP process in the *Conrail Acquisition*, including the Memorandum of Understanding the Board executed with FRA in establishing an ongoing monitoring process, is set out in the NPRM at 63 FR 72228.

[4] *Chevron* is shorthand for the landmark Supreme Court case *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), which stands for the proposition that courts must defer to an agency's interpretation of a statute, even if other statutory constructions are more plausible, if the statute is silent or ambiguous with respect to a specific issue.

Transmission Access Policy Study Group v. *Federal Energy Regulatory Comm'n*, 225 F.3d 667, 694 (D.C. Cir. 2000) (''it is the law of (the D.C.) (C)ircuit that the deferential standard of *Chevron* applies to an agency's interpretation of its own statutory jurisdiction'' (citing *Oklahoma Natural Gas*)), *affirmed sub nom. New York* v. *FERC*, 2002 U.S. LEXIS 1380 (U.S. Mar. 4, 2002). *See generally Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979) (regulations issued by an agency must be promulgated pursuant to statutory authority in which ''the grant of authority contemplates the regulations issued'').

C. FRA's Views on Issuance of a Final Rule v. Guidelines

The AAR commented that the SIP process is best employed through the issuance of policy guidelines adopting the model procedures that were used in the *Conrail Acquisition* and Canadian National Railway Company/Illinois Central Railroad Company [5] control transactions, and embodied in the memoranda of understanding (''MOU'') between FRA and the STB entered in these cases. See 63 FR at 72228. Under this approach, the Board would determine when a SIP would be required for a transaction within its jurisdiction.

The AAR based its position on three points. First, this approach would ensure that each agency would respect each other's division of authority and role in overseeing the SIP process. Second, an MOU would offer the flexibility for an applicant to meet changing customer needs and market opportunities, such as staffing levels reached through collective bargaining agreements (''CBAs''), infrastructure improvements for highway-grade crossings, and designating repair facilities and computer software operating systems. Finally, a rule along the lines suggested by the NPRM would, according to AAR, represent government micromanagement of rail operations and implementation programs and could potentially delay integration, leaving an applicant at a competitive disadvantage with other railroads.

FRA respectfully disagrees with the AAR's proposal. The agency believes that the issuance of final rules ensures that all applicants seeking to consummate a regulated transaction will execute a SIP and complete the SIP process as enunciated in the rules. These final rules codify the prescribed requirements and stake out the legal landscape for regulating complex railroad transactions. *See* Attorney General's Manual on the Administrative Procedure Act 14–15 (1947) (''(t)he object of [a] rulemaking proceeding is the implementation or prescription of law or policy for the future * * *.''). In other words, the rules will prescribe substantive and procedural standards that will govern each application filed with the STB to carry out a transaction and the safety of operations during implementation of transactions the STB approves. *Cf.* the Administrative Procedure Act, 5 U.S.C. 551(4), which, in part, defines a rule as ''the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' FRA believes that the SIP process should be mandatory in large mergers, acquisitions of control, and consolidations cases because of the unique nature of the transactions involved and the complexity of safely integrating operations that are part and parcel of the transactions.

On the other hand, guidelines are simply recommendations issued by an agency that do not prescribe or mandate any standards on the regulated community. *See Industrial Safety Equipment Ass'n, Inc.* v. *EPA*, 837 F.2d 1115 (D.C. Cir. 1988). Rather than impose a regimen for conduct or action, guidelines do not ''change any law or official policy presently in effect,'' *id.* at 1119–21, nor do they ''implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4); *see also National Ornament & Elec. Light Christmas Ass'n* v. *Consumer Product Safety Comm'n*, 526 F.2d 1368 (2d Cir. 1975). Without sufficient ''effect'' to regulate conduct, guidelines have an ''advisory character'' without any firm commitment to law or policy. FRA believes that the issuance of guidelines would preclude the agencies from mandating standards or binding applicants to meet these requirements, creating an illusion of adequate safety oversight. FRA, like the Board, is committed to safe integration of complex railroad transactions and believes that these rules can best achieve that objective.

FRA also maintains that these rules enable the agencies to articulate interpretations of their respective statutes and reconcile them effectively, thereby preserving and recognizing each agency's authority to regulate aspects of these transactions. *See Tyrrell*, 248 F.3d at 523. The joint rules ensure that the agencies' roles and responsibilities complement each other in establishing SIP procedures and standards, and complete the rulemaking process announced in the NPRM. Lastly, the final rules will provide uniformity in regulating SIPs and preempt other efforts to regulate the safety of implementing transactions. FRA concludes that the issuance of rules is the most effective instrument in defining each agency's function in the SIP process and requirements a railroad must satisfy for transactions that warrant a SIP.

Concurrently, FRA takes issue with the reasons supporting the AAR's recommendation. First, as previously explained, the final rules cement the division of authority and prescribe textual interface between the agencies in regulating SIPs. Next, FRA believes that the SIP contents and subject matter areas capture the operations that are affected by a complex transaction. Although an applicant may propose a flexible plan to address these topics, the SIP elements themselves should not be compromised to ensure a safe transition of operations.

Finally, FRA rejects the notion that the rules represent government micromanagement of rail operations and implementation programs. The premise of the rules focuses on an applicant's preparation, issuance, and implementation of a plan that provides safe integration of rail operations. FRA's and the STB's individual and collective roles are to review and approve the railroad's SIP, and monitor its implementation. The agencies' oversight is to ensure that the SIP provides a reasonable assurance of safety. It is not to ''second guess'' the proposed migration or deployment of resources necessary to carry out a plan. Therefore, FRA characterizes its role as that of a ''gatekeeper'' to cross-check the SIP and its implementation against the safety aspects in integrating operations.

D. FRA's Views on Issues Involving the Framework of the Joint Final Rules

FRA received several comments from interested parties about the framework of the proposed SIP rules. The comments focused on two issues-scope and applicability of the joint rules, and the approval and disapproval process of an application.

FRA proposed to require certain railroads seeking to merge, consolidate, or acquire control of another railroad, or ''start-up'' operations as a railroad to file proposed SIPs with FRA before

[5] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter ''*CN/IC*'').

consummating the regulated transaction. The NPRM proposed covering the following transactions: (1) A Class I railroad, a railroad providing intercity passenger service such as Amtrak, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad; (2) a Class II railroad proposing to consolidate, merge, or acquire another Class II railroad with which it connects so as to involve the integration of operations; (3) any merger, consolidation, or acquisition resulting in operations that would generate revenue in excess of the Class I railroad threshold, except those transactions involving Class III freight only railroads; and (4) all start-up operations involving the establishment of a new line for passenger or freight service generating revenue that would exceed the Class II railroad threshold. Correspondingly, the Board proposed covering all transactions addressed in FRA's NPRM with the exception of ''start-up'' operations.

The AAR, Amtrak, and OK DOT commented that the STB lacks jurisdiction to regulate Amtrak or commuter railroads, citing 49 U.S.C. 10501(c) and *Norfolk & Western Railway Company-Petition for Declaratory Order-Lease of Lines,* STB Finance Docket No. 32279 (STB served February 3, 1999), for the proposition that the Board may not regulate any mass transportation provided by any local governmental authority, and arguing that the Amtrak Reform and Accountability Act of 1997, Pub. L. 105–134, 111 Stat. 2570, 2585, amending 49 U.S.C. 24301(c)(1)(C), prohibits the Board from regulating Amtrak. Accordingly, the commenters recommended that the scope of the joint rules be curtailed.

FRA agrees that the scope of the joint rules should be narrowed to cover unique complex transactions. After considering the comments, the agency has determined that acquisitions, consolidations, or mergers involving large railroads present transactions of significant size and complexity that warrant a SIP. These transactions generally involve substantial changes in railroad operations that impact effective communications, coordination, and execution of operations, *i.e.,* all aspects of safety. The final rules narrow the scope and applicability sections to capture these significant transactions because of the correlation between complexity of large rail entities and operational safety. As a result, the joint final rules only apply to transactions in which a Class I railroad proposes to merge, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations.

Some of the comments addressed each agency's independent approval process for a SIP, and any amendments thereto. The TTD endorsed the proposed two-step disposition process in which FRA and then the Board would review and approve a proposed SIP before an applicant could consummate a transaction. The AAR disagreed, claiming that FRA is without the authority to sanction a transaction that is within the STB's jurisdiction.

FRA believes that the safe transition of integrating operations is best achieved when FRA and the STB work together using their respective jurisdictions. As discussed above and in the NPRM, FRA enjoys primary jurisdiction, expertise, and oversight responsibility in railroad safety matters and is best positioned to ensure that a plan will comply with the safety laws and otherwise provide for safe railroad operations. *See Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Company,* STB Finance Docket No. 31700, slip op. at 1, 5 (served Mar. 2, 2000) (hereinafter ''*CP Purchase*'') (FRA entitled to ''great weight'' in identifying potential safety problems before STB imposes conditions on a transaction). At the same time, the Board, which has expertise in economic regulation and assessment of environmental impacts in the railroad industry, *Tyrrell*, 248 F.3d at 523, considers safety in the transactions that it regulates. *Id.* (STB's ''duty [is] to encourage ''safe and suitable working conditions'' for railway employees through its assessment of individual railway proposals subject to its authority''). FRA believes that these final rules meet the safety objectives of both agencies while interpreting their respective jurisdictions in a complementary way that is in the public interest.

E. Foundation of FRA's Final Rule

FRA received comments from three interested parties about the elements set out in the proposed rule. Generally, the labor organizations supported the subject matter areas contained in the regulatory text because they addressed the ''four adequates''—adequate work force, adequate training, adequate rest, and adequate familiarity with the subject territory. In fact, the TTD went further, contending that an applicant should detail information in the subject matter areas that are required in a SIP to prevent a railroad from pledging vague commitments in filing a plan.

The AAR, however, objected to the proposed rule's SIP elements on two grounds. First, the AAR asserted that the subject matter areas go beyond the scope of assuring safe integration. The AAR maintained that a SIP should center on railroad lines that will experience changes in motive power and equipment, signal and train control, dispatching operations, highway-rail grade crossings, personnel staffing, capital investment, and relationships between freight and passenger service; and changes in operations or traffic volume that will affect a railroad's systems or programs. These requirements, the AAR posited, should be captured in a SIP to enable FRA to review an applicant's practices and procedures to ensure that they provide a ''reasonable assurance of safety.'' The AAR added that the proposed SIP rules impose new standards on the railroad industry that are not required under the existing regulations and serves as a ''back door'' vehicle for issuing substantive regulations that impact selected transactions. These rules, the AAR reflects, impose new burdens, costs, and delays on an applicant, which leaves it at a competitive disadvantage with other railroads.

FRA agrees in part and disagrees in part with the AAR's comments. The agency has amended the subject matter areas in its proposed rule to require an applicant to focus its SIP on changes in railroad operations during the integration phase. The agency believes that a plan must analyze the major changes that will occur as railroads subject to a regulated transaction integrate their operations from commencement to completion. Advance planning will require an applicant to consider the nature of operations involved in the transaction and the migration or transition from two or more entities to one entity. The final rule satisfies these concerns.

FRA disagrees with AAR's characterization that the SIP rules are a ''back door'' approach to regulating subject matter areas that are not already covered under the existing regulations. The integration of very large and complex railroad operations present safety hazards not found (or not found to a degree sufficient to merit regulatory attention) either before a transaction or after operations have been successfully integrated. It is entirely appropriate for FRA to address those hazards in the limited context in which they are found. For example, integrating the operations of two railroads will usually require choosing a set of operating rules that differ in important respects from the operating rules used by one of the

railroads. The employees of that railroad will have to be trained in the new operating rules and will have to overcome the bias common among railroaders that the railroad on which they started had the best way of running a railroad.

There are several essential tasks that affect railroad safety, *e.g.,* training, qualifications, fatigue, hazardous materials inspection programs, and information system compatibility. Failing to address such issues adequately can jeopardize railroad safety, as some recent mergers have demonstrated. FRA believes that UP/SP, for instance, faced increased exposure to accidents, injuries, and fatalities as overworked officials and employees encountered workforce reductions, inadequate infrastructure and equipment, and service delays and disruptions. Between June 22 and August 31, 1997, UP/SP experienced five major train collisions that resulted in the deaths of five UP/SP employees and two trespassers. These accidents were in addition to a series of yard switching accidents that claimed the lives of four UP/SP train crew employees. In connection with the UP/SP merger, for example, FRA launched a comprehensive review of UP/SP's operations, including its dispatching operations. FRA observed inefficient and unsafe practices by supervisors and dispatchers caused by inadequate training and work overload. FRA made specific recommendations, which UP/SP accepted, such as creating additional dispatch operations, realigning dispatcher territories to better balance the workload, hiring new dispatchers, tripling the number of dispatching supervisors, making improvements to the software in UP/SP's CAD computer system, and forming a working group consisting of representatives of FRA, rail labor, and UP/SP management to continually monitor and address dispatching issues that may arise. As a result of FRA's effort, UP/SP's safety performance recovered rapidly; UP/SP's fatalities due to train collisions dropped from seven in 1997 to none in 1998.

Similarly, FRA believes that most of the other recent mergers involving Class I railroads had safety integration problems. The BNSF merger, for example, resulted in the merged entity having incompatible electronic database systems used by BN and ATSF. This incompatibility resulted in terminal offices generating and transmitting inaccurate and incomplete train consist lists and waybills, which compromised the safety of train crews transporting the shipments. Even at a very simple level, BN and ATSF each had locomotives bearing the same number; this problem was not addressed before integrated operations began, resulting in dangerous confusion for dispatchers and train crews. In NS's and CSXT's acquisition of Conrail, both railroads also grappled with information technology shortcomings in preparing hazardous materials shipping papers, and training deficiencies in the computer software programs and the safety laws.

Based on observation, professional experience and judgment, and empirical evidence, FRA believes that there is a nexus between safe integration of large railroads and the subject matter areas identified in the SIP rule. Although filing a SIP will involve certain costs, burdens, and delays, FRA reasons that the safety benefits that will result from the SIP process outweigh these impediments.

Finally, there was some confusion within the regulated community that the SIP rules would impose explicit standards for the elements the railroads would have to address in their SIPs. FRA therefore clarifies that its rule only requires a railroad to identify measures, efforts, commitments, and targeted completion dates that it will take to completely integrate those elements identified in § 244.13. *See* § 244.11 for the contents required in a SIP. FRA's review and approval is predicated on whether the details in executing the elements in the plan provide ''a reasonable assurance of safety.'' 49 CFR 244.19. As enunciated in the NPRM, FRA reiterates that:

> [I]t has no intention of operating the railroad or questioning management decisions implementing the SIP. Instead, the agency sees it[s] role as conducting a rational basis review of the SIP, meaning that the plan must be reasonable.

63 FR 72234. Provided that the SIP comprehensively explains how an applicant intends to proceed from commencement to completion in executing a transaction, FRA will approve the plan, contingent upon fulfillment of the elements enunciated in the plan and execution of those operations. In summary, a SIP must provide for the safety of operations, systems, practices, and programs that are identified in FRA's final rule before FRA will approve the plan.

FRA's Section-by-Section Analysis of Its Final Rule

The final rule contains significant changes from the proposed rule in response to the written comments received, the testimony at the public hearing, and further review and reflection within FRA. This section of the preamble explains the changes made in the final rule to the provisions of the NPRM. FRA informs interested parties that this section focuses on the specific requirements of FRA's proposed and final rules as applied to the coextensive authority of the STB to regulate the transactions identified, and respectfully refers the regulated community to the agency's Section-by-Section Analysis of the NPRM for a full discussion of those aspects of the proposed rule that remain unchanged in the final rule. *See* 63 FR 72228–35.

Subpart A—General

Section 244.1—Scope, Application, and Purpose

Proposed rule: FRA proposed that a railroad seeking to consummate certain discrete transactions would be required to file a SIP. Section 244.1(a)(1) proposed that a Class I railroad, a railroad providing intercity passenger service, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad would be subject to this part. The rule further proposed that a Class II railroad applying to acquire, consolidate, or merge with another Class II railroad with which it would connect so as to involve the integration of operations would also be required to file a SIP. Additionally, part 244 would apply to any merger, consolidation, or acquisition, excluding a transaction involving a Class III freight-only railroad, that would result in operations generating revenue in excess of the Class I railroad threshold, and all start-up operations as defined in § 244.9.

Paragraph (b) of this section explained that the proposed rule was designed to mandate that a railroad detail a plan before it would merge, consolidate, or acquire another railroad to ensure that safety interests were advanced before integrating operations of complex transactions. Section 244.1(c) informed the regulated community that part 244 applied only to FRA's disposition of an application filed pursuant to this part, and did not apply to the STB's rules, 49 CFR part 1106, governing transactions under the STB's authority.

Comments: FRA received several comments addressing a wide range of views on the proposed scope of the SIP rule. The AAR recommended that the rule should cover only Class I—Class I or Class I—passenger operations transactions because of the magnitude and complexity of these transactions and the lack of evidence that the other proposed transactions demonstrated a compromise to railroad safety. The ASLRRA and W&L suggested that the

rule regulate only Class I transactions given that Class II railroad operations are less complex than their Class I counterparts, *e.g.,* lower volume, slower speeds, shorter consists, and more condensed networks, and the weight of the evidence shows that only Class I railroads need to be regulated. The ASLRRA and W&L added that Class II railroads should be regulated on an *ad hoc* basis and that the proposed coverage of start-up operations should be dropped. Amtrak commented on start-ups as well, expressing its position that a SIP should only be required when a start-up involves a new railroad and not existing railroads commencing operations over newly constructed track. APTA opined that the rule should not apply to start-ups covering existing commuter railroads that commence operations over newly constructed track or extending service on existing track.

Conversely, the BMWE, BRC, and TTD suggested that the scope of the rule be expanded to cover Class II and Class III railroads. The BRC, for instance, asserted that although Class III railroads present less complex operations than their Class I counterparts, shortline railroads use less sophisticated roadway equipment and track maintenance practices because of their lower revenue base, and employ workers who may not understand the complexities of Class I rail traffic control systems with which they interchange. The TTD supported its position by claiming that shortline railroads lack sufficient capital resources, training requirements, and staffing levels to execute transactions, and that these railroads have higher casualty and accident rates than Class I railroads.

Final Rule: Having considered the entire spectrum of comments, FRA believes that the SIP rule should apply only whenever a Class I railroad proposes to merge with, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations. The agency has re-examined the anecdotal and empirical evidence and determined that there is a correlation between large-scale transactions and compromises to railroad safety in the absence of advance planning and the preparation of a SIP. As the recent UP/SP and BNSF mergers illustrated, large-scale transactions present unique challenges in operations that can affect the resulting carrier's ability to conduct business while complying with the safety laws. (Indeed, CSXT and NS may have experienced the same shortcomings in the *Conrail Acquisition* had FRA and the STB not required the railroads to file individual SIPs addressing a systematic plan that assessed the safety effects of the transaction and explaining the manner in which they intended to implement the transaction.) Integrating cultures and differing work rules, migrating work forces, deploying capital resources, and adopting information systems are initial steps that must be planned before consummation and implemented during integration to ensure the safety of railroad employees and the public, and the protection of the environment. Therefore, to combat safety and operational problems associated with complex transactions, FRA is requiring a SIP for Class I—Class I transactions and Class I—Class II transactions when there is an amalgamation of operations. The agency believes that advance safety planning by an applicant will promote safety of its lines and minimize exposure to unnecessary accidents, incidents, injuries, or fatalities.

Although FRA recognizes that transactions not involving Class I railroads (*e.g.,* Class II railroads, passenger railroads, and start-ups) can be sophisticated operations, the agency has decided to withhold regulating these transactions for the time being. Nevertheless, FRA reserves the right to revisit the scope section should evidence or experience warrant expanding the reach of the SIP rule.

FRA also notes that paragraph (b) of this section has been modified from the proposed regulatory text to read, ''This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.'' The meaning and application of this paragraph, however, remains unchanged.

Section 244.3—Preemptive Effect

Proposed Rule: FRA proposed this section to inform the public of its views regarding the preemptive effect of the proposed rule. The rule would provide that 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as the regulations proposed with the exception of a provision directed at an essentially local safety hazard.

Comments: The AAR commented that FRA's reading of the preemption provision of the safety laws is incompatible with the STB's exclusive jurisdiction over economic regulation of railroads.

Final Rule: The final rule adopts the proposed rule in full. (The AAR's comments and FRA's response are discussed in the preamble above.)

Section 244.5—Penalties

Proposed Rule: FRA proposed § 244.5 to identify the penalties that the agency may assess upon any person, including a railroad or employees of a carrier, that violated any requirement of this part. The provision would provide that any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, and FRA may assess a penalty of up to $22,000 per violation where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury. Each day would constitute a separate offense, and the agency could assess civil penalties against individuals for only willful violations of this part. Criminal penalties would be available for persons knowingly and willfully falsifying entries or reports required by the SIP rule.

Paragraph (b) of this section would authorize FRA to exercise any of its other enforcement remedies available under the safety laws if an applicant failed to comply with this part. For instance, FRA could issue an emergency or compliance order or seek the issuance of a mandatory or prohibitory injunction should a railroad violate § 244.21.

Comments: Two parties commented on this section. The TTD suggested that the agency clarify the penalty provision to reflect that an individual may be subject to the maximum penalty under the safety laws. The AAR restated its jurisdictional argument that was discussed earlier, asserting that FRA lacks the authority to assess penalties against an applicant, and that conditions or remedies imposed by the STB, such as a cease and desist order, would suffice to address a noncomplying condition.

Final Rule: FRA adopts the proposed rule in full. FRA refers the TTD to the definition of ''person'' contained in § 244.9, which covers individuals such as managers, supervisors, officials, or other employees or agents of a railroad, and independent contractors providing goods or services to a railroad. As explained earlier in the preamble, the agency believes that the safety laws authorize the issuance of this final rule and its penalty provisions. FRA further reasons that enforcement is a necessary and effective tool to promote compliance with the safety laws. Such enforcement actions include assessing civil penalties, issuing compliance, disqualification, or emergency orders,

seeking equitable remedies in Federal court, or referring selected incidents to the Department of Justice for criminal investigation and prosecution. In the SIP rule, these sanctions are necessary to ensure that applicants obtain agency approval of a proposed SIP before implementing a regulated transaction, and execute all measures provided in an approved plan. FRA approval or disapproval of a SIP serves as a baseline for enforcement. Should the agency disapprove of a SIP or portions thereof, this provision provides various remedies if the railroad does not change its SIP to bring it into compliance with the law. Likewise, FRA can take enforcement action if the railroad fails to implement specific requirements of an approved SIP that currently exist under the safety laws. In summary, FRA believes that this section will ensure compliance with the SIP rule by identifying the legal and equitable remedies available.

At this time, FRA has decided not to include a schedule of civil penalties for this rule. The agency received no comments from interested parties about the appropriate penalties corresponding to the sections violated in the rule. Therefore, FRA will reserve Appendix A to 49 CFR part 244 until further notice. Because such penalty schedules are statements of policy, notice and comment are not required before their issuance. *See* 5 U.S.C. 553(b)(3)(A).

Section 244.7—Waivers

Proposed Rule: Proposed § 244.7 would provide the procedures for seeking a waiver of compliance with the requirements of the SIP rule. Any railroad subject to part 244 could petition for such a waiver, and FRA would conduct its own independent investigation to determine whether an exception to the general criteria existed to warrant granting the waiver, provided that the waiver would not compromise or diminish rail safety.

Comments: The AAR suggested that FRA's waiver provision be modified to meld it with the STB's waiver provision.

Final Rule: The proposed rule is adopted with the addition of paragraph (d). FRA believes that its rule text is closely aligned with the STB's counterpart, but informs interested parties that its waiver provision governs only FRA's disposition of a petition for a waiver. An applicant must still seek a waiver from the STB to be free and clear of any SIP requirements under 49 CFR parts 244 and 1106. This caveat is spelled out in paragraph (d) of this section.

Of special note, FRA informs applicants that a petition for a waiver in which a Class I railroad seeks to consummate a transaction with a small Class II railroad with which it proposes to amalgamate operations may be received more favorably than a waiver request in a transaction involving two Class I railroads. Presently, FRA intends to focus its energies on monitoring transactions involving Class I and large-scale Class II railroad operations, *e.g.,* the Canadian National Railway Company's acquisition of the Wisconsin Central Transportation Corporation,[6] where it believes systemic operating deficiencies are most likely to manifest themselves during the integration phase if no SIP is prepared and implemented. Although transactions involving smaller-scale Class II railroads may present safety challenges, FRA opines that not every merger, consolidation, or acquisition covered in this rule should face a comprehensive SIP review. Rather, FRA invites applicants seeking to execute less complex transactions to petition for a waiver of this rule's requirements. FRA will then review the petition on an *ad hoc* basis and may grant it should the agency determine that it is in the public interest and is consistent with rail safety.

FRA reminds the regulated community that it reserves the right to impose any conditions as it believes are necessary to promote rail safety. The agency further advises that it has plenary authority to approve or reject a petition for a waiver of this rule, and its decision is ''agency discretion by law.'' 5 U.S.C. 701(a)(2); *see also Heckler* v. *Chaney,* 470 U.S. 821 (1985).

Section 244.9—Definitions

Proposed Rule: The NPRM proposed an extensive set of definitions that would introduce the regulations. As FRA explained in the proposed rule, the definitions were issued to clarify the meaning of important terms as employed in the rule text and were designed to minimize any possible misinterpretation of the rule. Because the commenters only responded to two proposed definitions, FRA will focus on these terms. The agency refers interested parties to the NPRM for a complete recitation of the meaning and application of those definitions that are adopted as proposed. *See* 63 FR 72230.

FRA proposed defining ''corporate culture'' to mean the attitudes, commitments, directives, and practices of railroad management with respect to safe railroad operations. The concept was to cover a railroad management's attitudes, directives, planning and resource allocations when safety was at issue. ''Best practices'' was defined to mean the safest and most efficient rules or instructions governing rail operations that a railroad issued.

Comments: FRA received two comments on ''corporate culture.'' The AAR represented that the definition as applied could not be quantified in an objective fashion to place an applicant on notice about the measures that must be taken to comply with this element. At the same time, the BMWE wanted to expand the definition to include modifications or changes to CBAs that were not negotiated under the Railway Labor Act that the applicants wished to have the STB impose under the authority of 49 U.S.C. 11321 (commonly referred to as ''cram downs''). *See* 49 U.S.C. 11324(c).

The AAR also questioned the definition of ''best practices,'' asserting two reservations. First, the AAR asserted that the clause ''railroad industry standards'' is code for FRA practices. Second, the railroad organization claimed that the proposed definition invited the agency to formulate business decisions. In response, the AAR recommended qualifying the definition to permit an applicant to select the ''best practices'' of the parties that are subject to the transaction, which would best promote the safety interests.

Final Rule: FRA amends the proposed definitions. ''Corporate culture'' is now defined as ''the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.'' The notion is to capture the business directives issued by a railroad's management and the practices implementing these directives by labor to encompass a wide range of field operations. These activities include the formulation, development, issuance, and execution of measures and programs related to safe railroad operations that involve consultations between railroad management and railroad employees. The heart of the safety issue involved is that FRA has observed (1) that a railroad tends to operate more safely when all of its employees understand that the railroad has a defined way of operating and comply with it and (2) that employees coming from different railroads will

[6] A SIP was prepared and adopted in that case. *See Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation, et al.,* STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (STB Decision No. 2, served May 9, 2001) (STB order mandates the preparation of a SIP) (hereinafter ''*CN/WCTC*''); and *CN/WCTC,* STB Finance Docket No. 34000 (STB Decision No. 10, served Sept. 7, 2001) (STB adopts the SIP and approves the transaction).

tend to continue to do their jobs as they learned them on their first railroad until they are taught to operate differently. This part of the rule is intended to get the railroads subject to a covered transaction to observe their differences, choose how the resulting railroad is to operate, and assure that their employees adopt the chosen culture. FRA does not intend to impose its own choice of corporate safety culture, but insists that the railroad choose and implement its choice.

FRA grappled with ''corporate culture'' in light of the AAR's comments about how objectively the agency could apply its meaning in evaluating a proposed SIP, and in light of BMWE's suggestion that it be expanded to include ''cram downs.'' FRA believes that ''corporate culture'' quantifies sufficient elements to provide for meaningful and objective agency review, and given the spirited debate over cram downs, and the recent settlement among most Class I railroads and labor organizations representing most rail employees, including the BMWE, on the issue of CBA overrides, FRA cannot adopt the BMWE's suggestion that cram downs be considered a part of the definition of corporate culture.

''Best practices'' is modified to read those ''measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.'' This amended definition incorporates the change recommended by the AAR. To reiterate, FRA does not intend to substitute its judgment for that of a railroad in determining which legally permissible safety and efficiency measures to use, but instead will defer to a railroad's construction and application of its operating rules and practices that promote these interests. Put another way, the agency believes that the railroad has the prerogative in identifying the best practices to be employed within the law.

Subpart B—Safety Integration Plans

Section 244.11—Contents of a Safety Integration Plan

Proposed Rule: FRA proposed § 244.11 to frame the structure of a SIP that a railroad must file. The section would require an applicant to prepare a roadmap or playbook detailing the practices and procedures, financial commitment, and timetable for integrating or commencing field operations identified as subject matter areas under § 244.13. In particular, the NPRM would require a plan to propose a timetable from commencement to completion to implement the transaction.

Comments: Only one interested party commented on this section. The AAR generally agreed with FRA's proposal with one exception. The railroad organization opposed the timetable provision in paragraph (f) because it was perceived as being too rigid to afford flexibility in reaching proposed milestones in the plan. The AAR countered with its own textual proposal to require a general overview of steps and order in which the steps would be implemented.

Final Rule: The rule is adopted as proposed with minor textual changes and paragraphs (c)–(e) redesignated as paragraphs (d), (e), and (c), respectively. Paragraph (a) replaces the conjunctive clause ''and the best practices of these railroads'' with ''including the rules or instructions governing railroad operations of these railroads,'' and paragraph (b) adds the text ''including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction'' at the end of the provision to narrow the scope of the information on integrating operating practices a SIP must provide. Paragraph (f) inserts the word ''targeted'' in lieu of ''stated'' to enable an applicant to set benchmarks for completing the specified elements. FRA understands the dynamics of assimilating disparate operating practices and procedures and recognizes the flexibility needed to achieve their integration. The change of the operative word ''stated'' to ''targeted'' thus assuages the AAR's concern. FRA intends to hold a railroad accountable for conducting front-end planning measures and executing the same within identified milestones to complete the integration of operations.

FRA believes that the final rule should delineate the SIP contents and SIP subject matter areas as separate regulatory functions. The contents provision provides the basis for identifying and addressing the subject matter areas and facilitates a well organized plan that will articulate the execution and implementation of these elements. Section 244.11 best exemplifies the roadmap or playbook concept necessary to address the subject matter areas provided in § 244.13. Accordingly, the section's regulatory heading and introductory text remain unchanged.

Section 244.13—Subjects To Be Addressed in a Safety Integration Plan Involving an Amalgamation of Operations

FRA received several comments expressing a wide variety of opinions about the contents of § 244.13. To improve the flow of this analysis, each paragraph will be treated as a separate section, summarizing the proposal, comments, and final rule. FRA refers interested parties to the NPRM's Section-by-Section Analysis for the background of the elements identified in this section, and the justification for requiring these subject matter areas for transactions that involve an amalgamation of operations. Because FRA received no comments about the basis for or scope of proposed § 244.13, the introductory text of the regulation is adopted as proposed.

Section 244.13(a)—Corporate Culture

Proposed Rule: FRA proposed paragraph (a) to require an applicant to explain the basis for its safety culture. Specifically, the regulation would require a railroad to identify and describe differences in corporate cultures for each safety-related area; describe how these cultures lead to different practices governing rail operations; and explain how the proposed integration of corporate cultures would result in a system of 'best practices' when the proposed transaction was implemented.

Comments: Management and labor organizations commented on the ''corporate culture'' provision. APTA wanted ''corporate culture'' to address the safety of passenger operations, and the TTD suggested that a railroad detail similarities and differences in corporate culture to avoid issuing ''boilerplate language'' in its proposed SIP. Concurrently, the AAR agreed with the proposed rule text because it provided sufficient flexibility in accounting for different organizational structures, styles, and operations.

Final Rule: The proposed rule is adopted with revisions to § 244.13(a)(1), and (3). Subparagraph (1) is refined to mandate that an applicant ''(i)dentify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction(,)'' and subparagraph (3) is changed to read that the railroad must ''(d)escribe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of 'best practices' when the transaction is implemented.'' These provisions draw a closer nexus between safety and corporate culture

than the proposed rule and require a railroad to detail the incremental measures it will take to integrate disparate cultures that will culminate in adopting safe and efficient standards governing railroad operations.

As FRA explained in the proposed rule, safety culture is an instrumental element in achieving rail safety. Acquisitions, consolidations, and mergers of large rail operations are complicated transactions that require a railroad to adopt an operating structure that underscore safety and good communications among management, employees, and the employees' union representatives. Such a structure should unify the different cultures under which railroads operate that draw upon the best practices of each to facilitate the formulation, development, issuance, and implementation of safety practices and procedures within a seamless merged company.

To carry out this task, an applicant needs to describe how it will successfully integrate the underlying priorities, practices, and philosophies while implementing the transaction. For example, UP recently published a three-step directive to its officials. First, the railroad indicated that it would focus, in part, on adequate staffing levels and predictable work schedules. Second, it would direct its attention to values, leadership development, training, and quality. Finally, the railroad pledged that it would build a new relationship with its employees. At the same time, NS has established a culture that elevates training, professionalism, commonality of purpose, and rules compliance to achieve safety on its railroad. NS has acknowledged that rules compliance is most fundamental to avoid accidents or incidents, and has stressed effective communications between management and the rank-and-file workers to implement this measure. CSXT has amplified the importance of safety culture by establishing a cooperative program comprising management officials and labor union members that educates, counsels, and improves the performance of safety-sensitive employees who commit operating rules violations, and instituting safety culture offices that ensure that safety is foremost in job performance. *See* SIP Update at 22.

At bottom, FRA posits that it will not dictate attitudes, directives, planning, or resource allocation criteria under this part. Rather, the agency intends to defer to proposed and implemented planning processes that promote and value railroad safety. It is incumbent on a railroad to resolve different cultures, direct and carry out programs that emphasize safety practices, and engage management and labor to develop, issue, and implement an iteration process to execute these programs. To this end, FRA endorses the corporate culture concept and incorporates the textual standards accordingly.

Section 244.13(b)—Training

Proposed Rule: The proposed rule would require a railroad to discuss its training and educational programs to ensure that its employees and supervisors who are responsible for field operations would be proficient and qualified. FRA identified the employment crafts that would be covered in the NPRM, which were train and engine service employees, dispatchers or operators, roadway workers, signal employees, mechanical officials, and hazardous materials personnel.

Comments: FRA received diverse comments from interested parties. The TTD, for example, wanted the rule to set minimum qualifications and training requirements, and require an applicant to detail the number of class and on-the-job training hours and file a report on hazardous materials training. At the same time, the BRC wanted to establish qualification and training standards for car inspectors when defect ratios exceed three percent for an applicant, and the ATDD suggested training and qualification requirements for dispatchers. The AAR agreed with the regulatory concept, but opposed new training requirements that are not prescribed under the safety laws because such standards do not present an integration issue.

Final Rule: FRA adopts the proposed rule with some substantive changes to the introductory text and paragraph (b)(6). The rule centers on ensuring that designated employees, including information technology personnel affecting hazardous materials transportation, are proficient, qualified, and familiar with the operating rules and operating tasks of territory assigned when these employees are moved to a new territory or the operating rules on a given territory are changed. Training impacts integration of operations when employees are either transferred to new divisions or subdivisions, or when operating rules, timetables, or timetable special instructions, *e.g.*, superintendent bulletins, are changed in an assigned territory. In other words, when operating circumstances change, the ''front line'' employees must be familiar with all aspects of their crafts or occupations. A SIP should also include details identifying the scope and depth of the type of training operating personnel will receive, discuss the resources allocated to conduct and complete training, and a proposed schedule for reaching this milestone.

FRA and the AAR are in agreement about the concept of the SIP rule. It is not the agency's intention to prescribe new substantive standards in this rulemaking action. Instead, the rule requires a railroad seeking to consummate a transaction to inaugurate and implement certain programs when integration commences. In this instance, an applicant needs to make certain that its operating employees are conversant in logistics, operations, and equipment handling in unfamiliar localities, and when operating rules, timetables, or timetable special instructions are changed in an assigned territory. Although FRA is receptive to the labor organizations' recommendations, the agency believes that training standards are more appropriate in another rulemaking action and therefore, declines the invitation.

Section 244.13(c)—Operating Practices

Proposed Rule: FRA proposed requiring a railroad to provide operating practices information that would address operating rules, accidents/incidents, hours of service laws, and the alcohol and drug and locomotive engineer qualification and certification programs. The regulation would also require an applicant to discuss the efforts taken to minimize fatigue of covered service employees, *i.e.*, employees who perform train and engine service, dispatching, or signal system service, to enhance safety in the field and reduce the likelihood of committing errors while performing safety-sensitive functions.

Comments: Four parties filed comments on this proposal. The labor union commenters supported the proposal, but suggested changes. The BMWE wanted the rule to also require a railroad to consider fatigue management of roadway workers because of the physical demands of their labor and the travel necessary to carry out their assigned tasks. The BRC recommended that the proposed accident/incident reporting procedures be amended to require an applicant to certify the integrity of electronic data entered and a security system to reflect any amendments to initial data entries. The TTD supported the provision, but suggested four changes. First, the labor organization wanted a railroad to identify the size of current operating crews and detail the injuries, fatalities, and expenditures on safety-related claims. Second, it recommended that an applicant file a compilation of all

alcohol and drug tests performed and their results for the previous three years, and an explanation of its options for substance abuse treatment. Next, it wanted a railroad to specify the measures necessary to minimize employee fatigue. Lastly, the TTD wanted a SIP to identify how an engineer would be qualified on the physical characteristics to operate over any new territory.

The AAR also commented on paragraph (c). The railroad organization agreed with the operating rules provision because of its integral nature in governing operations on a new railroad system, but opposed the accident/incident reporting and alcohol and drug testing provisions on the ground that they are not integration issues unique to regulated transactions.

Final Rule: FRA adopts the proposed rule with two modifications. The agency amends § 244.13(c)(1) to add ''freight and passenger service'' to the provision requiring a railroad to identify the operating rules, timetables, and timetable special instructions that govern railroad operations. The inclusion of this proviso renders § 244.13(l) redundant, which substantiates its withdrawal from the final rule. FRA also drops proposed paragraph (c)(2) from the final rule, agreeing with the AAR that there is no correlation between accident/incident reporting procedures and safe integration of operations. The agency has determined that accidents/incidents reporting is not a safety problem with the transactions it has reviewed. FRA believes that the current regulations under 49 CFR part 225 achieve the interests of safety for reporting accidents or incidents and establishing an internal control plan under § 225.33. Therefore, the accidents/incidents provision is unnecessary and is withdrawn.

FRA believes that the final rule captures the information a railroad needs to address in a SIP to ensure that operations are performed safely during the integration phase. Although the agency considered expanding the reach of the operating practices area, it decided to focus on those employees and practices that will be most affected by a transaction, particularly those aspects that involve logistics, operations, and equipment handling in unfamiliar territories, and the need to retain institutional knowledge on lines experiencing operational changes. A railroad, for instance, needs to identify the alcohol and drug testing programs that will apply after it consummates operations to facilitate continuity and consistency during the transition period. Again, the rule's objective is to require an applicant to conduct advance planning of operations that impact rail safety. The operating practices enumerated in the rule text are such critical operations that mandate detailed planning. This rationale thus undergirds the requirements contained in this provision.

Section 244.13(d)—Motive Power and Equipment

Proposed Rule: Section 244.13(d) would require an applicant to identify the qualification standards for employees who inspect, maintain, or repair rolling stock and designate the facilities that will repair the rolling equipment, and provide adequate assurances that mechanical officials who are responsible for performing required inspections and tests of the equipment are proficient in mechanical practices to safeguard the use of freight or passenger cars and locomotives on a railroad.

Comments: The AAR, BRC, and TTD shared their respective comments with FRA about the proposed rule. The AAR agreed that the regulation should be adopted with the proviso that a railroad be afforded flexibility to change the designation of repair facilities without the need of agency approval. The BRC took issue with the provision ''designation of facilities that will repair such equipment'' because it implies that a railroad would be authorized to assign repair facility locations irrespective of safety concerns. The BRC recommended that the sentence read, in part, that an applicant must identify ''all facilities being used, and that will be used following consummation of the transaction, to repair such equipment,'' to enable FRA to determine whether a railroad is eliminating redundant repair facilities or increasing the distance noncomplying cars may be permitted to travel. The TTD also wanted to amend the provision to require a railroad to identify the average and mean age of engines owned by an applicant and the location of new repair facilities.

Final Rule: FRA agrees with the BRC that a SIP must identify all repair facilities that are being used or will be used after a transaction is consummated. The agency is concerned about the safety of rolling stock and believes that the modification will enable it to determine whether an applicant is eliminating redundant repair facilities or increasing the distance in which noncomplying rolling equipment may travel, thereby compromising rail safety. FRA thus rewords the last clause in the provision to read ''the designated facilities used, or to be used, to repair such equipment'' to reflect this amendment.

Section 244.13(e)—Signal and Train Control

Proposed Rule: The NPRM would require a railroad to identify the signal and train control systems used, and maintenance, capital improvement, and research and development projects planned for signal and train control operations.

Comments: The TTD supported the proposed requirement, but recommended that the rule should also require an applicant to identify signal malfunctions and false signal reports, dark territory, and accidents in signal and non-signal territory. The AAR opposed the TTD's suggestion to require a railroad to identify signal malfunction reports, asserting that it does not present an integration issue.

Final Rule: FRA agrees with the AAR that the TTD's proposal does not present an integration issue but instead, an operational issue affecting the routine movement of engines, equipment, or trains. The TTD's suggestion is therefore not adopted. The final rule tailors the proposed rule text to require a railroad to address ''any planned amendments or modifications to capital improvement'' to focus an applicant on advance planning of signal systems integration to prevent any incompatibility between signal and train control systems and reconcile or harmonize signal practices and standards when dissimilar systems exist.

Section 244.13(f)—Track Safety Standards and Bridge Structures

Proposed Rule: FRA would require a railroad to identify the maintenance and inspection programs for track and bridges to ensure that its infrastructure was safe or would be repaired, rehabilitated, or replaced, if necessary.

Comments: The labor organizations, led by the BMWE and TTD, wanted the regulation to require an applicant to identify the qualification standards for trackside workers to track the requirements contained in § 244.13(d). The AAR opposed the NPRM, claiming that Track Safety Standards and bridge structures do not present an integration issue.

Final Rule: Based on FRA's recent assessment of the *Conrail Acquisition*, the agency believes that track safety does present an integration issue that should be addressed in the final rule. FRA's audit found that CSXT experienced track maintenance and inspection practices shortcomings after the implementation of the *Conrail Acquisition*. In 1999, FRA determined

that the railroad's track defects ratios did not improve from the previous year, and track-related accidents remained a problem on its lines. These accidents were caused by wide gage and defective switch points and track hardware at turn-outs, which were easily preventable and evidence the need for the railroad to redouble its efforts in upgrading its track program. *See* SIP Update at 24. Because track maintenance and inspection programs are essential elements to promote safe rail operations during integration, FRA believes that the roadway or trackside workers should be qualified in carrying out these tasks. As a result, the final rule adopts the labor organizations' recommendation by requiring a SIP to identify the qualification standards for these workers.

Section 244.13(g)—Hazardous Materials

Proposed Rule: Section 244.13(g) proposed requiring an applicant to address hazardous materials in a SIP. First, a railroad would have to identify a hazardous materials inspection program that covered field inspection practices, communication standards, and emergency response procedures. Second, the applicant would have to discuss its development and deployment of an automated system at designated locations for immediate retrieval of hazardous materials shipping papers.

Comments: Three parties commented on the proposal. The BMWE and TTD wanted an applicant to provide an emergency action hazardous materials plan. Conversely, the AAR opposed the requirement of developing and delivering computer software operating systems because there was insufficient evidence that the regulation would promote the safe integration of hazardous materials safety programs.

Final Rule: FRA has reorganized paragraph (g) by requiring a railroad to identify a hazardous materials inspection program that covers four discrete areas. The first three are identical to the proposed rule. The fourth area reconfigures proposed § 244.13(g)(2) to require the program to address information technology (''IT'') systems and employees who are responsible for shipping papers accompanying hazardous materials shipments. The provision also stipulates that a SIP should identify preventive measures that an applicant will use in responding to IT integration and hazardous materials documentation problems.

FRA believes that IT systems that transmit and receive hazardous materials information must employ programs that properly place cars in train consists and identify the contents of hazardous materials shipments to the hostler and train and engine crews. The agency documented several IT deficiencies in implementing the *Conrail Acquisition*, finding improper hazardous materials shipping papers and inaccurate train consists hauling hazardous materials shipments because of, in part, the lack of familiarity with the data systems used to process hazardous materials documentation. *See* SIP Update at 2, 25, and 28. To prevent recurrences, FRA believes that a railroad should test the computer systems that will be responsible for handling hazardous materials paperwork to detect and eliminate any incompatibility problems found and provide for information accuracy. FRA's revision captures the lesson learned from a recent transaction.

Section 244.13(h)—Dispatching Operations

Proposed Rule: Paragraph (h) would require a railroad to identify the dispatching system to be adopted, the migration of the existing system to the adopted one, if applicable, the qualifications for determining duties performed by dispatchers or operators, and the volume of work assigned to the dispatchers or operators.

Comments: The ATDD and AAR provided disparate comments on this proposal. The ATDD opined that a railroad should be required to address the familiarity of the dispatchers with the territory that is subject to the transaction, whereas the AAR opposed this recommendation because no current substantive regulation exists and proper training alone may provide adequate territory familiarization. The AAR also asserted that the dispatching requirements should apply only to operations that are affected by the transaction.

Final Rule: FRA adopts the suggestions that were provided. The proposals are incorporated in § 244.13(b) introductory text and § 244.13(b)(4) by requiring a SIP to identify training programs for dispatchers to ensure familiarity with the operating tasks of the territory assigned when these employees are assigned to a new territory or the rules governing an assigned territory are changed. Otherwise, the term ''workload'' is added to paragraph (h)(3) and paragraph (h)(4) is withdrawn. This cosmetic change retains the sum and substance of the information on dispatcher workloads in a SIP without setting out a separate regulatory function.

Section 244.13(i)—Highway-Rail Grade Crossing Systems

Proposed Rule: The NPRM would require a SIP to address highway-rail grade crossing signal system safety, emergency response measures, public education initiatives, and proposals to improve grade crossings and grade crossing system warning devices.

Comments: Only one party commented on the proposal. The AAR maintained that the proposed regulation was inappropriate because railroads already discuss grade crossing issues and upgrades with state highway departments, and FRA's insertion into the process may create conflicts with these government agencies and impose unnecessary burdens on an applicant. Alternatively, the AAR suggested that a SIP require a railroad to discuss grade crossing safety programs and the integration of the programs in a transaction.

Final Rule: The final rule adopts the AAR's suggestion in part and breaks out the information required in a SIP in more detail. The regulation mandates that an applicant identify the grade crossings that will experience an increase in traffic as a result of the transaction, the existing grade crossing programs of the railroads as they apply to these crossings, the integration of the grade crossing programs of the railroads that are subject to the transaction to the extent the programs differ, emergency response action plans, measures to avoid blocking or obstructing grade crossing systems, and signs used for changes to rail traffic patterns.

FRA believes that grade crossing safety is a critical element that a SIP must address. As was explained in the NPRM, statistics show that the vast majority of fatalities and injuries during railroad operations occur at grade crossings due to collisions or trespass incidents. 63 FR 72233. A complex transaction presents its own challenges given that a railroad acquiring, consolidating, or merging with another railroad will dedicate traffic on certain corridors or lines. The SIP rule requires an applicant to consider the impact of increased traffic density in a territory on the safety of grade crossings.

Again, FRA's role is not to approve or reject specific measures, such as upgrading grade crossings, a railroad may take during the course of a transaction. Rather, the agency reviews the applicant's proposed plan within the context of providing a ''reasonable assurance of safety.'' FRA does not foresee that such a review process will interfere with a railroad's consultations with a state highway agency or impose

a substantial burden on the railroad. The interests of safety direct an applicant to develop and implement a grade crossing program that will reduce accidents, incidents, injuries, and fatalities that occur at crossings. The grade crossing element is thus retained in the final rule.

The rule also sets out discrete new items-avoidance of blocked crossings and signs used for changes in traffic patterns-that a railroad must address in its grade crossing program. Blocked crossings are of particular concern to FRA and communities that will experience increased rail traffic over its crossings. To illustrate, the agency found that a significant number of NS crossings were blocked for extended periods of time in the State of Ohio during the end of 1999. *See* SIP Update at 20. The agency has determined that this deficiency is more systematic and frequent than previously believed, creating unnecessary challenges for emergency response vehicles and creating congestion at crossings. To reduce the likelihood of similar problems occurring in the future, FRA believes that a railroad should identify in its SIP practices to alleviate blocked crossings, which may include identifying additional sidings required, crew change points, and other actions or construction needed. (The agency notes that this requirement is similar to the STB regulations requiring applicants to submit evidence about potentially blocked grade crossings as a result of anticipated merger-related traffic increases. *See* 49 CFR 1105.7(e)(7) and 49 CFR 1180.1(f)(3)(ii) and 1180.8(a)(2), requiring an applicant to identify specific measures to be employed to avoid blocking crossings that may result otherwise due to the consummation of a transaction, at 66 FR 32582, 32585 and 32589, June 15, 2001.) The SIP must also discuss the signs used for changes in traffic patterns. FRA believes that these signs serve to advise motorists and pedestrians of the frequency of rail traffic traversing crossings to protect them from possible collisions.

Section 244.13(j)—Personnel Staffing

Proposed Rule: Paragraph (j) would require a SIP to cover personnel staffing in terms of the number of employees, both current and proposed, for certain occupations carrying out safety-sensitive service in the railroad industry.

Comments: FRA received two comments to this proposal. The ATDD agreed with the regulatory text as proposed. The AAR wanted to clarify the proposal by authorizing a railroad to file a copy of its Labor Impact Exhibit that is filed with an application to the STB under 49 CFR part 1180 to avoid any redundancies in information provided pursuant to an application.

Final Rule: FRA adopts the proposed rule with one minor modification. An applicant need only address the personnel staffing element when it projects a change of operations that will impact workforce duties or responsibilities. A railroad may omit this section if it expects operations will remain constant after the transaction is consummated. Otherwise, it must address the full litany of job functions that are provided in subparagraphs (1)–(8).

FRA declines to accept AAR's suggestion in authorizing a railroad to file a copy of its Labor Impact Exhibit to satisfy this provision. Under 49 CFR 1180.6(a)(2)(v), also known as the Labor Impact Exhibit requirement, the STB only requires an applicant to address projected changes that a transaction will impact on its employees by class or craft, the geographic locations where the impact will occur, the timeframe of the impact, and whether any employee protection agreements have been reached. The Board's regulation thus does not cover current employees and does not enunciate specific job duties that are prescribed here. Because the two regulations are not congruent, the filing of a Labor Impact Exhibit alone will fall short of the requirements enumerated in this section. Nevertheless, a railroad may use the same information provided in its Labor Impact Exhibit to meet portions of this regulation where appropriate.

Section 244.13(k)—Capital Investment

Proposed Rule: Paragraph (k) would require an applicant to explain its capital investment program by describing its intended investments in the company's infrastructure and addressing changes to existing investment forecasts.

Comments: The TTD agreed with the capital investment proposal.

Final Rule: FRA adopts the rule as proposed.

Section 244.13(l)—Relationship Between Freight and Passenger Service

Proposed Rule: FRA proposed requiring a railroad to describe the relationship of freight and passenger service on railroad lines subject to a transaction.

Comments: The agency received comments from APTA and OK DOT about proposed paragraph (l). APTA requested that the regulation enunciate the schedule changes involving commuter and freight service on operations subject to the transaction. OK DOT, on the other hand, wanted the provision to require an applicant to address the density of combined freight and passenger operations.

Final Rule: Upon further consideration, FRA has concluded that freight and passenger service should be addressed within the context of the operating rules that will govern their operations. The agency reasons that safe integration is premised on identifying those rules and practices that will govern these services on property that is the subject of a transaction. Service alone does not present an integration issue that warrants separate analysis and requiring a railroad to address schedule changes or density concerns serves to ''micromanage'' an application, which is contrary to the purpose of the SIP rule. Service falls within the rubric of railroad operations that must be evaluated to identify the potential safety impact and the measures directed to minimize any consequences during integration. Based on this analysis, FRA withdraws proposed paragraph (l) and transfers ''freight or passenger service'' to paragraph (c)(1).

Section 244.13(m) (Now Section 244.13(l))—Information Systems Compatibility

Proposed Rule: Section 244.13(m) proposed requiring a railroad to address the steps it intended to execute to provide a single interface of data on train consists, freight car and locomotive movements and movement history, also known as ''wheel reports,'' dispatching operations, accident/incident reporting and recordkeeping requirements, and emergency cessation of operations.

Comments: Both the BMWE and TTD suggested expanding the regulation to require information systems to address movement and movement history of roadway equipment and hi-rail vehicles.

Final Rule: FRA adopts the proposed rule, now redesignated as § 244.13(l), with two changes. First, the final rule removes proposed subparagraph (4), which addressed accident/incident reporting and recordkeeping requirements within the information systems context. As explained in its discussion of Section 244.13(c)(2) above, FRA has concluded that accidents/incidents reporting is not a problem warranting a SIP. The agency therefore believes that requiring an applicant to explain the transmission and receipt of such information when integrating computer technologies is unnecessary. Consequently, the provision is withdrawn.

Second, this section adds one provision. A SIP must also address the compatibility of information systems that are responsible for transporting hazardous materials to ensure their safe movement while a railroad is switching or converting hardware, software, or program systems. The agency found that both NS and CSXT experienced difficulties in identifying and tracking hazardous materials shipments through their respective computer systems after they switched over from Conrail's ''CATS'' system in June 1999. *See, e.g.*, SIP Update at 25, 28, and 32. For example, CRCX employees, who work for the Shared Assets Areas in the *Conrail Acquisition*, reportedly had difficulty in obtaining documentation from CSXT and NS computer systems to properly place hazardous materials shipments in train consists. *Id.* at 32. Hazardous materials shipping papers must represent the contents of shipments being transported on the railroad. To this end, the IT systems must be capable of receiving and transmitting accurate hazardous materials documentation to ensure the seamless and efficient flow of information during the interchange of shipments. FRA, however, disagrees with expanding the regulation to include roadway equipment or hi-rail vehicles. There has been no evidence of problems associated with these service vehicles during the integration of complex transactions. Therefore, FRA demurs on the suggestion.

Section 244.15—Subjects To Be Addressed in a Safety Integration Plan Not Involving an Amalgamation of Operations

Proposed Rule: FRA proposed, in part, requiring a railroad engaging in a transaction that did not involve an amalgamation of operations to file a SIP that covered only the training, personnel staffing, and capital investment elements.

Comments: The AAR opposed requiring a SIP for a ''paper transaction'' because such a transaction does not present operational changes and only serves to impose an unnecessary burden on an applicant without any consummate safety benefit. In response, the AAR proposed revising the provision to require a SIP on an *ad hoc* basis when no operational changes exist.

Final Rule: FRA agrees with the AAR's rationale that a ''paper transaction'' presents minimal changes in operations that will affect rail safety and revises the regulation as suggested. An applicant seeking to consummate a transaction that does not propose an amalgamation of operations need not file a SIP unless FRA directs the railroad to do so.

As we explained in the NPRM, FRA distinguishes ''operational transactions'' that present a migration of personnel or equipment, or infrastructure changes from ''paper transactions'' that are limited to changes in company letterhead. *See* 63 FR 72234. FRA advises interested parties, however, that changes in operating rules, timetables, bulletins, special instructions, or any other written directives that affect the movement of locomotives or rolling stock impact safety and are therefore designated as ''operational transactions,'' requiring the filing of a SIP. FRA thus adopts a broad interpretation of ''amalgamation of operations'' by mandating a SIP for transactions that propose only changes in practices or procedures governing railroad operations.

Section 244.17—Procedures

Proposed Rule: The NPRM proposed a set of procedures that would govern the filing and handling of an application to carry out a transaction. Section 244.17(a) provided that a railroad would be required to file a SIP with FRA and the STB no later than the date it submitted its request for authority to the Board. Under paragraphs (b) and (c), FRA would review and comment on the proposed SIP, and the railroad would provide additional information supporting its plan should the agency require it. Paragraph (d) proposed requiring FRA to issue its factual findings and conclusions on the proposed SIP to the STB before the Board ruled on the application. Section 244.17(e) would require a railroad to coordinate with FRA in implementing a proposed SIP approved by FRA and the STB until integration was complete. The proposed rule also set out the interplay between FRA and the Board during the implementation phase of the transaction in paragraph (f).

Comments: The AAR maintained that the proposal to require the contemporaneous filing of a proposed SIP and a request for authority with the STB was unrealistic, as the same employees generally would write both the operating plan for the STB application and the SIP. The organization also questioned the proposal because it may compromise the quality of the SIP and was inconsistent with the *Conrail Acquisition* proceeding in which the STB gave NS and CSXT four months to file their separate plans after they filed their respective applications. As an alternative, the AAR proposed that the rule provide a railroad 30–90 days after it files its application with the Board to file a proposed SIP.

The AAR further opposed proposed paragraph (b) on the ground that the regulatory text called for information that was beyond the scope of the rule. The organization recommended amending the text to authorize FRA to obtain additional information on matters that address specific safety concerns. Finally, the AAR requested that proposed paragraph (f) be amended to establish a three-year window of regulatory oversight of a railroad's SIP implementation, and that the section add a provision covering the confidential treatment of information provided by an applicant to the agency to safeguard proprietary and competitively sensitive information.

Final Rule: FRA revises § 244.17 to reflect the proposals advanced by the AAR and to clarify the procedural requirements governing the SIP process. Paragraph (a) is amended to give a railroad up to 60 days after it files an application with the STB to file a proposed SIP with FRA. FRA believes that a two-month interim will provide sufficient time for the company to complete its SIP after filing its operating plan. The agency also adds the phrase ''to satisfy the requirements of this part'' to paragraph (b) to assuage the AAR's concerns. Restated, the regulation now requires a railroad to provide additional information in a SIP that FRA may require to meet the rule's requirements, such as the operational elements within the framework of the plan's contents as provided in § 244.11. The final rule also has been revised to delete the reference to ''exemptions'' filed with the STB, because Class I carriers typically file applications in consolidation transactions.

FRA adds paragraph (f) to § 244.17 to require a railroad to communicate with the agency about any changes and refinements to its plan in response to unfolding developments, and file any amendments to its plan with FRA for approval. Proposed paragraph (f) is redesignated paragraph (g), and the last sentence of the proposed provision is amended to reflect that FRA will oversee the implementation of a SIP for a period of five years, for a period prescribed by an order issued by the Board, or when FRA advises the Board in writing that the integration of operations is complete, whichever is shorter. The oversight period is necessary to ensure that the SIP is being implemented as intended, that the railroads are adhering to the representations made in the SIP, that no unforeseen circumstances have arisen

requiring FRA to exercise any of its enforcement remedies, and that the milestones established in the SIP are being met in a timely fashion.

Finally, the agency adds paragraph (h) to provide a procedural mechanism for an applicant to request that advance drafts of a proposed SIP and information filed in support of the proposed or approved plan receive confidential treatment should an outside party submit a request for the documents under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The regulation directs the railroad to comply with the procedures enumerated under 49 CFR 209.11 to petition for such treatment. Nevertheless, FRA reminds the regulated community that the agency alone will decide whether to grant or deny a request, but that it will afford a company whose request was denied an opportunity to respond no less than five days before the agency discloses the information. *See* 49 CFR 209.11(e). It should be noted, however, that FRA, like the STB, will not treat a proposed or approved SIP that is filed pursuant to the regulations prescribed under 49 CFR 244.17(a) and 1106.4(a) as confidential because the proposed plan will be incorporated in the Board's environmental documentation, which will be made available for public review and comment.

Section 244.19—Disposition

Proposed Rule: Section 244.19 would enunciate FRA's review and approval process of a proposed SIP. The regulation proposed requiring a plan that detailed a logical and workable transition from conditions existing before the proposed transaction to conditions intended to exist after the transaction was consummated. FRA would review the SIP on a ''reasonable assurance of safety'' standard, meaning that the agency would conduct rational basis review of the plan to ensure that it was reasonably sufficient to comply with the safety laws, provide for safe railroad operations, and satisfy expectations of integration of operations. The agency would then issue its notice of approval should the SIP prove satisfactory, provided that the railroad implemented the plan as proposed.

The rule also would authorize amendments to a SIP. A railroad could amend its plan as needed with FRA's approval or the agency could mandate changes consistent with rail safety should it identify deficiencies during implementation of an approved plan that were unforeseen while the plan was under review. Again, SIP approval would be contingent on a railroad's fulfillment of the subject matter elements in the plan and the execution of operations necessary to implement the plan.

Comments: The AAR was the only commenter to the proposed section. The railroad organization opposed FRA's formal review and approval process of a SIP, and any amendments thereto, on the grounds of the agency's lack of jurisdiction to consider transactions within the STB's scope of authority, and the need to maximize flexibility in updating and improving safety plans and minimize the burdens imposed by the rule. The AAR proposed four revisions to the section. First, FRA would advise the Board in reviewing a proposed SIP on practices and procedures relating to rail safety, with the STB to determine whether to approve or disapprove of a plan based on its adequacy after FRA comments on it. Second, an applicant would be permitted to file any amendments with FRA and explain the need for the changes should the agency request the same. Third, the section would authorize amendments to take effect within 20 days after they are filed with the agency and remove the review process of amendments. Finally, the AAR recommended modifying paragraph (b) by replacing ''later developments'' with ''amendments to a SIP.''

Final Rule: FRA adopts the core of the proposed rule and certain changes advanced by the AAR. Paragraph (a) is rewritten to articulate the standard of review for a proposed SIP, and any amendments thereto, up front. The rule further explains the structure of the plan to be filed, which the NPRM set out. Recast, the SIP must be thorough, complete, and clear; and address a logical and workable transition of railroad operations from conditions before the transaction to conditions intended after the transaction is consummated that provide a reasonable assurance of safety at every step during implementation. FRA intends to work informally with an applicant both before and after the transaction is approved and consummated to ensure that the SIP complies with the regulations and that the transaction is safely implemented.

Consistent with the AAR's proposal, FRA amends paragraph (b) by inserting ''any amendments to the plan approved by FRA'' in lieu of ''all later developments subject to FRA approval that could not be completed before approval of it.'' This revision clarifies an applicant's role in fulfilling the elements of an approved SIP by requiring it to implement all of the plan's measures and any amendments to the plan. The agency notes that it may approve portions of a SIP while disapproving other portions if it concludes that the actions under the plan can be segregated without jeopardizing safety.

Section 244.19(c) is also amended by requiring a railroad to substantiate any changes to its SIP and communicate with the agency to resolve any comments about the amendments. The regulation also prescribes that any amendments approved by FRA will take effect within 20 days of approval, and the agency may ''request'' rather than ''require'' a railroad to amend its approved plan should circumstances dictate. The operative word ''request'' is inserted to afford the agency discretionary review of the plan while it is being implemented and sufficient leverage to proffer a change that promotes safety interests.

FRA takes issue with the AAR's suggestion that the agency lacks authority to adopt a formal review and approval process of SIPs. As FRA explained earlier, the agency believes that it has the authority to regulate railroad safety during implementation of mergers, consolidations, and acquisitions that are approved by the STB. FRA has always done so for the hazards presented by railroading generally. In this rule, FRA is exercising its existing jurisdiction and expertise in regulating the safety hazards presented by the proposed integration of operations of different railroads. *See* 49 U.S.C. 20103. In short, the transaction that is approved by the STB is the context within which the potential safety hazards are presented and dealt with, but the transaction itself is not regulated by FRA. The rule does not authorize FRA to sanction or veto a transaction subject to STB approval or to impose conditions upon which approval of the transaction is authorized because those functions are exclusively vested with the STB. *See* 49 U.S.C. 11321–24.

FRA believes that there is a need to codify an ongoing SIP approval process to allow for appropriate enforcement. There are two parts to this process. First, a railroad must submit a proposed SIP for agency review and approval to determine whether the plan meets the requirements of the rule. Second, assuming the proposed SIP, including any amendments thereto, is approved, the railroad must implement the SIP as approved. Should FRA disapprove a SIP, or portions thereof, or the railroad fail to implement the SIP, the rule authorizes the agency to take enforcement action to ensure safety. *See* 49 CFR 244.21(b).

Section 244.21—Compliance and Enforcement

Proposed Rule: Proposed § 244.21 would require a railroad to have an FRA-approved SIP before it could change its operations to implement a transaction. Additionally, the rule would authorize the agency to use any of its enforcement remedies available under the safety laws should the railroad either change its operations without an approved plan or fail to execute any measure in an approved plan. The regulation also provided that FRA would consult with the STB at all appropriate stages of SIP implementation for a transaction that involved Board authorization.

Comments: The AAR objected to this proposal, asserting that FRA is not authorized to take any enforcement action against a railroad under this part because the STB is the only agency with jurisdiction to approve or disapprove a proposed SIP.

Final Rule: FRA revises § 244.21(a) to clarify that, in approving a SIP, FRA is regulating the safety of railroad operations and is neither approving nor disapproving the transaction before the STB nor exercising an alleged veto over whether that transaction can be consummated if it should be approved by the STB. FRA also withdraws proposed paragraph (c) because it duplicates the requirements provided under § 244.17(g). The regulation now requires a railroad implementing a transaction to operate in compliance with the SIP approved by FRA until all of its operations are completely integrated. The rule is rewritten in this fashion to eliminate the possibility of interpreting the rule, as some commenters did, to equate FRA's approval or disapproval of a SIP with approving or disapproving an application to the STB to approve a transaction. As explained above, FRA agrees that the STB has exclusive authority to approve or disapprove a transaction covered by this part.

Correspondingly, FRA's role in the STB's process is to advise the Board on safety issues identified in a transaction. Indeed, the Board's own proposed and final rule relies upon the FRA's safety expertise as the Board evaluates the merits of a transaction and disposes of an application. *See* 49 CFR 1106.4; *see also* Tyrrell, 248 F.3d at 523; *CP Purchase,* slip op. at 5–6 (the STB gives ''great weight'' to FRA's expert view on rail safety in determining whether to impose any conditions on a proceeding).

Briefly stated, regulation of ''every area of railroad safety'' is FRA's jurisdiction. *Tyrrell,* 248 F.3d at 523 (''FRA exercise[s] primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*''). In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad operates while implementing a transaction permitted by the STB, *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the ''plenary safety authority with respect to the safety of rail operations-before, during, and after a transaction'' which the AAR acknowledges that FRA has. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction.

In summary, FRA is authorized to exercise any of its legal or equitable enforcement remedies should a railroad either not operate in accordance with an approved SIP or not comply with any element provided in that plan.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA is adopting rules that will require merging or acquiring railroads to adopt SIPs before commencing merged operations. Two railroads, NS and CSXT, prepared such plans for their acquisition of the Conrail system. One of those railroads has informed FRA that its SIP cost $300,000, the other said it cost $212,000. The main difference is that the more expensive plan was developed almost exclusively by a contractor, while the other was mostly done in-house. It is unlikely that any SIP would cost much more. It is possible that a SIP for a smaller Class I railroad might cost less. A likely range for the cost of a SIP is $150,000 to $400,000. A SIP for a Class II railroad might cost much less. The Class II railroad's business plan will be smaller, and the safety information will be easier to gather. A SIP for a Class II might cost $25,000 to $100,000. It is a one-time expense for any railroad. The assumed total cost of the SIP rule to a railroad is twice the initial cost of preparing the SIP, to account for such vagaries as SIP modifications and restrictions on training.

Although FRA cannot with certainty say which of the several accidents following mergers were the result of poor planning, it appears extremely likely that at least one of them could have been prevented with a SIP. Assuming that the SIP would prevent two fatalities and $600,000 in damage implies that a SIP for the UP/SP merger would have saved at least $6,000,000 in accident costs. FRA believes that one or more of these accidents could have been prevented based on its findings when it did a detailed analysis of the UP/SP operations. For other railroads the accident savings might vary. For a larger railroad, the accident savings might be twice as much ($12,000,000), while for smaller Class I railroads the safety benefits might be one-fourth that much ($1,500,000). FRA does not have as much information on Class II railroads, but it appears that the accident savings on a Class II railroad might be one percent ($60,000) or as much as twenty percent ($1,200,000) of the savings that would have been available for the UP/SP. These figures are roughly based on ratios of reported accidents, noting that when railroads merge, they become larger entities than they are now.

FRA's careful review of the impacts of mergers that have taken place in the recent past has clearly revealed that mergers and acquisitions disrupt existing safety and operating patterns. Because these transactions are generally justified in significant part by cost savings, there is pressure to close redundant facilities and eliminate positions. This can lead to degradation of safety programs unless formal, written, systematic, and detailed plans are prepared to ensure that safety programs are continued and closely followed. Any less attention to safety could produce catastrophic results, both in terms of economic cost and, more importantly, loss of life.

The final rule will cost $300,000 to $800,000, and will prevent $1,500,000 to $12,000,000 in accident costs for Class I railroads, and will cost $50,000 to $200,000, and will prevent $60,000 to $1,200,000 for Class II railroads. The final rule will not apply to small entities, *i.e.,* the Class III railroads. In addition, the railroad may avoid substantial service difficulties by carrying through the safety planning process. This could save the railroad hundreds of millions or billions of dollars. In the first three quarters of 1998, UP reported losses exceeding $900,000,000 due to service difficulties. The societal losses of these delays is probably much greater, as the figures only account for costs to UP. FRA notes that although numerous parties have submitted data to the STB regarding the impact of the service difficulties, the Board has not attempted to quantify the

societal costs of these service problems. *See Rail Service in the Western United States,* STB Ex Parte No. 573 (STB Decision served Feb. 25, 1998).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on ''small entities.'' The final rule relates to acquisitions, consolidations, and mergers involving only Class I railroads and a Class I railroad with a Class II railroad where there is a proposed amalgamation of operations. Given FRA's recently published interim policy establishing ''small entities'' as being railroads that meet the line haulage revenue requirements of a Class III railroad, FRA certifies that this proceeding will not have a significant economic impact on a substantial number of small businesses. *See* Interim Statement of Policy Concerning Small Entities Subject to the Railroad Safety Laws, 62 FR 43024, Aug. 11, 1997.

Paperwork Reduction Act

The information collection requirements (''ICRs'') in this final rule have been submitted for approval to the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the ICRs and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual reponses	Average time per response	Total annual burden (in hours)	Total annual burden cost
244.13—Subjects to be addressed in a Safety Integration Plan (SIP) involving an amalgamation of operations.	8 railroads	1 SIP (plan)	360 hours	360	$22,224
244.17—Procedures	8 railroads	25 reports	40 hours/2 hours	92	$5,152
—Coordinating Implementation of Approved SIP with FRA.	8 railroads	50 phone calls	10 minutes	4	$224
—Request For Confidential Treatment	8 railroads	.5 request	8 hours	8	1,224
244.19—Disposition	8 railroads	2 communications	16 hours	32	1,792

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning whether these ICRs are necessary for the proper performance of the agency's function, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Organizations and individuals desiring to submit comments on the ICRs should direct them to the Office of Management and Budget, FRA Desk Officer, Washington, DC 20503. OMB is required to make a decision concerning the ICRs contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA hereby notices that it cannot impose a penalty on persons for violating ICRs that do not display a current OMB control number, if required. FRA intends to obtain a current OMB control number for any new ICRs resulting from this rulemaking action before the effective date of the agency's final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated the final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by NEPA, other environmental statutes, Executive Orders, and related directives. This rule meets the criteria that establish this action as a non-major action for environmental purposes.

Federalism Implications

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as ''significant energy actions.'' FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

STB's Statement of Basis

The circumstances that led to the promulgation of these rules are set out in the NPRM. As explained there, in the advance notice of proposed rulemaking (''ANPRM'') published in the **Federal Register** on December 4, 1997, at 62 FR 64193, the Board requested comments on the extent to which railroads should be required to provide information pertaining to the manner in which they intend to provide for the safe implementation of merger and acquisition authority granted by the Board. The Board explained that for several years the Board and its predecessor agency, the Interstate Commerce Commission (''ICC''), have considered the issue of safety along with other relevant issues in individual cases. As particularly pertinent here, in the Conrail Acquisition proceeding,[7] the Board for the first time required applicants to submit detailed information on how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction.[8] (The Board required the same type of showing in the CN/IC merger,[9] which the Board approved on May 25, 1999. A SIP also

[7] *Conrail Acquisition*, STB Finance Docket No. 33388 (STB Decision No. 52, served Nov. 3, 1997).

[8] The Board did so at the suggestion of FRA and rail labor interests.

[9] *CN/IC*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998).

was prepared and adopted in the CN/WCTC merger proceeding. [10]

Specifically, the Board's practice in recent railroad merger proceedings involving Class I and Class II railroads has been to require applicants to file detailed SIPs based on guidelines issued by FRA. The railroads' submissions are made part of the environmental record in those proceedings and addressed in the ongoing environmental review process in those proceedings. This allows review and comment by FRA, other interested parties, and the public. The Board's environmental staff, SEA, also independently reviews the plans.

Moreover, the Board has entered into an MOU with FRA, with DOT's concurrence, to establish an ongoing monitoring process during implementation of these transactions. The MOU clarifies the actions that FRA and the Board will take to ensure the successful implementation of the SIP. Under the terms of the MOU, FRA monitors, evaluates, and reviews the applicants' progress in implementing the approved SIP. The MOU provides that FRA may request action by the Board in the exercise of its oversight authority over the applicants to correct safety deficiencies identified and to address other safety-related concerns resulting from the approved transaction. FRA also agrees to report to the Board at least on a biannual basis regarding the applicants' implementation of the SIP. In those circumstances in which FRA informs the Board of safety deficiencies that may require Board action, FRA will identify the deficiencies and provide recommendations for correcting them. FRA's reporting will continue until FRA advises the Board in writing that the proposed integration of operations has been safely completed.

The Board's ANPRM explained that, having developed a vehicle by which to evaluate safety integration issues in the *Conrail Acquisition*, it was appropriate to consider promulgating rules extending this process to other rail transactions subject to the Board's jurisdiction. Accordingly, the Board solicited comments from FRA and any other interested persons on how the Board should proceed to ensure the safe implementation of rail transactions subject to its jurisdiction (*i.e.*, whether the STB should proceed broadly by general rule or exclusively on a case-by-case basis, and whether procedures other than those adopted in *Conrail Acquisition* might be preferable in Board-approved transactions outside the merger area). [11]

Based on the comments received and the Board's experience with the SIP process in *Conrail Acquisition*, the Board issued its decision served on July 27, 1998, finding sufficient merit to warrant further exploration of establishing regulations addressing the safe implementation of Board approved transactions. *Safe Implementation of Board-Approved Transactions*, STB Ex Parte No. 574 (STB served July 27, 1998). The Board directed its staff to develop a joint notice of proposed rulemaking with FRA that would address the issues that have arisen in this proceeding and that are of concern to FRA.

Following the issuance of the Board's July 27, 1998, decision, the Board's staff met informally with FRA staff regarding the development of an appropriate proposal that would accomplish the objectives of both agencies, avoid gaps and inconsistencies in the two agencies' regulatory requirements, and impose as little burden as possible on the participating parties. The NPRM was published in the **Federal Register** on December 31, 1998, at 63 FR 72225. On May 4, 1999, a public hearing was held jointly with FRA to hear testimony on the proposed rules.[12]

As noted, eleven parties representing labor, freight and passenger railroads, and state departments of transportation filed comments on the NPRM. Many of the commenters endorsed the objectives of the SIP rules and indicated that they were generally satisfied with the approach used in the *Conrail Acquisition* and *CN/IC* proceedings.[13] However, they offered a number of recommendations on how the proposed rules could be clarified and improved. In issuing final rules, the Board has taken into account all the concerns raised in the parties' written comments and presented at the hearing. As discussed below, the Board is adopting some of the suggestions offered.

STB's Analysis of the Comments Pertaining to the Scope of the Rules

A number of commenters expressed concerns about the scope of the STB's proposed rules. The AAR and Amtrak asserted that the proposed inclusion of transactions that involve a passenger railroad or commuter service in a metropolitan area would exceed the Board's jurisdiction. [14] (*See* proposed 49 CFR 1106.2.) In response to the comments, the definitions of ''applicant'' and ''transaction'' in § 1106.2 have been amended. The new definitions clarify that the SIP requirement applies only to a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad or a Class II railroad with which it proposes to ''amalgamate operations,'' as defined in FRA's regulations at 49 CFR 244.9. (The Board also adds FRA's definition of ''amalgamation of operations'' to its rule.) The changed definitions coincide with the scope of the transactions covered by FRA's final rule, which will promote consistency and efficiency in the interplay between FRA and the Board.

Rail labor interests took the position that the Board's SIP rule should apply to transactions involving Class III carriers, [15] *i.e.,* those railroads that generate revenue, measured in 1991 dollars, of less than $20 million per year, whereas the railroad interests argued that it is not necessary to require the preparation of a SIP for transactions that do not involve two or more Class I railroads. [16] Commenters also suggested that freight traffic density or combined freight and passenger traffic (rather than the Class of railroad) could

[10] *See CN/WCTC*, STB Finance Docket No. 34000 (STB Decisions Nos. 2, 9, and 10 served May 9, August 2, and September 7, 2001, respectively) (hereinafter ''*CN/WCTC Decisions*'').

[11] The administrative process permits the Board to proceed either on a case-by-case basis or by rule, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

[12] AAR and TTD presented testimony at the oral hearing. AAR filed supplemental comments following the hearing.

[13] *See also Major Rail Consolidation Procedures,* STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001) (''*Major Rail Consolidation Procedures*''), slip op. at 36–37 (practice of requiring applicants to work with FRA to formulate SIPs in major mergers received wide public support, and no opposition, in proceeding adopting new rules for major rail consolidations). Indeed, some commenters including the AAR questioned whether formal rules in this area were necessary because the Board could continue to work with FRA on a case-by-case basis, as in the *Conrail Acquisition* and *CN/IC* proceedings. The Board agrees with the AAR that the SIP process used in these proceedings generally has been successful and is publishing final rules to codify existing practices and FRA's role in advising the Board on safety integration matters in transactions that the Board regulates.

[14] Under 49 U.S.C. 10501(c), the Board does not have jurisdiction over mass transportation (commuter service) provided by a local governmental entity. Thus, a transaction involving a railroad subject to the STB's jurisdiction and a commuter railroad ''is now a one-railroad transaction over which [the Board does] not have jurisdiction under 49 U.S.C. 11323.'' *Norfolk & Western Railway Company—Petition for Declaratory Order—Lease of Line in Cook & Will Counties, IL. To Commuter Rail Division of the Regional Transp. Auth. of Northeast Illinois,* STB Finance Docket No. 32279 (STB served Feb. 3, 1999). Moreover, except for certain provisions not relevant here, Amtrak is not subject to the Board's jurisdiction. 49 U.S.C. 24301(c).

[15] *See* the comments of TTD, ATDD, BRC, and BMWE.

[16] *See* the comments of AAR, ASLRRA, and W&LE.

serve as a benchmark for determining the necessity of a SIP.[17]

The Board's final rule covers Class I railroads and Class II railroads that will have their operations amalgamated by a Class I railroad. The Board believes that this scope of coverage is reasonable because it is consistent with the scope of FRA's rule and Congress has treated Class II railroads more like Class I railroads than like Class III railroads in ICCTA.[18] The Board believes that it would be unduly burdensome to expand the proposed rules to cover transactions involving Class II railroads or Class III railroads as a matter of course. Under §§ 1106.5 and 1106.6 of the final rule, however, the Board retains the flexibility to require a SIP for such transactions if warranted, or to waive or modify SIP requirements on a case-by-case basis, if it concludes that doing so is appropriate for particular transactions.[19]

AAR indicated that the Board should allow an additional 30 to 90 days for preparing and filing a proposed SIP, rather than requiring the SIP to be submitted simultaneously with the application. This request is reasonable. Therefore, section 1106.4(a) of the STB's final rule provides 60 days from the date of the application[20] for the filing of a proposed SIP.

The BMWE urged that the Board clarify proposed § 1106.4(b)(4), which, it argued, could be construed to give the Board discretion to approve a transaction without a SIP or without requiring compliance with the SIP. To eliminate any possible confusion, the Board's final rule has been clarified to specifically state that, if the Board approves the transaction and adopts the SIP, the Board will require compliance with the SIP as a condition to its approval of the transaction.

STB's Section-By-Section Analysis of Its Final Rule

§ 1106.1 Purpose.

The regulations are designed to assure adequate and coordinated consideration of safety integration issues by the Board and FRA in implementing certain transactions subject to the Board's jurisdiction.

§ 1106.2 Definitions.

This section sets forth definitions used in this part; these definitions are self explanatory.

§ 1106.3 Actions for Which Safety Integration Plan is Required.

This section explains which transactions require a railroad to file a SIP with the Board. As noted above, a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations, as defined in FRA's rule at 49 CFR 244.9, will be subject to the requirements of this rule. Where the filing of a SIP is required by the Board's rules, the Board will enforce the requirement with appropriate sanctions, including suspending the processing of the application or, in extreme cases, dismissing the application itself.

§ 1106.4 The Safety Integration Plan Process

Section 1106.4 sets out the procedures for an applicant to file a proposed SIP, and the procedures by which the Board will consider a proposed SIP in connection with its approval of transactions for which the Board has concluded such consideration is required. A railroad seeking to carry out a covered transaction must file a proposed SIP prepared in accordance with FRA's regulations with the STB's SEA and FRA no later than 60 days from the date the application is filed with the Board. The proposed SIP will become part of the environmental documentation in the Board proceeding, and will be considered in the Board's environmental review process conducted in accordance with NEPA and the Board's environmental rules at 49 CFR part 1105. Generally, covered transactions will be subject to environmental review because the nature of the transaction involves operational changes that exceed the regulatory thresholds established under 49 CFR 1105.7(e)(4) or (5). *See* 49 CFR 1105.6(b)(4)(i). In the event that a SIP should be required in a transaction that would not be subject to environmental review, *see* 49 CFR 1105.6(c)(2), the Board intends to develop appropriate case-specific SIP procedures.[21]

After FRA reviews the proposed SIP, FRA will issue its findings and conclusions on the adequacy of the plan and will provide its analysis of the proposed SIP early enough to permit incorporation in the Board's draft environmental assessment or draft environmental impact statement. Nevertheless, recognizing that the SIP is an ongoing and fluid process, as in the *Conrail Acquisition* proceeding, FRA may comment on the plan and on an applicant's progress in completing a SIP, without endorsing the plan in full. The Board agrees with FRA that flexible procedures for FRA's response are necessary to enable an applicant to complete a comprehensive plan.

Additionally, this approach will enable the Board to incorporate FRA's comments in its draft environmental documentation, which, in turn, will encourage the public to review and comment on the proposed SIP. SEA will then independently review the proposed SIP and respond to comments received on the plan in its final environmental documentation. Finally, the Board will consider the entire environmental record, including information concerning the SIP, in deciding whether to approve the proposed transaction. Should the Board approve the transaction and adopt the SIP, it will require that the applicants comply with the SIP as a condition to its approval and require each applicant to coordinate with FRA in implementing the SIP, including any amendments to the plan, if necessary. (*See* FRA's Section-By-Section Analysis

[17] *For example,* OK DOT notes that the Board's environmental regulations at 49 CFR 1105.7(e)(5) consider the amount of increased traffic on a line in determining whether there is a need for environmental review.

[18] The Board's recently adopted new rules for major railroad mergers and consolidations involving two or more Class I railroads, published at 66 FR 32582, June 15, 2001, require Class I applicants to bear a substantially heavier burden in demonstrating that a merger proposal is in the public interest. The agency concluded that the current merger regulations at 49 CFR part 1180, subpart A, are not adequate to address future major rail merger proposals that, if approved, would likely result in the creation of two North American transcontinental railroads. But although the economic and service issues that drove the Board's action in *Major Rail Consolidation Procedures* are of concern principally when two Class I railroads merge, the safety considerations underlying SIPs also apply to mergers, consolidations, and acquisitions involving a Class I railroad and a Class II railroad with which it proposes to amalgamate operations.

[19] In the NPRM, the Board specifically solicited comments from interested parties as to whether the final rule should cover Class III railroads. The comments did not persuade the Board that transactions involving Class III railroads typically create sufficient safety problems to warrant requiring the preparation of a SIP. However, the Board's final rule at 49 CFR 1106.6 would allow the agency to require a SIP in particular cases involving Class III railroads if it concluded that doing so is necessary in its proper consideration of the proposed transaction.

[20] Because the Board is narrowing the scope of transactions that require a SIP to those filed under 49 U.S.C. 11323(a) involving Class I railroads and Class II railroads that will have their operations amalgamated with Class I railroads, the final rule eliminates the reference to ''exemptions'' in § 1106.4(a)(1). The reference to ''applications'' and ''other requests for authority'' in the definition of ''transaction'' in § 1106.2, and in the reservation of jurisdiction provision in § 1106.6, however, give the Board the flexibility to require a SIP in cases filed by exemption as well as by application should it be appropriate to do so.

[21] *See CN/WCTC Decisions,* STB Finance Docket No. 34000 (STB Decision Nos. 2 and 9, served May 9 and Aug. 2, 2001, respectively) (SIP prepared even though no environmental review was required).

discussing amendments to 49 CFR 244.17 for a more complete discussion.)

As explained in FRA's Section-By-Section Analysis of § 244.17(g), FRA will advise the Board about its findings on the ongoing implementation process in accordance with an agreement that the agencies will enter into and execute (1) over a five-year period, (2) during any other oversight period for the transaction established by the Board, or (3) until FRA advises the Board that, in its view, the proposed integration of the applicants' operations has been safely completed, whichever is shortest.[22] Should FRA identify shortcomings or deficiencies during the integration process, the Board reserves jurisdiction to reopen the proceeding and impose terms and conditions on the transaction to ensure that the transaction is safely implemented.

§ 1106.5 Waiver.

The Board can waive or modify the requirements of this part where a carrier shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require the filing of a SIP in transactions other than those provided in this part or to adopt modified SIP requirements in individual cases if it concludes that doing so is necessary to properly consider an application or other request for authority.

Regulatory Flexibility Act

The Board certifies that its decision to adopt regulations requiring Class I and Class II railroads to prepare safety integration plans under certain circumstances will not have a significant effect on a substantial number of small entities.

Environmental Impact

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Statement of Energy Effects

Even though the Board is an independent regulatory agency, it recognizes the importance of the policy objective in Executive Order 13212 to expedite consideration of projects that would increase the production, transmission, or conservation of energy. The SIP rulemaking action, however, should not affect the production, transmission, or conservation of energy.

[22] The Board's new rules at 49 CFR 1180.1(g) provide for at least a five-year oversight period for major railroad mergers and consolidations involving two or more Class I railroads.

Federal Railroad Administration 49 CFR Chapter II

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends chapter II of title 49, Code of Federal Regulations, to read as follows:

1. Part 244 is added to read as follows:

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Subpart A—General

Sec.
244.1 Scope, application, and purpose.
244.3 Preemptive effect.
244.5 Penalties.
244.7 Waivers.
244.9 Definitions.

Subpart B—Safety Integration Plans

244.11 Contents of a Safety Integration Plan.
244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.
244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.
244.17 Procedures.
244.19 Disposition.
244.21 Compliance and Enforcement.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

Subpart A—General

§ 244.1 Scope, application, and purpose.

(a) This part prescribes requirements for filing and implementing a Safety Integration Plan with FRA whenever a Class I railroad proposes to consolidate with, merge with, or acquire control of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations.

(b) The purpose of this part is to achieve a reasonable level of railroad safety during the implementation of transactions described in paragraph (a) of this section. This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.

(c) The requirements prescribed under this part apply only to FRA's disposition of a regulated transaction filed by an applicant. The transactions covered by this part also require separate filing with and approval by the Surface Transportation Board. *See* 49 CFR part 1106.

§ 244.3 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that:

(a) Is necessary to eliminate or reduce an essentially local safety hazard;

(b) Is not incompatible with a law, regulation, or order of the United States Government; and

(c) Does not unreasonably burden interstate commerce.

§ 244.5 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $11,000 per day, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) As specified in § 244.21, FRA may also exercise any of its other enforcement remedies if a railroad fails to comply with § 244.21.

(c) Any person who knowingly and willfully makes a false entry in a record or report required by this part shall be subject to criminal penalties under 49 U.S.C. 21311.

§ 244.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with any requirement of this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement pending action on such a petition.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

(d) The procedures governing a petition for a waiver that are prescribed under this part apply only to FRA's

disposition of such a petition. A person seeking a waiver of a Surface Transportation Board regulation would need to file a petition for a waiver with the Board. (*See* 49 CFR 1106.5.)

§ 244.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Amalgamation of operations means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Best practices means measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.

Class I or Class II railroad has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Corporate culture means the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.

Control means actual control, legal control, or the power to exercise control through:

(1) Common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(2) Any other means. *See* 49 U.S.C. 10102.

Consolidation means the creation of a new Class I railroad by combining existing Class I railroads or a Class I railroad and a Class II railroad where there is an amalgamation of operations, or by a railroad or a corporate parent of a Class I railroad taking over the assets or assuming the liabilities, or both, of another Class I railroad such that the resulting unified entity has the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its constituents.

Environmental documentation means either an Environmental Assessment or Environmental Impact Statement prepared in accordance with the Surface Transportation Board's environmental rules at 49 CFR part 1105.

Merger means the acquisition of one Class I railroad or Class II railroad where there is amalgamation of operations by a Class I railroad such that the acquiring railroad or a corporate parent of that railroad acquires the stock, assets, liabilities, powers, subsidiaries and affiliates of the railroad acquired.

Person means an entity of any type covered under 1 U.S.C. 1, including the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Safety Integration Plan means a comprehensive written plan submitted to and approved by FRA in compliance with this part that demonstrates in required detail how an applicant will provide for safe railroad operations during and after any transaction covered by this part, and otherwise assure compliance with the Federal railroad safety laws.

Section of Environmental Analysis or ''SEA'' means the Section of the Surface Transportation Board that prepares its environmental documentation and analyses.

Transaction means a consolidation, merger, or acquisition of control subject to the requirements of this part.

Subpart B—Safety Integration Plans

§ 244.11 Contents of a Safety Integration Plan.

Each Safety Integration Plan shall contain the following information for each subject matter identified in § 244.13 or § 244.15:

(a) A detailed description of how the applicant differs from each railroad it proposes to acquire or with which the applicant proposes to consolidate or merge, including the rules or instructions governing railroad operations of these railroads;

(b) A detailed description of the proposed manner of operations of the resulting railroad, including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction;

(c) The measures to be taken to comply with applicable Federal railroad safety laws and regulations;

(d) The proposed specific measures, expressed step-by-step, for each relevant subject matter that the applicant believes will result in safe implementation of the proposed transaction consistent with the requirements of this part;

(e) The allocation of resources, expressed as human and capital resources within designated operating budgets, directed to complete safety-relevant operations subject to the transaction; and

(f) The timetable, targeted in specific terms from commencement to completion, for implementing paragraphs (c), (d) and (e) of this section.

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

Each Safety Integration Plan involving an amalgamation of operations shall address the following subjects for railroad operations conducted on property subject to the transaction:

(a) *Corporate culture.* Each applicant shall:

(1) Identify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction;

(2) Describe how these cultures lead to different practices governing rail operations; and

(3) Describe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of ''best practices'' when the transaction is implemented.

(b) *Training.* Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency, qualification, and familiarity with the operating rules and operating tasks of territory assigned of the following employees, either when these employees are assigned to a new territory or the operating rules on a given territory are changed:

(1) Employees who perform train and engine service;

(2) Employees who inspect and maintain track and bridges;

(3) Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;

(4) Dispatchers or operators;

(5) Employees who inspect and maintain signal and train control devices and systems;

(6) Hazardous materials personnel, including information technology personnel who affect the transportation of hazardous materials;

(7) Employees who maintain or upgrade communication systems affecting rail operations; and

(8) Supervisors of employees enumerated in paragraphs (b)(1) through (7) of this section.

(c) *Operating practices.*

(1) *Operating rules.* Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations and freight or passenger service.

(2) *Alcohol and drug.* Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219.

(3) *Qualification and certification of locomotive engineers.* Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR part 240.

(4) *Hours of service laws.* Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

(d) *Motive power and equipment.* Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and the designated facilities used, or to be used, to repair such equipment.

(e) *Signal and train control.* Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, and any planned amendments or modifications to capital improvement and research and development projects for signal and train control operations.

(f) *Track Safety Standards and bridge structures.* Each applicant shall identify the maintenance and inspection programs for track and bridges, and the qualification standards for roadway workers.

(g) *Hazardous Materials.* Each applicant shall identify an inspection program covering the following areas:

(1) Field inspection practices;

(2) Hazardous materials communication standards;

(3) Emergency response procedures; and

(4) Information technology systems and personnel employed for transmitting or receiving information accompanying hazardous materials shipments. The inspection program should identify preventive measures that will be employed to respond to potential information technology integration and hazardous materials documentation deficiencies.

(h) *Dispatching operations.* Each applicant shall identify:

(1) The railroad dispatching system to be adopted;

(2) The migration of the existing dispatching systems to the adopted system, if applicable; and

(3) The criteria used to determine workload and duties performed by operators or dispatchers employed to execute operations.

(i) *Highway-rail grade crossing systems.* Each applicant shall identify a program, including its development and implementation, covering the following:

(1) Identification of the highway-rail grade crossings at which there will be an increase in rail traffic resulting from the transaction;

(2) An applicant's existing grade-crossing programs as they apply to grade crossings identified in paragraph (i)(1) of this section;

(3) Integration of the grade crossing programs of the railroads subject to the transaction to the extent the programs may be different;

(4) Emergency response actions;

(5) Avoidance of blocked or obstructed highway-rail crossing systems by trains, locomotives, railroad cars, or other pieces of rolling equipment; and

(6) Signs employed for changes in rail traffic patterns.

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform each of the following types of function when there is a projected change of operations that will impact workforce duties or responsibilities:

(1) Train and engine service;

(2) Yard and terminal service;

(3) Dispatching operations;

(4) Roadway maintenance;

(5) Freight car and locomotive maintenance;

(6) Maintenance of signal and train control systems, devices, and appliances;

(7) Hazardous materials operations; and

(8) Managers responsible for oversight of safety programs.

(k) *Capital investment.* Each applicant shall identify the capital investment program, clearly displaying planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall describe any differences from the program currently in place on each of the railroads involved in the transaction.

(l) *Information systems compatibility.* Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:

(1) Train consists;

(2) Movements and movement history of locomotives and railroad freight cars;

(3) Dispatching operations;

(4) Emergency termination of operations; and

(5) Transportation of hazardous materials.

§ 244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.

If an applicant does not propose an amalgamation of operations conducted on properties subject to the transaction, the applicant shall not be required to file a Safety Integration Plan unless directed to do so by FRA.

§ 244.17 Procedures.

(a) Each applicant shall file one original of a proposed Safety Integration Plan with the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC, 20590, no later than 60 days after the date it files its application with the Surface Transportation Board.

(b) The applicant shall submit such additional information necessary to support its proposed Safety Integration Plan as FRA may require to satisfy the requirements of this part.

(c) The applicant shall coordinate with FRA to resolve FRA's comments on the proposed Safety Integration Plan until such plan is approved.

(d) FRA will file its findings and conclusions on the proposed Safety Integration Plan with the Board's Section of Environmental Analysis at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(e) Assuming FRA approves the proposed Safety Integration Plan and the Surface Transportation Board approves the transaction and adopts the

Plan, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan.

(f) During implementation of an approved Safety Integration Plan, FRA expects that an applicant may change and refine its Safety Integration Plan in response to unforeseen developments. An applicant shall communicate with FRA about such developments and submit amendments to its Safety Integration Plan to FRA for approval.

(g) During implementation of an approved Safety Integration Plan, FRA will inform the Surface Transportation Board about implementation of the plan at times and in a manner designed to aid the Board's exercise of its continuing jurisdiction over the approved transaction in accordance with an agreement that FRA and the Board will enter into and execute. Pursuant to such agreement, FRA will consult with the Board at all appropriate stages of implementation, and will advise the Board on the status of the implementation process:

(1) For a period of no more than five years after the Board approves the transaction,

(2) For an oversight period for the transaction established by the Board, or

(3) Until FRA advises the Board in writing that the integration of operations subject to the transaction is complete, whichever is shorter.

(h) *Request for Confidential Treatment.* Each applicant requesting that advanced drafts of the proposed Safety Integration Plan and information in support of the proposed and approved plan that are filed with FRA receive confidential treatment shall comply with the procedures enumerated at 49 CFR 209.11.

§ 244.19 Disposition.

(a) *Standard of review.* FRA reviews an applicant's Safety Integration Plan, and any amendments thereto, to determine whether it provides a reasonable assurance of safety at every step of the transaction. In making this determination, FRA will consider whether the plan:

(1) Is thorough, complete, and clear; and

(2) Describes in adequate detail a logical and workable transition from conditions existing before the transaction to conditions intended to exist after consummation of the transaction.

(b) *Approval of the Safety Integration Plan and Amendments Thereto.* FRA approves a Safety Integration Plan, and any amendments thereto, that meets the standard set forth in paragraph (a) of this section. The approval will be conditioned on an applicant's execution of all of the elements contained in the plan, including any amendments to the plan approved by FRA.

(c) *Amendment.*—(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the amendment. Any amendment is subject to the approval of FRA as prescribed in paragraph (b) of this section, and shall take effect within 20 days of approval. The applicant shall communicate with FRA to resolve any FRA comments on the proposed amendment until it is approved.

(2) *By FRA.* FRA may request an applicant to amend its approved Safety Integration Plan from time to time should circumstances warrant.

§ 244.21 Compliance and Enforcement.

(a) After the Surface Transportation Board has approved a transaction subject to this part, a railroad implementing a transaction subject to this part shall operate in accordance with the Safety Implementation Plan approved by FRA until the properties involved in the transaction are completely integrated into the form contemplated in the Surface Transportation Board's approval of the transaction.

(b) FRA may exercise any or all of its enforcement remedies authorized by the Federal railroad safety laws if a railroad fails to comply with paragraph (a) of this section or to execute any measure contained in a Safety Implementation Plan approved by FRA.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Issued in Washington, DC, on March 8, 2002.

Allan Rutter,

Federal Railroad Administrator.

Surface Transportation Board 49 CFR Chapter X

List of Subjects in 49 CFR Part 1106

Railroad Safety, Railroads, Safety Integration Plans.

For the reasons set forth in the preamble, in title 49, subtitle IV, part 1106 is added to read as follows:

PART 1106—PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Sec.

1106.1 Purpose.
1106.2 Definitions.
1106.3 Actions for which Safety Integration Plan is Required.
1106.4 The Safety Integration Plan Process.
1106.5 Waiver.
1106.6 Reservation of jurisdiction.

Authority: 5 U.S.C. 553; 5 U.S.C. 559; 49 U.S.C. 721; 49 U.S.C. 10101; 49 U.S.C. 11323–11325; 42 U.S.C. 4332.

§ 1106.1 Purpose.

This part is designed to ensure adequate and coordinated consideration of safety integration issues, by both the Board and the Federal Railroad Administration, the agency within the Department of Transportation responsible for the enforcement of railroad safety, in the implementation of rail transactions subject to the Board's jurisdiction. It establishes the procedures by which the Board will consider safety integration plans in connection with its approval and authorization of transactions for which the Board has concluded such consideration is required.

§ 1106.2 Definitions.

The following definitions apply to this part:

Act means the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995).

Amalgamation of operations, as defined by the Federal Railroad Administration at 49 CFR 244.9, means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.,* changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Board means the Surface Transportation Board.

Class I or Class II railroad has the meaning assigned by the Board's regulations (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Environmental documentation means either an Environmental Assessment or an Environmental Impact Statement prepared in accordance with the National Environmental Policy Act and Board's environmental rules at 49 CFR part 1105.

Federal Railroad Administration (''FRA'') means the agency within the

Department of Transportation responsible for railroad safety.

Safety Integration Plan (''SIP'') means a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the transaction that requires a SIP.

Section of Environmental Analysis (''SEA'') means the Section that prepares the Board's environmental documents and analyses.

Transaction means an application by a Class I railroad that proposes to consolidate with, merge with, or acquire control under 49 U.S.C. 11323(a) of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations, as defined by FRA's regulations at 49 CFR 244.9. ''Transaction'' also includes a proceeding other than those specified above if the Board concludes that a SIP is necessary in its proper consideration of the application or other request for authority.

§ 1106.3 Actions for which Safety Integration Plan is required.

A SIP shall be filed by any applicant requesting authority to undertake a transaction as defined under § 1106.2 of this part.

§ 1106.4 The Safety Integration Plan process.

(a) Each applicant in a transaction subject to this part shall file a proposed SIP in accordance with the informational requirements prescribed at 49 CFR part 244, or other FRA guidelines or requirements regarding the contents of a SIP, with SEA and FRA no later than 60 days from the date the application is filed with the Board.

(b) The proposed SIP shall be made part of the environmental record in the Board proceeding and dealt with in the ongoing environmental review process under 49 CFR part 1105. The procedures governing the process shall be as follows:

(1) In accordance with 49 CFR 244.17, FRA will provide its findings and conclusions on the adequacy of the proposed SIP (*i.e.,* assess whether the proposed SIP establishes a process that provides a reasonable assurance of safety in executing the proposed transaction) to SEA at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(2) The draft environmental documentation shall incorporate the proposed SIP, any revisions or modifications to it based on further consultations with FRA, and FRA's written comments regarding the SIP. The public may review and comment on the draft environmental documentation within the time limits prescribed by SEA.

(3) SEA will independently review each proposed SIP. In its final environmental documentation, SEA will address written comments on the proposed SIP received during the time established for submitting comments on the draft environmental documentation. The Board then will consider the full environmental record, including the information concerning the SIP, in arriving at its decision in the case.

(4) If the Board approves the transaction and adopts the SIP, it will require compliance with the SIP as a condition to its approval. Each applicant involved in the transaction then shall coordinate with FRA in implementing the approved SIP, including any amendments thereto. FRA has provided in its rules at 49 CFR 244.17(g) for submitting information to the Board during implementation of an approved transaction that will assist the Board in exercising its continuing jurisdiction over the transaction. FRA also has agreed to advise the Board when, in its view, the integration of the applicants' operations has been safely completed.

(c) If a SIP is required in transactions that would not be subject to environmental review under the Board's environmental rules at 49 CFR part 1105, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented.

§ 1106.5 Waiver.

The SIP requirements established by this part may be waived or modified by the Board where a railroad shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require a SIP in cases other than those enumerated in this part, or to adopt modified SIP requirements in individual cases, if it concludes that doing so is necessary in its proper consideration of the application or other request for authority.

Decided: March 6, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6046 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304-01; I.D. 031202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2002, until 1200 hrs, A.l.t., August 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20 (a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not

exceed 15,187 mt in any single season. The B season allowance of the pollock TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). The Regional Administrator hereby reduces the B season pollock TAC by 141 mt. This amount is the A season pollock over harvest in Statistical Area 610 and provides for an aggregate B season allowance in the Central and Western Regulatory Areas that does not exceed 15,187 mt. In accordance with § 679.20 (a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 610 is 2,775 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,725 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6275 Filed 3–12–02; 3:00 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–2 IFR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2002 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the production cap for the 2002 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields.

DATES: Effective March 18, 2002. Comments received by April 1, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the production cap for the 2002 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2002 RDP will bring the figure in line with 2001 crop yields. This action was recommended by the RAC at a meeting on November 13, 2001.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase,

distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in an RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in an RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in an RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on November 13, 2001, and recommended reducing the production cap from 2.75 to 2.0 tons per acre. With 2001 raisin-type variety grape production down by 31 percent, according to the California Agricultural Statistics Service, the RAC recommended reducing the production cap by about 30 percent to reflect 2001 crop yields. Paragraph (t) in § 989.156 of the order's rules and regulations is revised accordingly.

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projects a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the 2002 RDP. Of the 45,182 tons, 40,182 tons will be made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who plan to remove vines receiving priority over those who plan to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons will be made available to approved producers who submit applications to the RAC from December 21, 2001, through May 1, 2002, and plan to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(t) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in an RDP. This rule reduces the cap from 2.75 to 2.0 tons per acre to accurately reflect 2001 crop yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2002 RDP will have the opportunity to earn some income for not harvesting a 2002–03 crop. Producers will sell the certificates to handlers next fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest

costs for the 2002 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2001–02 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this rule. A 15-day comment period is deemed appropriate because producer applications were due to the RAC by December 20, 2001, and therefore the 2.0 tons per acre production cap should be in place as soon as possible.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The submission deadline for producer applications for the 2002 RDP was December 20, 2001; (2) producers are aware of this action which was recommended by the RAC at a public meeting; (3) the program is voluntary, and any producer can choose to produce a raisin crop for delivery in 2002; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989 — RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1.The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (t) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(t) Pursuant to § 989.56(a), the production cap for the 2002 raisin diversion program for the Natural (sun-dried) Seedless varietal type is 2.0 tons of raisins per acre.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6143 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 161

[Docket No. 99–053–2]

Origin Health Certificates for Livestock Exported From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to animal exports and the standards for accredited veterinarians to allow origin health certificates for animals intended for export from the United States to be valid for more than 30 days in some cases, depending on the testing requirements of the country of destination. This change will align our requirements for export origin health certificates with the testing requirements of importing countries. This action will eliminate the need for exporters to obtain another certificate when animals arrive at the port of embarkation after more than 30 days have elapsed, thereby reducing costs and delays for U.S. livestock exporters who ship animals to certain countries. This change will not increase the risk of infected or exposed animals being exported, since all animals are inspected an additional time before leaving the United States.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Bokma, Coordinator, Americas Region, National Center for Import and

Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8066.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, referred to below as the regulations, prescribe conditions for exporting animals from the United States. Among other things, § 91.3(a) provides that all animals intended for exportation be accompanied from the State of origin to the port of embarkation or border by an origin health certificate issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian. Origin health certificates attest that the animals in a shipment were inspected prior to export and were found free from any evidence of or exposure to communicable disease. The certificates also include identifying information pertaining to the individual animals in the shipment, as well as all test results, certifications, or other statements required by the country of destination.

The regulations in § 91.3(c) further require that all samples for tests be taken by an APHIS inspector or accredited veterinarian in the State of origin of the export movement and that, with certain exceptions, such sampling and testing be conducted within 30 days prior to the date of the export movement. Exceptions include cases in which the country of destination requires testing more than 30 days prior to the date of export. The regulations in 9 CFR part 161 contain requirements and standards for accredited veterinarians. Accredited veterinarians are authorized by APHIS to perform various types of work such as testing and inspecting animals for and issuing origin health certificates—on behalf of the Federal Government. Section 161.3, paragraph (b), states the length of time that certificates and other documents issued by an accredited veterinarian shall be valid. Prior to this final rule, the timeframe was 30 days from the date of inspection of the animal identified on the document, without exception. This meant that animals intended for export had to be inspected for purposes of the origin health certificate within 30 days prior to the date of export, even when sampling and testing could be conducted earlier.

On April 17, 2000, we published in the **Federal Register** (65 FR 20384–20387, Docket No. 99–053–1) a proposal to amend § 91.3(a) to allow animals intended for exportation to be inspected for origin health certificates more than 30 days prior to the date of export, in accordance with the testing requirements of the country of destination. In conjunction with this proposed action, we also proposed to amend the language in § 91.3(c) to provide that sampling and testing may be conducted more than 30 days prior to the date of export in instances where a receiving country allows rather than just requires, as the regulations previously stated this to occur. In addition, we proposed replacing the phrase ''the date of the movement of the animals for export'' with ''the date of export'' in both 91.3(a) and (c). We proposed this change to clarify that animals must be tested and inspected for origin health certificates 30 days or more, if the receiving country requires or allows it prior to the date they are actually exported, rather than 30 days from the date the animals started in transit to the port of embarkation or border. We further proposed to amend § 161.3(b) to allow origin health certificates issued by accredited veterinarians to be valid for more than 30 days in cases where the Administrator allows the animals identified on the document to be inspected more than 30 days prior to the date of export.

We solicited comments concerning our proposal for 60 days ending June 16, 2000. We received five comments by that date—four from livestock exporters, and one from a representative of a livestock export industry association. All supported the proposed rule, stating that, among other things, the proposed changes would improve their efficiency, eliminate costly delays, and help expedite livestock shipments.

However, two of the commenters indicated that, while our action was a step in the right direction, we did not go far enough. These commenters asserted that APHIS should change the validity timeframe of all U.S. origin health certificates and test results from 30 days to 45 days, unless otherwise required by the importing country. These commenters stated that 30 days is an insufficient amount of time to address the numerous problems that may arise during the export process; for example, if reactor animals need to be retested, or if mistakes or delays occur at the diagnostic laboratory. One of these commenters also asserted that extending the validity of origin health certificates for another 15 days would, in serious outbreak situations, give exporters time to avoid flight cancellation fees imposed by the airlines, and give importers time to reschedule quarantine space without incurring penalties. Moreover, this commenter stated that such a change would give APHIS' National Veterinary Services Laboratories (NVSL) more time to perform the necessary export tests.

One of the commenters also objected to our proposal to change the phrase ''date of movement for export'' in the regulations to ''date of export.'' This commenter stated that the ''previous interpretation'' that tests and origin health certificates remained valid if the animals had started in transit to the port of embarkation or border prior to 30 days from the date of the first test or the date of issuance of the certificate had assisted in facilitating livestock shipments on many occasions. The commenter also asserted that this change would likely contribute to the time problems faced by exporters.

We are making no changes to the final rule based on these comments. We agree that 30 days can be a short amount of time in which to complete the numerous steps involved in the export certification process. More to the point, however, the countries of destination—not APHIS— determine and enforce their own import health requirements, including the timeframes within which test results and export origin health certificates are considered valid.

As stated previously, while we recognize that problems and delays can occur with regard to obtaining the necessary tests, inspection, and other documentation required to certify animals for export, our experience shows that 30 days is not an unreasonable amount of time in most cases to complete the steps involved. For example, it typically takes only about 7 to 10 days to obtain test results for brucellosis, as well as for many of the other diseases of concern to importing countries. Nevertheless, APHIS' NVSL has undertaken a number of initiatives to improve its ability to provide efficient and expeditious service to exporters and other customers. For example, NVSL officials have developed guidelines that address the specific test requirements for exporting swine to China. NVSL officials have also developed a booklet that contains information about all currently available tests and reagents, including the length of time required to conduct each test. This document is available on the NVSL website at *http://www.aphis.usda.gov/vs/nvsl.* To avoid delays in processing the diagnostic tests necessary for export health certification, exporters are also encouraged to contact NVSL and/or the APHIS area veterinarian in charge in the State of origin to make arrangements for testing well in advance of planned shipping dates. Advance notification is particularly important for tests that are not run on a routine basis, such as those

for diseases like *Salmonella abortus-equi.*

It is ultimately the exporters' responsibility to ensure that he or she complies with all requirements for testing and obtaining the appropriate health certification for animals intended for export. Accordingly, while we recognize that flight and quarantine space cancellations caused by delays in completing the steps involved in the export process can be costly to both exporters and importers, such issues are beyond the scope of APHIS' jurisdiction and this rulemaking action. Finally, it was always our intent that the actual date of export—not the date when animals start in transit to the port of embarkation or border—determine the timeframe within which origin health certificates and test results are deemed valid.

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

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. By extending the validity for origin health certificates issued for animals being exported to certain countries, this rule will make the export process less time consuming and expensive for livestock exporters and marketers. We have determined that approximately 2 weeks are needed to ensure that APHIS field personnel receive official notice of this change in the regulations. Therefore, the Administrator of APHIS has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the regulations in 9 CFR part 91 to allow animals to be inspected for an origin health certificate as early as the country of destination allows or requires sampling or testing to be performed. We are also amending 9 CFR part 161 to allow an origin health certificate to be valid for more than 30 days when animals are allowed to be inspected more than 30 days prior to the date of movement for export in accordance with § 91.3.

Costs

Formerly, exporters who had their animals inspected and obtained an origin health certificate more than 30 days prior to the date of export had to obtain a new origin health certificate when the animals arrived at the port of embarkation or the border. On average, it costs $150 per shipment to have a veterinarian inspect animals for export and issue an origin health certificate. When this final rule becomes effective, the original origin health certificate will still be valid when the animals arrive at the port of embarkation or the border, and the exporter will not incur the costs of obtaining an additional origin health certificate.

Live Animal Exports

United Nations trade data show that U.S. exports of live animals are worth more than $½ billion dollars a year (see tables 1 and 2). On average, U.S. exports of live animals from 1993 through 1999 were distributed as follows: More than 40 percent went to Mexico and Canada, approximately 13.5 percent went to Japan, 2 percent went to Brazil, 1.1 percent went to the Republic of Korea (South Korea), and less than 1 percent went to Turkey, Egypt, or Taiwan. Of these countries, Brazil, Egypt, Japan, South Korea, Taiwan, and Turkey provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin.

TABLE 1.—U.S. EXPORTS OF LIVE ANIMALS

[In $1,000]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey	Rest of the world	Total
1993	$108,679	$127,058	$12,339	$1,337	$39,667	$4,777	$3,116	$2,339	$219,615	$518,927
1994	149,747	146,578	12,415	2,800	47,516	6,740	3,496	1,136	216,924	587,352
1995	31,409	124,974	14,179	2,196	110,646	8,856	2,791	7,689	216,502	519,242
1996	81,119	105,130	10,598	6,362	103,228	7,412	3,236	9,307	206,141	532,533
1997	210,013	111,446	13,691	2,261	109,123	8,060	2,495	2,042	235,965	695,096
1998	138,117	135,328	9,969	5,614	72,758	3,709	1,923	9,623	302,825	679,866
1999	103,681	180,262	9,863	4,115	74,766	6,866	2,882	4,276	271,306	658,017

TABLE 2.—U.S. EXPORTS OF LIVE ANIMALS

[As a percentage of total U.S. exports]

Year	Mexico	Canada	Brazil	Egypt	Japan	South Korea	Taiwan	Turkey
1993	20.9	24.5	2.4	0.3	7.6	0.9	0.6	0.5
1994	25.5	25.0	2.1	0.5	8.1	1.1	0.6	0.2
1995	6.0	24.1	2.7	0.4	21.3	1.7	0.5	1.5
1996	15.2	19.7	2.0	1.2	19.4	1.4	0.6	1.7
1997	30.2	16.0	2.0	0.3	15.7	1.2	0.4	0.3
1998	20.3	19.9	1.5	0.8	10.7	0.6	0.3	1.4
1999	15.8	27.4	1.5	0.6	11.4	1.0	0.4	0.6

Kazakhstan, Turkmenistan, and Uzbekistan also provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin. These three Central Asian countries imported relatively few live animals from 1993 through 1998 and none from the United States; 1999 import data are not currently available. Table 3 shows the value of live animals imported into these three countries and

the rest of the world, based on United Nations data.

TABLE 3.—IMPORTS OF LIVE ANIMALS

[In $1,000]

Year	Kazakhstan	Turkmenistan	Uzbekistan	All countries
1993	$600	$551		$8,965,958
1994	29		$400	9,556,484
1995	427		200	10,020,452
1996	137		200	9,925,704
1997	231		200	8,991,483
1998	433		200	8,991,071
1999				

This final rule will facilitate live animal exports from the United States to Brazil, Egypt, Japan, Kazakhstan, Korea, Taiwan, Turkey, Turkmenistan, Uzbekistan, and other countries that may allow or require animals to be tested, or samples to be taken for testing, more than 30 days prior to export from the United States. Approximately 17.5 percent of live animal exports from the United States went to these countries in the years 1993 through 1999. We do not know how many of these shipments were made by small entities. However, all U.S. entities, including small entities, who export live animals to these countries will benefit from this rule, albeit in a relatively small way, by not having to bear the costs of an additional origin health certificate, estimated at approximately $150 per shipment.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we are amending 9 CFR parts 91 and 161 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 is revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 1343f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 3901 and 3902; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.4.

2. In § 91.3, paragraph (a) and the second sentence in paragraph (c) are revised to read as follows:

§ 91.3 General export requirements.

(a) All animals intended for exportation to a foreign country, except by land to Mexico or Canada, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation by land to Mexico or Canada must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30 days prior to the date of export, except as follows: When the Administrator allows sampling or testing to be done more than 30 days prior to the date of export, in accordance with paragraph (c) of this section, then the animals also may be inspected within that same time period, and the origin health certificate will remain valid for that time period. The origin health certificate must certify that the animals were found upon inspection to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be endorsed by an authorized APHIS veterinarian in the State of origin and must include any test results added by the authorized APHIS veterinarian pursuant to § 161.3(k) of this chapter (any added test results must be initialed by the authorized veterinarian). The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings. The origin health certificate must include all test results, certifications, or other statements required by the country of destination.

* * * * *

(c) * * * The samples must be taken and tests must be made within the 30 days prior to the date of export, except that the Administrator may allow such sampling or testing to be conducted more than 30 days prior to the date of export if required or allowed by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of export. * * *

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.22, 2.80, and 371.4.

4. In § 161.3, the last two sentences in paragraph (b) are revised to read as follows.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(b) * * * Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document, except that origin health certificates may be valid for a longer period of time as provided in § 91.3(a) of this chapter. The accredited veterinarian must distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 11th day of March 2002 .

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6266 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–028–2]

Importation of Horses, Ruminants, Swine, and Dogs; Inspection and Treatment for Screwworm

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the animal import regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. In the interim rule, we also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Senior Staff Officer, Invasive Species Team, Animal Health Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–8093.

SUPPLEMENTARY INFORMATION:

Background

Screwworm is a pest native to tropical areas of South America, the Indian subcontinent, Southeast Asia, tropical and sub-Saharan Africa, and the Arabian peninsula that causes extensive damage to livestock and other warmblooded animals. The adult female screwworm typically lays her eggs in open wounds on warmblooded host animals. Screwworm larvae hatch in as little as 12 hours and begin to feed on the flesh of the host animal; they are fully grown within 5 to 7 days after hatching. The fully grown larvae then drop from the host and tunnel into the soil, where they form protective cases to house themselves while they pupate. Adult screwworm flies emerge from these pupal cases and are ready to mate again within 3 to 5 days.

Screwworm was eradicated from the United States in 1966. However, in July of 1999, and again in February and March of 2000, screwworm larvae were found in horses that were imported into the United States from Venezuela and Argentina.

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively.

In an interim rule effective and published in the **Federal Register** on November 13, 2000 (65 FR 67617–67624, Docket No. 00–028–1), we amended the regulations to require horses, ruminants, and swine that are imported from regions of the world where screwworm is considered to exist to be inspected and treated, under certain conditions, for screwworm. We also amended the regulations to require dogs that are imported from regions of the world where screwworm is considered to exist to be inspected, and if necessary, treated for screwworm. The interim rule was necessary to prevent the introduction of screwworm into the United States.

We solicited comments concerning the interim rule for 60 days ending January 12, 2001. We received five comments by that date. They were from foreign and State governments, a trade association, and a U.S. veterinary medical association. We have carefully considered all of the comments we received. They are discussed below by topic.

Note: As explained below, we are amending the regulations in this final rule to require that horses that are imported from screwworm-affected regions must be tranquilized or sedated, rather than anesthetized, for the final examination so that the veterinarian performing that examination can thoroughly examine the horses' external genitalia. We are also amending the regulations to clarify that only male horses must be tranquilized or sedated for the purposes of the final examination. For consistency's sake, in the preamble of this final rule, we use the terms ''sedate or tranquilize'' in place of ''anesthetize'' in discussing the comments submitted by the public when it is consistent with the intent of the issues raised.

Anesthetization Requirement

In the interim rule, we set out inspection and treatment requirements for horses, ruminants, swine, and dogs imported from any region of the world where screwworm is considered to exist. Among other requirements, the interim rule established that horses that are imported from screwworm-affected regions be quarantined for a minimum of 7 days upon arrival in the United States at an Animal and Plant Health Inspection Service (APHIS) animal import center. On the seventh day of quarantine, prior to a horse's release, a veterinarian must examine the horse for screwworm at the expense of the owner or broker. For this final examination, the interim rule provided that the veterinarian must anesthetize the horse so that he or she can thoroughly examine the horse's external genitalia. If screwworms are found during this examination, the horse must be held in quarantine and treated until free.

Several commenters took issue with requiring that horses imported from screwworm-affected regions be anesthetized for the final examination. These commenters stated that anesthesia is unnecessary and that tranquilization or sedation will be sufficient in order to perform the final examination. Two of these commenters expressed concern over the physical risk associated with the use of anesthetics. One commenter recommended that if APHIS finds it necessary to examine the horses for screwworm during quarantine, then that examination could be performed on the final day of quarantine without anesthetization. This commenter suggested that if the veterinarian performing the final examination determined that further examination requiring anesthetization was necessary, then the horse could be held and examined at a later point in time.

We agree with these commenters that sedating or tranquilizing the horses will

be sufficient so that the veterinarian performing the final examination can thoroughly examine the horses' external genitalia. Many of the horses imported into or entering the United States from screwworm-affected regions are valuable purebred horses. Tranquilizing or sedating the male horses will help to ensure the safety of the horses and the veterinarian during the examination. Therefore, we are amending the regulations to require that horses that are imported from screwworm-affected regions be tranquilized or sedated, rather than anesthetized, for the final examination so that the horses' external genitalia can be thoroughly examined by the veterinarian.

Horses Subject to the Sedation or Tranquilization Requirement

One commenter stated that, while it has been assumed that the tranquilization or sedation requirement applies only to male horses because of the difficulties in examining their external genitalia, the interim rule does not specify only male horses are subject to this requirement. This commenter recommended that we specify that male horses must be tranquilized or sedated for the final examination.

We appreciate this commenter's suggestion. The interim rule required that horses be tranquilized or sedated for the final examination so that the external genitalia of the horses can be thoroughly examined. However, we did not state that this requirement only pertains to male horses. For greater clarity, we are amending the regulations in § 93.301(j)(7) in this final rule to specify that only male horses are subject to this requirement.

Different Examination Requirements for Horses Than for Ruminants and Swine

Two commenters questioned the rationale for requiring the tranquilization or sedation of only horses for the final examination; both commenters noted that there is no similar requirement for ruminants or swine. One of these commenters asked if APHIS had determined that tranquilizing or sedating ruminants and swine is unnecessary to thoroughly examine their external genitalia, or if APHIS had gathered information from other countries confirming that screwworm infestations are not found on the prepuce of ruminants and swine. Another commenter stated that if horses are tranquilized or sedated for the final examination so that the veterinarian can thoroughly examine the horses' external genitalia, then the genitals of all species should be examined because screwworm infestations do not occur exclusively on the prepuce of horses. This commenter also stated that, because of the final examination requirement and extended quarantine period for horses that are imported from screwworm-affected regions, the interim rule placed a greater regulatory burden on the horse industry than on importers of other species mentioned in the rule.

Protocol requirements for ruminants and swine are the same as for horses, other than for the 7-day quarantine and final examination of the tranquilized or sedated animal. Due to the life cycle of screwworm, a minimum quarantine period of 7 days is necessary to ensure the detection of screwworm infestations in animals that were infested just prior to their export to the United States. Because ruminants and swine are already required under the regulations to be quarantined for at least 7 days, it was not necessary to adjust the length of time those animals must be held in quarantine. It was necessary, however, to extend to 7 days the length of time that horses, when imported from screwworm-affected regions, must be held in quarantine, given the life cycle of the pest.

After hatching, screwworm larvae are fully grown within 5 to 7 days. Because horses are released from quarantine close to the time that any screwworm infestations that may have occurred just prior to export would mature and become visible upon inspection, it is necessary to perform an examination on the final day of quarantine to ensure that any infestations are detected and eliminated. Due to the difficulties in examining the external genitalia of male horses, those animals must be tranquilized or sedated for that examination so that the veterinarian can thoroughly examine the external genitalia while ensuring his or her own safety, as well as the safety of the horses.

Screwworm infestations can be detected on the prepuce of ruminants and swine. However, except for those ruminants imported from Central America and the West Indies, ruminants and swine are already required under §§ 93.411 and 93.510 of the regulations to be quarantined for 15 and 30 days, respectively. During this period, the animals are observed for disease or infestation with animal pests. These quarantine and inspection requirements provide ample time and opportunity to detect and eliminate any screwworm infestations on these animals. Therefore, a final examination for these animals is unnecessary.

Ruminants from Central America and the West Indies are subject to different importation requirements than ruminants from all other regions. Out of those countries and regions that constitute Central America and the West Indies, only Panama is affected by screwworm. Panama does not have a history of ruminant exports to the United States; within the last 10–15 years, only one ruminant, a prized bull, was imported from Panama into the United States. In the event that ruminants were imported from Panama, or in the event that ruminants were imported from any other region in Central America or the West Indies that becomes affected by screwworm, the ruminants are required under § 93.423 to be quarantined for 7 days upon arrival in the United States, during which time they are subject to dippings and blood tests or other tests necessary to determine if these animals are free from communicable diseases. We believe that these requirements are sufficient to prevent the introduction of screwworm from ruminants imported from those regions.

Treatment Protocols

Several commenters questioned the need to quarantine horses for 7 days before performing the final examination for screwworm infestation and recommended alternative treatment protocols. One of these commenters suggested that if ivermectin was administered at recommended doses 2 weeks prior to export and again 24 hours prior to export, there would be sufficient tissue concentration of the drug to ensure that any larvae present are killed. Another commenter questioned whether the 7-day quarantine could be cut to 5 days with a second administration of ivermectin upon arrival in the United States.

Research has shown that ivermectin is effective within 3 to 5 days after treatment against the early stages of screwworm infestation, which are difficult to observe during visual inspection of the animals. Screwworm larvae hatch in as little as 12 hours and are fully grown within 5 to 7 days after hatching. Although additional doses of ivermectin administered just prior to export or upon arrival in the United States would reduce the risk of the horses becoming infested with screwworm, a 7-day quarantine is necessary to allow time for any screwworms that infested the animals just prior to export to the United States to mature and for any infestations to become visible upon inspection.

Cancellation of Reservations at APHIS Quarantine Facilities

One commenter expressed concern over the cancellation policy for

reservations at quarantine facilities maintained by APHIS. This commenter stated that reservation fees should not be forfeited if services provided by carriers are unavailable within the required period because of unforseen circumstances. In particular, this commenter was concerned that transportation services for livestock from Argentina to the United States are unreliable due to a limited number of regularly scheduled flights and frequent, unscheduled delays that exceed 24 hours.

The regulations in § 93.304(a)(3) set out the reservation fee requirements for securing space at quarantine facilities for horses. The importer or importer's agent must pay or ensure payment of a reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. With certain exceptions, reservation fees will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made. The reservation system is necessary in order to ensure that there is sufficient space in the quarantine facilities and that APHIS recovers its expenses for providing these services. Because this system is necessary and applies to all horses quarantined at an APHIS quarantine facility, not just those horses imported from screwworm affected regions, and because the interim rule did not make any changes to the reservation system, this comment falls outside the scope of this rulemaking. Therefore, we are not making any changes to the rule as a result of this comment.

Exemptions for the 7-Day Quarantine Requirement

One commenter requested that APHIS consider allowing registered thoroughbred horses imported temporarily into the United States and registered thoroughbred horses returning to the United States from screwworm-affected regions to enter the United States without meeting the extended 7-day quarantine requirement. This commenter argued that the risk of screwworm being introduced into the United States would be negligible provided that these horses are kept under intensely managed and controlled conditions while in the screwworm-affected region.

We are not making changes in this final rule as a result of this comment. We do not currently have an assessment of the risk associated with the importation of horses under the conditions described by the commenter and, therefore, cannot confirm that importing horses under those conditions would ensure against the further introduction of screwworm into the United States. However, we may consider amending the regulations in future rulemaking to address the issues raised by this commenter.

Approved 7-Day Quarantine Facilities

Two commenters expressed concern over the lack of space in, and the limited numbers of, APHIS animal import centers approved as 7-day quarantine facilities. One of these commenters was concerned that, because the quarantine facility located at Hollywood Park, CA, is not approved as a 7-day quarantine center, horses entering the United States to race at Hollywood Park from screwworm-affected countries must be quarantined at another facility approved as a 7-day quarantine facility. The other commenter argued that no scientific rationale supports limiting approved quarantine centers to APHIS-owned facilities. This commenter requested that APHIS consider authorizing those public or private quarantine facilities that are equipped to undertake the required inspection and testing protocols for screwworm as approved 7-day quarantine centers.

Authorizing public or private quarantine facilities as approved 7-day quarantine centers is outside the scope of this rulemaking. Therefore, we are not making any changes to the rule based on this comment. However, because recent demand for quarantine services for horses has exceeded the space available at existing facilities, we are considering developing standards for allowing the establishment of permanent, privately owned quarantine facilities.

Increases in User Fees for Quarantine Services

In a final rule published in the **Federal Register** on August 28, 2000 (65 FR 51997–52010, Docket No. 97–058–2), we changed our user fees for import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors. That final rule increased user fees for quarantine services, among other services, for fiscal years 2001 through 2004. One commenter requested that APHIS review those increases in user fees for quarantine services in light of the increased costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected countries.

The annual increases in user fees for quarantine services set out in the August 2000 final rule mentioned above reflect standard annual increases in expenses and are necessary for APHIS to recover the anticipated cost of providing those services each year. Because the user fees must be adjusted annually for APHIS to recover its expenses, and because the interim rule did not make any changes to the user fees, reviewing or making changes to the user fees charged for quarantine services falls outside the scope of this rulemaking.

Emergency Action and Opportunity to Comment on Rulemaking

One commenter objected to the issuance of an interim rule ''without sufficient time to consider the issues.'' This commenter stated that, at the time of publication, the United States was not facing such emergency conditions that would have warranted an interim rule.

We disagree with this comment. Screwworm was eradicated from the United States in 1966. However, in July 1999, and again in February and March 2000, screwworm larvae were found in horses imported into the United States from Argentina and Venezuela. The Administrator of APHIS determined that immediate action was necessary to prevent further introductions of screwworm into the United States. Prior notice was impracticable and contrary to public interest under these circumstances. The preembarkation requirements for ruminants, swine, and dogs and preembarkation and postarrival requirements for horses imported from any region of the world where screwworm is considered to exist were considered necessary on an emergency basis to safeguard the United States from screwworm.

Economic Effects

One commenter stated that the economic information presented in the interim rule underestimated the number of horses exported from the United Arab Emirates to the United States between 1995 and 1998. In the interim rule, we stated that, out of those screwworm-affected regions where other diseases that would require at least a 7-day quarantine are not known to exist, only Argentina is a significant source of horses imported into the United States. To support this point, we stated that China, the Philippines, Taiwan, and the United Arab Emirates also exported horses to the United States during the period 1995–1998, but collectively they exported only 5 horses in 1995, 9 horses in 1996, 14 horses in 1997, and 13 horses in 1998. The commenter stated that the number of horses exported from the United Arab Emirates alone in each of those years exceeded the collective

number of horses exported from China, the Phillippines, Taiwan, and the United Arab Emirates cited in the interim rule.

This commenter is indeed correct; while the interim rule's economic analysis accurately estimated the number of horses imported permanently into the United States from those regions, it did not account for horses imported under temporary permits, such as competition or race horses. Out of all breeding, commercial, competition, purebred, and race horses imported, both permanently and temporarily, from screwworm-affected regions, Argentina accounted for 83 percent (1,730 of 2,094) of horses imported between 1996 and 2001. The United Arab Emirates supplied 14 percent (299 of 2,094) of horses imported from affected regions during the same 6-year period. The remaining 3 percent of horses imported from screwworm-affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand. However, because only 2 percent (1,952 of 94,729) of all horses imported into the United States between 1996 and 2001 were from screwworm-affected regions, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

Several commenters expressed concern that the economic effects of the interim rule on the horse industry were underestimated in the interim rule's economic analysis. Several commenters stated that the costs associated with the additional inspection and quarantine requirements for horses imported from screwworm-affected regions will have a significant impact on the U.S. horse industry, especially in light of the increase in quarantine fees at APHIS quarantine facilities. Several commenters also opposed the additional inspection and quarantine requirements because the resulting cost increases, along with reservation deposits, time away from training for horses, additional post-quarantine time to allow for drug residues to be eliminated prior to competition, and any potential complications, will inhibit the movement of foreign horses to and from the United States. For example, one commenter stated that these costs alone exceed the value of a green polo pony from Argentina.

The additional inspection requirement for horses contained in the interim rule affects only those importers moving horses into the United States from regions of the world where screwworm is considered to exist. In addition, the quarantine period is extended to 7 days only for those horses that are imported from screwworm-affected regions where other diseases that require at least a 7-day quarantine are not known to exist. These requirements affect a limited number of regions. As mentioned above, Argentina and the United Arab Emirates accounted for 83 percent and 14 percent, respectively, of horses imported from regions subject to these requirements during the period 1996–2001. The remaining 3 percent of horse imports from affected regions were from China, India, Malaysia, Philippines, Qatar, Singapore, Taiwan, and Thailand during that same 6-year period. Furthermore, the additional costs borne by importers moving horses into the United States from screwworm-affected regions as a result of the additional inspection and treatment requirements are small when compared to the import value of the horses. For example, the average value of purebred horses imported from screwworm-affected countries in the Western Hemisphere, excluding Argentina, between 1998 and 2000 was $10,697. The costs for the preembarkation inspection of and treatment for screwworm represent 1 to 2 percent of this average value.

For horses imported from screwworm-affected regions that are not already affected by other diseases that require at least a 7-day quarantine, the additional cost will have a larger impact. Between 1998 and 2000, the average value of purebred horses imported from Argentina was $6,625; the preembarkation inspection and treatment costs for screwworm, as well as the 4 additional days in quarantine, are about 13 to 14.6 percent of the average value of these horses.[1] However, a relatively small percentage of horses imported into the United States are expected to be affected. Out of 94,729 horses imported into the United States between 1996 and 2001, only 2 percent (1,952 of 94,729) were from screwworm-affected regions.

As only a small percentage of horses are imported into the United States from screwworm-affected regions, it can be concluded that the additional requirements set out in the interim rule will not significantly impact the entire U.S. horse industry nor inhibit the movement of foreign horses to and from the United States. The largest impact will be borne by the importers of horses from Argentina and other countries that must quarantine their animals for 4 additional days. Nonetheless, we continue to expect that the interim rule will not have a significant economic effect on a substantial number of small entities.

In addition to the changes mentioned above, we are adding, to §§ 93.301, 93.405, 93.505, and 93.600, the Office of Management and Budget control numbers assigned to the information collection requirements associated with the interim rule, as required by the Paperwork Reduction Act.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on November 13, 2000. This rule provides that horses that are imported from regions of the world where screwworm is considered to exist must be sedated or tranquilized, rather than anesthetized, for the purposes of the examination on the seventh day of quarantine. In addition, this rule specifies that only male horses must be sedated or tranquilized during that examination. Immediate action is necessary to provide for the use of an appropriate level of chemical restraint and clarify that female horses do not require such restraint. These changes are, therefore, necessary to relieve requirements that we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 9 CFR part 93 that was published at 65 FR 67617–67624 on November 13, 2000, is adopted as a final rule with the following changes:

[1] The cost estimates quoted in the interim rule for horse imports have been updated here to incorporate up-to-date import figures for 1999 through 2001 and reflect the annual cost increases in user fees for quarantine services provided by APHIS.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.301, paragraph (j)(7) is revised to read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(j) * * *

(7) Horses must be held at the animal import center for a minimum of 7 days. On day 7, prior to the horses' release, the horses must be examined by a veterinarian at the expense of the owner or broker. For this examination, male horses must be tranquilized or sedated so that the external genitalia of the horses can be thoroughly examined. If screwworm is found during this examination, the horses must be held in quarantine and treated until free of infestation. (Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)

§ 93.405 [Amended]

3. Section 93.405 is amended by revising the OMB control number citation at the end of the section to read as follows: ''(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0165)''.

§ 93.505 [Amended]

4. Section 93.505 is amended by adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0165)''.

§ 93.600 [Amended]

5. Section 93.600 is amended by adding, at the end of the section, the following: ''(Approved by the Office of Management and Budget under control number 0579–0165)''.

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6268 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 01–125–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Inez D. Hockaday, Acting Director, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of the Animal and Plant Health Inspection Service's Veterinary Services (VS) program on a Sunday, holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for travel between Olympia and Sumas in the State of Washington. The new allowance is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

The number of requests for overtime services of a VS employee at the locations affected by this rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not

intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, we are amending 9 CFR part 97 as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 280, and 371.4.

2. In § 97.2, the table is amended by revising, under the State of Washington, the entry for Sumas to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
* * *	* * *	*	*
Washington:			
* * *	* * *	*	*
Sumas	Blaine		2
Do	Olympia		6
Do	Seattle		6
* * *	* * *	*	*

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6269 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment 2 to Certificate of Compliance (CoC) Number 1025. This amendment will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: The final rule is effective May 29, 2002, unless significant adverse comments are received by April 15, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No.

ML013480571. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

CoC No. 1025, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment 2, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail *RWB@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444) that approved the NAC–MPC cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1025.

Discussion

NAC International, the certificate holder for CoC No. 1025, submitted an application to the NRC to amend the CoC on May 19, 2000; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. The applicant requested an amendment to permit a part 72 licensee to store a new type of fuel in the NAC–MPC. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. No other changes to the NAC–MPC cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–MPC cask design listing in § 72.214 by adding Amendment 2 to CoC No. 1025. The amendment includes a revision of the TS in their entirety to revise the format of the TS and to include specifications for the new type of fuel and new operational limits. Details on specific changes to the TS are discussed in the SER.

The redesigned NAC–MPC cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

§ 72.214 List of approved spent fuel storage casks.

Certificate No. 1025 is revised by adding the effective date of Amendment 2.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility

Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–MPC cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–MPC cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7608, e-mail *RWB@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC cask design by adding it to the list of NRC-approved cask designs in § 72.214. On May 19, 2000, the certificate holder, NAC International, submitted an application to the NRC to amend CoC No. 1025; supplemental information to support the application was submitted on September 6, October 2, and 12, 2000; and April 13, September 6, October 5, 10, and 15, and November 21, 2001. Amendment 2 will allow for modification of the design of the cask system to accommodate a new type of fuel. The MPC system component modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small

Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.
Initial Certificate Effective Date: April 10, 2000.
Amendment Number 1 Effective Date: November 13, 2001.
Amendment Number 2 Effective Date: May 29, 2002.
SAR Submitted by: NAC International.
SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).
Docket Number: 72–1025.
Certificate Expiration Date: April 10, 2020.
Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6228 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

RIN 3038–AB88

Reporting Levels for Large Trader Reports; Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its rules to establish reporting levels for security features products (SFPs) traded on designated contract markets and notice-designated contract markets. The reporting levels are 1000 contracts for an SFP involving an individual security and 200 contracts for an SFP involving a narrow-based index of equity securities.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [*GMartinaitis@cftc.gov*] or [*NYanofsky@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (CFMA), Pub. L. 106–554, which extensively revised the Commodity Exchange Act (Act). Among other things, the CFMA removed the restriction in the Act on the trading of futures contracts on individual equity securities and narrow-based indices of equity securities.[1] Under the revised law, these products are now referred to as ''security futures products'' (SFPs)[2] and may be traded on designated contract markets, notice-designated contract markets and registered derivatives transaction execution facilities.

SFPs, like all other commodities traded on Commission-designated markets, will be subject to the Commission's large trader reporting rules. Those rules require futures commission merchants, clearing members and foreign brokers to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set for individual futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures

[1] *See* section 251(a) of the CFMA. This trading previously had been prohibited by section 2(a)(1)(B)(v) of the Act.

[2] The term ''security futures product'' is defined in section 1a(32) of the Act to mean ''a security future or any put, call straddle, option, or privilege on any security future.'' The term ''security future'' is defined in section 1a(31) of the Act; it generally means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except exempted securities (with the exclusion of municipal securities) and certain agreements, contracts, or transactions excluded from the Act. Because the CFMA provides that options on security futures cannot be traded until at least December 21, 2003, security futures are the only security futures product that may be made available for trading during the next two years.

markets and other matters of public interest. Generally, large trader reports are filed by the firm carrying the reportable trader's position.[3]

Based upon its experience in administering the large trader reporting system, the Commission proposed establishing a reporting level of 1000 contracts for SFPs involving an individual security[4] and 200 contracts for SFPs involving a narrow-based index of securities.[5] 66 FR 64383 (December 13, 2001). In its proposal, the Commission stated its intent to review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether these levels are too high or too low for effective market surveillance.

The Commission noted in its proposal that the rules require the reporting of positions in SFPs on notice-designated contract markets. Notice-designated contract markets are entities that are otherwise regulated by the Securities and Exchange Commission (such as registered national securities exchanges and registered national securities associations) that apply for and, pursuant to a notice-filing procedure, become designated as contract markets by the Commission for the limited purpose of trading SFPs.[6] The Act and the Commission's regulations exempt notice-designated contract markets from certain provisions of the Act and the Commission's regulations; these trading facilities, however, are subject to the Commission's large trader reporting system.[7] Thus, futures commission merchants (whether registered under a full or a notice filing-procedure under rule 3.10[8]), clearing members, foreign brokers and others who have reporting and other obligations under parts 15 through 21 of the Commission's rules will have concomitant obligations with respect to SFPs traded on notice-designated contract markets.

The Commission received two comment letters on its proposal—one from a contract market, the Chicago Mercantile Exchange (CME), and one from a national securities exchange that, in connection with listing and trading SFPs, is required to become a notice-designated contract market, the American Stock Exchange (AMEX). Both the CME and the AMEX generally supported the reporting levels. The CME specifically noted that the levels appropriately balance the protection of market integrity with administrative burdens. AMEX commented that, based on actual trading experience, the Commission may in the future need to establish higher reporting levels. AMEX also suggested that it may be appropriate for the Commission to tier reporting levels to take into account capitalization, trading volume and/or public float of the underlying security.[9]

The Commission is adopting the reporting levels as proposed. As stated in the proposal, and consistent with the comments, the Commission will review these levels an appropriate amount of time after trading in SFPs commences to determine if they provide adequate coverage for effective market surveillance. At that time, the Commission will also consider actual trading experience—including trading volume, open interest and the number and position sizes of individual traders—to determine whether the levels are too high or too low for effective market surveillance. While the Commission does not anticipate tiered reporting levels, due to the administrative difficulties inherent in such a system, the Commission has not ruled out such an approach and will consider it, as appropriate.[10]

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of the subject rule.

Section 15(a) further specifies that the costs and benefits of the proposed rule shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon. 66 FR at 64384. The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules with their comment letters. The Commission has considered the two comment letters received, neither of which specifically addressed the Commission's analysis of the costs and benefits of the proposed rules.

The Commission has considered the costs and benefits of the proposed rules and has decided to adopt the rules as discussed above.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that federal agencies, in proposing rules, consider the impact of those rules on small

[3] Generally, parts 17 and 18 of the regulations, 17 CFR parts 17 and 18, require reports from firms and traders, respectively, when a trader holds a ''reportable position.'' A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and part 150.

The firms which carry accounts for traders holding ''reportable positions'' are required to identify those accounts by filing a CFTC Form 102 and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[4] Based on staff discussions with industry participants, the Commission understands that futures contracts on individual securities will specify 100 shares of the underlying security.

[5] This number corresponds to the current reporting level for security options.

[6] *See* section 5f of the Act, 7 U.S.C. 7f.

[7] *See* section 4f(a)(4) of the Act, 7 U.S.C. 6f(a)(4); 17 CFR 41.34. The Commission discussed the application of its large trader reporting system to notice-designated contract markets when it adopted its rules governing these markets. *See* 66 FR 44960 (Aug. 27, 2001).

[8] *See* 66 FR 43080 (Aug. 17, 2001).

[9] AMEX also noted its intent to use its current reporting level of 200 (which applies to options positions on stocks, shares of exchange-traded funds and stock indexes) for SFPs.

[10] AMEX noted that some firms are considering submitting their reports through the Security Industry Automation Corporation (SIAC). The Commission and the exchanges are working with SIAC to facilitate this. Whether or not the reports are filed through SIAC, the reporting firm remains responsible for the filing of the report.

entities. The Commission has previously determined that large traders and FCMs are not ''small entities'' for purposes of the RFA.[11] The amendment to reporting requirements primarily impacts FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.,* large positions. The Commission invited comments from any firm believing that these rules would have a significant economic impact on its operations. No comments were received in response to that invitation,

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes that the rule amendment does not contain information requirements which require the approval of the Office of Management and Budget. The purpose of this rule is to establish a specific reporting level for security futures products.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 4g, 4i, 5, 5a and 8a of the Act, 7 U.S.C. 6g, 6i, 7, 7a and 12a, as amended, the Commission hereby proposes to amend Part 15 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is amended by revising paragraph (b) to read as follows:

§ 15.03 Reporting levels.

* * * * *

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
Security Futures Products:	
Individual Equity Security	1,000
Narrow-Based Index of Equity Securities	100
All Other Commodities	25

Issued in Washington, DC, this 11th day of March, 2002 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–6288 Filed 3–14–02; 8:45 am]

BILLING CODE 6351–01–M

[11] 47 FR 18618–20 (Apr. 30, 1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 96P–0460]

Topical Antifungal Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of February 8, 2002 (67 FR 5942). The document amended the final monograph for over-the-counter (OTC) topical antifungal drug products to add the ingredient clotrimazole as generally recognized as safe and effective for the treatment of athlete's foot, jock itch, and ringworm. The document was inadvertently published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Doris B. Tucker, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 02–3079, appearing on page 5942 in the **Federal Register** of Friday, February 8, 2002, the following correction is made:

1. On page 5942, in the first column, ''[Docket No. 99N–4063]'' is corrected to read ''[Docket No. 96P–0460]''.

Dated: March 7, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6180 Filed 3–14–02; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in April 2002. Interest assumptions are also published on the PBGC's Web site *(http://www.pbgc.gov).*

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during April 2002, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during April 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during April 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 5.50 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 4.25 percent for the period during which a benefit is in pay status, and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for March 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during April 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*		*	*	*	*	*	
102	4–1–02 ...	5–1–02 ...	4.25	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 102, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
102	4–1–02	5–1–02	4.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
*	*	*	*	*	*	
April 2002	.0550	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 12th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6427 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA79

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is amending the regulation governing the Treasury Tax and Loan (TT&L) program, to provide the Secretary greater flexibility to adjust the rate of interest we charge on funds loaned through the existing TT&L investment option. In addition, Treasury is making regulatory changes that will allow us to test the feasibility of a new investment option known as the term investment option. The term investment option would provide financial institutions participating in the TT&L investment program with another option for borrowing Treasury funds. Under the term investment option, Treasury may invest excess balances with TT&L participants at a market based rate of interest for a predetermined period of time.

DATES: This final rule is effective April 15, 2002.

ADDRESSES: You can download this final rule at the following web site: *http://www.fms.treas.gov/eftps.* You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or *walt.henderson@fms.treas.gov;* Ellen Neubauer, Senior Attorney, at (202) 874–6680 or *ellen.neubauer@fms.treas.gov;* or John Galligan, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or *john.galligan@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background on the Treasury Tax and Loan Program

The Treasury Tax and Loan (TT&L) program, 31 CFR part 203 (part 203), encompasses two separate components—a depositary component through which we collect Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which we invest short-term operating balances not needed for immediate cash outlays.

Through the TT&L depositary component, which comprises nearly 10,000 commercial financial institutions and Federal Reserve Banks (FRBs), we collected over $1.6 trillion in Fiscal Year 2001, representing approximately 80 percent of the total Federal annual tax receipts, from approximately 5 million business taxpayers.

Nearly 1,400 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed under this Part, participating depositaries borrow Treasury funds in the form of a note secured with collateral pledged to Treasury and pay interest to the Treasury on these balances. In Fiscal Year 2001, we earned nearly $1 billion in interest income through the TT&L investment component.

The Secretary is required to consider the prevailing market in prescribing the rate of interest. (31 U.S.C. 323) In 1978 when the interest rate formula was implemented, the overnight repurchase agreement market was not mature and a published rate was not available. Thus, the TT&L rate was set as an approximation of an overnight repurchase agreement rate. At that time, it was generally believed that the Federal funds rate averaged twenty-five basis points above the volume-weighted average interest rate from overnight repurchase agreements secured by Treasury securities and select Agency securities, and executed by the Federal Reserve Bank of New York for its monetary operations. Historically, the overnight repurchase agreement rate and the Federal funds rate generally have moved broadly in tandem.

On July 30, 1999, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) at 64 FR 41748. The NPRM proposed a change to the interest rate we charge on funds loaned through the TT&L program, including funds loaned through the direct investment and special direct investment programs, from the Federal funds rate less twenty-five basis points to an overnight repurchase agreement rate. The closing date for submission of comments was September 28, 1999. Copies of the comments are available on the Financial Management Service's (FMS) web site at *http://www.fms.treas.gov/eftps.* Based on the comments we received, we have reconsidered that change. Instead, we are amending Part 203 to allow the Secretary the flexibility to adjust the rate of interest, taking into consideration prevailing market conditions.

The NPRM also sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. Given the level of interest expressed for this concept, Treasury is considering offering an investment option which incorporates a term feature. Amending Part 203 will enable us to proceed with the design and testing of this option. The new TT&L investment option under consideration is called the term investment option and will be designed so that the Treasury may earn a market based rate of return on investments with a fixed term. The term investment option will provide an additional investment option for current TT&L participants and may also increase participation in the TT&L program. Treasury expects that the rate of interest earned on term investments will reflect a market rate of return for similar funds.

At a later date, Treasury will also be publishing an NPRM for Part 203 to reflect terminology changes brought about by the October 2000 implementation of the Treasury Investment Program (TIP), the component of the TT&L program that receives tax collections, invests funds, and monitors collateral pledged to secure invested funds and public money.

Comments on the Proposed Rule

By the close of the comment period on September 28, 1999, we received comment letters on the NPRM from 56 financial institutions and 3 industry trade associations. Following is a discussion of the issues:

Reaction to a Change in the Treasury Tax and Loan Rate of Interest

All of the commenting financial institutions and one industry trade association opposed the change in the TT&L rate of interest proposed in the NPRM. All commenting financial institutions stated that the proposed rate change (from the Federal funds rate less twenty-five basis points to a rate based on the overnight repurchase agreement rate) would decrease the level of participation in the TT&L program. Several financial institutions, including the largest TT&L investment program participants, commented that the proposed TT&L rate of interest did not take into account certain characteristics of the program such as Treasury's ability to place or call funds with little or no notice and prescribed collateral requirements, both of which should be factored into the rate. Also, many commenting financial institutions expressed concerns about the source and availability of the overnight repurchase agreement rate and the lack of historical data associated with this rate.

Adjusting the TT&L Rate of Interest

We agree with the respondents that a TT&L rate based on the overnight repurchase agreement rate does not adequately take into consideration the embedded option to place or call funds with little or no advance notice, nor the administrative costs associated with posting and transferring TT&L collateral. Thus, the proposed rate does not meet our goal of establishing a rate reflective of the prevailing market for a transaction with characteristics economically similar to the TT&L investment program. We have therefore deleted those provisions of the NPRM that would change the TT&L rate of interest to an overnight repurchase rate.

Nevertheless, we have determined that the best way to ensure that the Treasury continues to earn the prevailing market rate of return is to periodically review the TT&L rate of interest and make any necessary adjustments as market conditions dictate. The final rule therefore allows the Secretary to periodically adjust the rate taking into consideration the prevailing market for a transaction with characteristics similar to the TT&L investment program. This will provide Treasury greater flexibility in earning a market based rate of return on investments. The rate will be established through *TT&L Special Notices to Depositaries* and will be published in the **Federal Register** and on the FMS web site. A *TT&L Special Notice to Depositaries* is included herein establishing the TT&L rate of interest as the Federal funds rate less twenty-five basis points.

Obtaining Funds for a Predetermined Period of Time

The NPRM sought comment on the extent to which TT&L participants were interested in obtaining TT&L funds for a predetermined period of time. The majority of commenters noted that the call feature associated with TT&L funds made participation in the program less desirable for financial institutions. Of the 15 commenters who specifically commented on their interest in obtaining TT&L funds for a predetermined period of time, 11 expressed some interest in the concept. In further discussions with financial institutions regarding the benefits of holding funds for a predetermined period of time, financial institutions again generally reacted favorably to the concept. Based upon these comments, we are considering a new investment component of TT&L, referred to as the term investment option.

Description of the Term Investment Option

The term investment option would provide Treasury with an option to invest excess operating funds with participating financial institutions for a predetermined period of time. This option is in the early stages of development and we anticipate that it will be offered initially on a pilot basis. Under this option, Treasury will determine the rate of interest taking into consideration the prevailing market and will either establish a predetermined rate based on a benchmark or establish the rate of interest based on the results of a bidding process. The term investment option may be offered by the Treasury at any time there are excess operating funds, providing an additional cash management tool for placing excess funds. The addition of this option may

also expand the total capacity within the TT&L program by providing an additional investment option for financial institutions, and may encourage greater participation. This rule is being amended to give us the flexibility to offer this option on a pilot basis and, after evaluating the pilot, on an ongoing basis if warranted. Additional details regarding the term investment option will be published in procedural instructions provided to financial institutions.

Summary of Changes

Definitions

Main note balance—the phrase main note balance has been added to section 203.2 of the final rule to describe the existing open-ended note balance maintained by financial institutions currently participating in the TT&L investment program. This phrase has been added as a means of differentiating between the existing open-ended note balance and the new *term note balance.* The phrase main note balance is used in §§ 203.3; 203.13; 203.19; 203.21; and 203.23 as necessary to clarify that certain features of the existing investment program, such as how funds move in and out of the main note balance, are not applicable to the new term investment option. The features of the existing investment program are unchanged. Where the phrase note balance is used, it is intended to refer to both the main note balance and the term note balance as, for example, in § 203.24 (g).

Term investment option—the phrase *term investment option* has been added to § 203.2 of the final rule to describe the new investment option introduced in this rule. Through the term investment option, financial institutions will have the ability to hold excess Treasury operating funds for a predetermined period of time. Section 203.23 (f) describes the features of this option.

Term note balance—the phrase *term note balance* has been added to § 203.2 of the final rule to describe the note balance maintained by financial institutions participating in the term investment option.

Treasury Tax and Loan rate of interest—the definition of Treasury Tax and Loan (TT&L) rate of interest has been changed in § 203.2 of the final rule to clarify that the phrase TT&L rate of interest refers only to the rate of interest charged on the main note balance. The phrase TT&L rate of interest does not describe the rate of interest charged on the term note balance which is addressed in § 203.23. The definition of the TT&L rate of interest has also been changed to give the Secretary greater flexibility to change the TT&L rate of interest when market conditions warrant.

Collateral requirements. Section 203.24 (b) describes the collateral requirements for the term note balance. Financial institutions participating in the term investment option will be required to pledge collateral sufficient to cover the total term note balance prior to the time the term investment is placed. Collateral will be pledged in the same manner as collateral for the main note balance, although specific collateral requirements may differ. As with main note balances, types and valuations of acceptable collateral for the term note balance will be published on the Bureau of the Public Debt's web site at www.publicdebt.treas.gov.

TT&L Special Notice to Depositaries

This is notice to Treasury Tax and Loan (TT&L) depositaries regarding the rate of interest the Department of the Treasury charges on TT&L main note balances, including funds invested through the direct investment and special direct investment programs. Effective April 15, 2002, the TT&L rate of interest is the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System less twenty-five basis points.

Executive Order 12866

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is herein certified that this final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this final rule does not require any actions on the part of or impose any new requirements on small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic fund transfers, Taxes.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR part 203 is amended as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1789a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

2. Amend § 203.2 by revising paragraph (g); redesignating paragraphs (w) through (dd) and (ee) through (kk) as paragraphs (x) through (ee) and (hh) through (nn), respectively; adding new paragraph (w); revising newly redesignated paragraphs (x) and (dd); adding new paragraphs (ff) and (gg); and revising newly redesignated paragraph (nn) to read as follows:

§ 203.2 Definitions.

* * * * *

(g) *Direct investment* means placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance.

* * * * *

(w) *Main note balance* means an open-ended interest-bearing note balance maintained at the FRB of the district.

(x) *Note option* means that program available to a TT&L depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by interest-bearing note balances maintained at the FRB of the district.

* * * * *

(dd) *Special direct investment* means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's main note balance, where the investment specifically is identified as a ''special direct investment'' and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.24(c)(2)(i).

* * * * *

(ff) *Term investment option* means the program available to financial institutions that offers the ability to borrow excess Treasury operating funds for a predetermined period of time.

(gg) *Term note balance* means an interest-bearing note balance maintained at the FRB of the district for a predetermined period of time.

* * * * *

(nn) *Treasury Tax and Loan (TT&L) rate of interest* means the interest charged on the main note balance. The TT&L rate of interest is the rate prescribed by the Secretary taking into

consideration prevailing market interest rates. The rate and any rate changes will be announced through a *TT&L Special Notice to Depositaries* and will be published in the **Federal Register** and on a web site maintained by Treasury's Financial Management Service at http://www.fms.treas.gov.

3. Amend § 203.3 to revise paragraph (c) to read as follows:

§ 203.3 Financial institution eligibility for designation as a Treasury Tax and Loan depositary.

* * * * *

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, note option depositaries shall possess either general or specific authority permitting the maintenance of a note balance. In the case of note option depositaries maintaining main note balances, the authority shall permit the maintenance of a main note balance which is payable on demand without previous notice of intended withdrawal.

4. Amend § 203.13 to revise paragraphs (b), (c)(1), and (d) (1) to read as follows:

§ 203.13 Same-day reporting and payment mechanisms.

* * * * *

(b) *Fedwire value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's main note balance.

(c) * * *

(1) For a note option depositary using a Fedwire non-value transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

(d) * * *

(1) For a note option depositary using a Direct Access transaction, the tax payment amount will be credited to the depositary's main note balance on the day of the transaction.

* * * * *

5. Revise § 203.19 to read as follows:

§ 203.19 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the main note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the main note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the main note balance on the business day following the receipt of the tax payment.

6. Revise § 203.21 to read as follows:

§ 203.21 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting main note balances under the various payment methods; debiting main note balances; maintaining term note balances; and pledging collateral security.

7. Amend section 203.22 to remove ''and'' at the end of paragraph (b), revise paragraph (c) and add paragraph (d) to read as follows:

§ 203.22 Sources of balances.

* * * * *

(c) Direct investments and special direct investments pursuant to subpart D of this part; and

(d) Other excess Treasury operating funds.

8. Amend § 203.23 by revising paragraphs (a)(1), (a)(2), (c), (d), and (e); and adding paragraph (f) to read as follows:

§ 203.23 Note balance.

(a)* * *

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its main note balance as stated in § 203.19(b).

(2) *EFTPS*—(i) *ACH debit and ACH credit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its main note balance for the value of the transactions on the date that an exchange of funds is reflected on the books of the Federal Reserve Bank of the district. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the main note balance.

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its main note balance and debit its customer's account for the value of the transactions on the date ETA receives and processes the transactions.

* * * * *

(c) *Main note balance withdrawals.* The amount of the main note balance shall be payable on demand without prior notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A main note balance shall bear interest at the TT&L rate. Such interest is payable by a charge to the Federal Reserve account of the depositary or its designated correspondent in the manner prescribed in the procedural instructions.

(e) *Maximum balance*—(1) *Note option depositaries.* A depositary selecting the note option shall establish a maximum for its main note balance by providing notice to that effect in writing to the FRB of the district. The maximum balance is the amount of funds for which a main note option depositary is willing to provide collateral in accordance with § 203.24(c)(1). The depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance unless it is a reduction resulting from a collateral re-evaluation as determined by the depositary's FRB. That portion of any advice of credit or EFTPS tax payment, which, when posted at the FRB, would cause the main note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A main note option depositary that participates in direct investment shall set a maximum for its main note balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow. The direct investment note option depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance.

(3) *Special direct investment depositaries.* Special direct investments,

when credited to the main note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

(f) *Term investment option.* Treasury may, from time to time, invest excess operating funds in obligations of depositaries selecting the term investment option. Such obligations shall be in the form of interest-bearing notes payable upon a predetermined period of time not to exceed 90 days. Such notes shall bear interest at a rate prescribed by the Secretary by auction or otherwise taking into consideration prevailing market interest rates.

9. Amend § 203.24 to revise paragraph (a); redesignate paragraphs (b) through (f) as paragraphs (c) through (g), respectively; add a new paragraph (b); and revise newly redesignated paragraph (d)(1) to read as follows:

§ 203.24 Collateral security requirements.

* * * * *

(a) *Note option—main note balance*—(1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (d)(1), (e), and (f) of this section in an amount that is sufficient to cover the pre-established maximum balance for the main note balance, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in direct investment is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each note option depositary participating in direct investment shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (d)(1), (e), and (f) of this section to cover the total main note balance including those funds received through direct investment. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's main note balance, the note option depositary shall pledge collateral security, in accordance with the requirements of paragraphs (d)(2) and (f) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Note option—term note balance.* Each note option depositary participating in the term investment program shall pledge, prior to the time the term investment is placed, collateral in accordance with paragraphs (d) (1), (e), and (f) of this section sufficient to cover the total term note balance.

* * * * *

(d) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1), (2), (b), and (c) of this section shall be deposited with the FRB of the district, or, where appropriate, with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

* * * * *

Dated: October 26, 2001.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 02–5918 Filed 3–14–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–162]

RIN 2115–AA97, 2115–AA97, and 2115–AA98

Anchorages, Regulated Navigation Areas, Safety and Security Zones; Boston Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising a temporary final rule (§ 165.T01–171) published September 27, 2001. This change will extend the effective period for four temporary safety and security zones in this rule until June 30, 2002, allowing us adequate time to conduct a rulemaking to make these four safety and security zones permanent. The anchorage area restrictions (§ 110.T01–162) and regulated navigation areas (§ 165.T01–162) created by the rule published September 27, 2001 will expire as provided in that rule on March 16, 2002.

DATES: Section 165.T01–171 is revised effective March 15, 2002 and will remain effective until June 30, 2002.

ADDRESSES: MSO Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Maritime Security Operations, MSO Boston, at 617–223–3030.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated.

For these same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rulemaking is urgently required to prevent future terrorist strikes within and adjacent to waters within the areas protected by these safety and security zones. The delay inherent in the NPRM process is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent area vulnerable to subversive activity, sabotage or terrorist attack.

Background and Purpose

On September 27, 2001, we published a temporary final rule creating anchorage area restrictions, three regulated navigation areas and five safety and security zones in the Boston Marine Inspection Zone and Captain of the Port Zone. (66 FR 49280). One of the safety and security zones, § 165.T01–171 (a)(4), for Pilgrim Nuclear Power Plant has been removed by a different temporary final rule (67 FR 1607, January 14, 2002), which was followed by an NRPM for a permanent rule (67 FR 4218, January 29, 2002).

We have determined that the anchorage area restrictions and three regulated navigation areas will not be

needed after their current expiration date, March 16, 2002.

As indicated by an NPRM we published last month, and in the reasons supporting our finding of good cause, we do see a need to continued the four remaining safety and security zones in temporary 33 CFR 165.T01–171. (67 FR 8915, February 27, 2002). We are extending the effective period of these zones until June 30, 2002, to allow us to issue a supplemental NPRM with a longer comment period on the proposal to make these safety and security zones permanent.

Safety and Security Zones

The rule extends the effective period for four distinct safety and security zones, having identical boundaries. Three of these zones are being established by reference to a radius around a particular coordinate or easily identifiable landmark. One zone is being established by reference to readily identifiable boundaries. All of the zones are being established in order to protect the waterfront facilities, terminals, power plants, as well as persons and vessels from subversive or terrorist acts. No person or vessel may enter or remain in the prescribed safety and security zones at any time without the permission of the Captain of the Port. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port.

The Captain of the Port may take possession and control of any vessel in a safety and security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around some of the safety and security zones in Boston Harbor and the zone in Salem Harbor; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential impacts, the Coast Guard still deems that these safety and security zones are need to protect the ports of Boston and Salem and the public.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Boston and Salem Harbor in which entry would be prohibited by safety or security zones.

This rule does not have a significant impact on a substantial number of small entities because the majority of the zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the Port of Boston are deemed to be low.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry, Maritime Security Operations, Marine Safety Office Boston, at 617–223–3030.

Collection of information

This rule does not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

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

List of Subjects 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.T01–171 published at 66 FR 49283–49284 to read as follows:

§ 165.T01–171 Safety and Security Zones: Boston Marine Inspection Zone and Captain of the Port Zone.

(a) *Location.* The following are established as safety and security zones:

(1) All waters of the Mystic River within a five hundred (500) yard radius of the Distrigas terminal pier in Everett, MA.

(2) All waters of Boston Harbor, including the Reserved Channel, west of a line connecting the Southeastern tip of the North Jetty and the Northeastern corner of the Paul W. Conley Marine Terminal pier.

(3) All waters of Boston Inner Harbor within a two hundred (200) yard radius of Pier 2 at the Coast Guard Integrated Support Command Boston, Boston, MA.

(4) All waters of Salem Harbor within a five hundred (500) yard radius of the PG & E U.S. Generating power plant pier in Salem, MA.

(b) *Effective dates.* This section is effective from September 18, 2001 until June 30, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

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

Dated: March 12, 2002.

G. N. Naccara,

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

[FR Doc. 02–6459 Filed 3–13–02; 3:48 pm]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

National Primary and Secondary Ambient Air Quality Standards

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 2001, on page 62, in Part 50 Appendix H, under the third heading, the fifth paragraph is amended by correcting the formula to read as follows:

Appendix H to Part 50—Interpretation of the 1–Hour Primary and Secondary National Ambient Air Quality Standards for Ozone

* * * * *

3. Estimating the Number of Exceedances for a Year

* * * * *

$$e = v + [(v/n) * (N\text{-}n\text{-}z)] \qquad (1)$$

* * * * *

[FR Doc. 02–55506 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 150–1150; FRL–7158–6]

Approval of Operating Permit Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing its approval of the amendments to the Iowa Title V operating permit program. EPA announced its proposed approval of these amendments on January 11, 2002. These amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

DATES: This rule is effective on April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Lynn M. Slugantz at (913) 551–7883.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permit program?

What is the Federal approval process for the Part 70 operating permit program?

What does Federal approval of a state operating permit program mean to me?

What is being addressed in this document?

Have the requirements for approval of a revision to the operating permit program been met?

What action is EPA taking?

What Is the Part 70 Operating Permit Program?

The Clean Air Act (CAA) Amendments of 1990 require all states to develop an operating permit program that meets certain Federal criteria listed

in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permit program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or particulate matter that is 10 micrometers in size (PM_{10}); those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state and local agencies' operating permit program are subject to public notice, comment, and our approval.

What Is the Federal Approval Process for the Part 70 Operating Permit Program?

In order for state regulations to be incorporated into the Federally enforceable Title V operating permit program, states must formally adopt the regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the operating permit program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally approved operating permit program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Program.''

What Does Federal Approval of a State Operating Permit Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved operating permit program is primarily a state responsibility. However, after the state program is Federally approved, we oversee the program and review proposed permits submitted by the state in accordance with 40 CFR part 70. We are also authorized to enforce the permit program and individual permits issued under the program. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has adopted amendments to 567 Iowa Administrative Code (IAC) 22.108(3). The purpose of the amendments is to incorporate IDNR's existing Title V Periodic Monitoring Guidance into its rules. Periodic monitoring is required by 40 CFR 70.6 and 71.6 where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring. Also, the amendments to 567 IAC 22.108(3) adopt by reference Compliance Assurance Monitoring (CAM) that is required to be included in 40 CFR part 70 or 71 operating permits for major stationary sources of air pollution that are required to obtain operating permits under Title V of the CAA. Periodic monitoring and CAM are needed to provide reasonable assurance of compliance with applicable requirements under the CAA. The amendments were adopted and filed by the Environmental Protection Commission on June 21, 2001; published on July 11, 2001; and became effective on August 15, 2001.

As a part of our review of these amendments, EPA requested clarification from IDNR regarding the list of factors to be considered in evaluating the type of periodic monitoring appropriate for an applicable requirement, as set forth in the narrative of the June 18, 2001, Periodic Monitoring Guidance. This narrative lists numerous factors to be considered, while Attachment 1 to that guidance contains a decision matrix considering only type of source and whether the source is controlled or uncontrolled. In response to EPA's request, IDNR sent EPA a November 7, 2001, letter in which the state clarified that it has flexibility in deciding to follow the matrix which is found in appendix A to that guidance or to make a case-by-case determination that differs from the periodic monitoring guidance and the matrixes. EPA believes that the state's ability to deviate from the guidance on a case-by-case basis is essential to implementation of this program, and our approval of the state program revisions is based, in part, on the state's assurance that it retains authority to establish appropriate periodic monitoring on a case-by-case basis. EPA reserves our authority to object to permit provisions regarding periodic monitoring if they do not meet the requirements of the CAA or 40 CFR 70.6(a)(3).

On January 11, 2002, we proposed to approve this rule revision. In the proposal, EPA expressly stated its understanding that IDNR retained authority to establish periodic monitoring on a case-by-case basis, and also stated that it retained authority to object to periodic monitoring which did not meet the requirements of the CAA (67 FR 1432). The public comment period was open through February 11, 2002. No comments were received.

This **Federal Register** document takes final action to approve the amendments to Iowa's Title V operating permit program to incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements.

Have the Requirements for Approval of a Revision to the Operating Permit Program Been Met?

Our review of the material submitted indicates the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

EPA is hereby approving amendments to Iowa rule, 567 IAC 22.108(3), effective August 15, 2001, as supplemented on November 7, 2001, as a revision to the Iowa Title V operating permit program.

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). This action 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 CAA. 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 Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the CAA. 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. 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 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, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

William Rice,

Acting Regional Administrator, Region 7.

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

PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding under ''Iowa'' paragraph (d) to read as follows:

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

* * * * *

Iowa

* * * * *

(d) The Iowa Department of Natural Resources (IDNR) submitted amendments to Iowa Rule, 567 Iowa Administrative Code (IAC) 22.108(3), as a revision to the Iowa Title V operating permits program on August 31, 2001, effective August 15, 2001. The amendments incorporate existing periodic monitoring guidance and adopt by reference compliance assurance monitoring requirements. The IDNR submitted a supplement regarding these amendments on November 7, 2001, clarifying IDNR's authority to establish periodic monitoring on a case-by-case basis. This revision to the Iowa program is effective April 15, 2002.

* * * * *

[FR Doc. 02–6272 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

Organization and Delegation of Powers and Duties, Update of Secretarial Delegation to the Administrator, Federal Motor Carrier Safety Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation (OST) is updating the delegations of authority from the Secretary to the Administrator of the Federal Motor Carrier Safety Administration in response to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

Section 1012 of the USA PATRIOT ACT amends the United States Code by adding a new section relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. By this action, the Secretary delegates the authority to carry out this provision to the FMCSA Administrator.

EFFECTIVE DATE: This final rule is effective on March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia A. Burke, Office of the Chief Counsel, MC–CC, (202) 366–0834, Federal Motor Carrier Safety Administration, U.S. Department of

Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, (Public Law 107–56, 115 Stat. 272 at 396, (October 26, 2001)), amends chapter 51 of title 49 United States Code, by adding a new section 5103a, relating to limitations on issuance of licenses to individuals who operate motor vehicles transporting hazardous materials in commerce. The new provision is best administered by the FMCSA, which is responsible for the commercial driver's license (CDL) program. This delegation broadens the FMCSA Administrator's delegated authority relating to hazardous materials transportation programs.

This final rule updates the delegations of authority from the Secretary to the FMCSA Administrator to reflect the organizational posture of the Department. As such, the final rule is ministerial in nature and relates only to Departmental management, organization, procedure, and practice. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b).

Furthermore, this rule does not impose substantive requirements on the public. Also, this final rule expedites the Department of Transportation's ability to implement section 1012 of the USA PATRIOT ACT. Consequently, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective on the date of publication in the **Federal Register**.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

The final rule is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation and funding requirements do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. I hereby certify this final rule, which amends the CFR to reflect a delegation of authority from the Secretary to the FMCSA Administrator, will not have a significant economic impact on a substantial number of small businesses.

E. Paperwork Reduction Act

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

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–56, 115 Stat. 396.

2. In § 1.73, revise paragraph (d)(2) to read as follows:

§ 1.73 Delegation to the Administrator of the Federal Motor Carrier Safety Administration.

* * * * *

(d) * * *

(2) Carry out the functions vested in the Secretary by 49 U.S.C. 5103a relating to limitations on issuance of licenses to operate motor vehicles transporting hazardous materials in commerce; 49 U.S.C. 5112 relating to highway routing of hazardous materials; 49 U.S.C. 5109 relating to motor carrier safety permits, except subsection (f); 49 U.S.C. 5113 relating to unsatisfactory safety ratings of motor carriers; 49 U.S.C. 5125(a) and (c)–(f), relating to preemption determinations or waivers of preemption of hazardous materials highway routing requirements; 49 U.S.C. 5105(e) relating to inspections of motor vehicles carrying hazardous material; and 49 U.S.C. 5119 relating to uniform forms and procedures.

* * * * *

Issued in Washington, DC on March 7, 2002.

Norman Y. Mineta,

Secretary.

[FR Doc. 02–6123 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 244 and 1106

[FRA Docket No. 1999–4985, Notice No. 4]

Surface Transportation Board

[STB Ex Parte No. 574]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCIES: Federal Railroad Administration (FRA), Surface Transportation Board (STB), DOT.

ACTION: Final rules.

SUMMARY: The Federal Railroad Administration (''FRA'') and the Surface Transportation Board (''STB'' or ''Board''), working in conjunction with each other, hereby issue joint final rules establishing procedures for the development and implementation of safety integration plans (''SIPs'' or ''plans'') by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same.

Under FRA's final rule, Class I railroads seeking to consummate a covered transaction must file a proposed SIP with FRA after they seek authority for the transaction from the Board. (A SIP is a written document explaining how each step in implementing a contemplated transaction would be performed safely.) FRA then reviews the proposed SIP and advises the Board as to whether it provides a reasonable assurance of safety for the transaction. The rule further requires that, once the STB has approved a transaction, a railroad must operate over property subject to the transaction in compliance with a SIP approved by FRA, and authorizes FRA to exercise its full enforcement remedies should a railroad fail to implement the terms of an approved plan. Finally, the rule provides that FRA will consult with the STB at all appropriate stages of SIP implementation, assuming FRA approves the SIP and the STB approves the transaction.

Under the STB's final rule, rail carriers seeking to carry out a regulated transaction are required to file a proposed SIP with FRA and the Board 60 days after they seek authority for the transaction. FRA will review the proposed SIP and file written comments with the Board's Section of Environmental Analysis (''SEA''), which is responsible for preparing the Board's environmental documents. SEA will then include the proposed SIP, FRA's written comments on the proposed SIP, and any additions or revisions based on continued discussions with FRA in the Board's draft environmental documentation. After reviewing the proposed SIP, SEA's analysis, and comments provided by interested persons during the STB's environmental review process, the Board will then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction and adopt the SIP, it will require compliance with the SIP as a condition to its approval. FRA then will oversee the implementation of the SIP, consult with the Board at all appropriate stages of implementation, and advise the Board when the proposed integration has been safely completed.

The final rules are designed to enable the Board and FRA to ensure adequate and coordinated consideration of safety integration issues in covered rail transactions while minimizing the burdens on the applicants. FRA and the STB believe that the joint rules will serve the public interest in promoting safety in the railroad industry, consistency in decisions, and efficiency in compliance, enabling the agencies to employ their areas of expertise to fulfill their respective statutory objectives in a complementary manner.

DATES: *Effective Date:* The final rules become effective on April 15, 2002.

ADDRESSES: Petitions for reconsideration of FRA's rule should be submitted to Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590. Petitions for reconsideration of the STB's rule should be submitted to Office of the Secretary, STB, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: jonathan.kaplan@fra.dot.gov); and Evelyn G. Kitay, Office of the General Counsel, STB, 1925 K Street, NW., Washington, DC 20423–0001 (telephone: (202) 565–1563 and e-mail: kitaye@stb.dot.gov). (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION:

Joint FRA/STB Introduction

On December 31, 1998, FRA and the STB issued a joint notice of proposed rulemaking (''NPRM'') establishing procedures for developing and implementing SIPs by railroads proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. 63 FR 72225, Dec. 31, 1998. FRA's proposed rule would have required railroads seeking to consummate any mergers, acquisitions, or consolidations of property involving (i) Class I railroads, (ii) Class II railroads when the railroads would directly interchange freight with each other, (iii) transactions in which the consummation of operations would produce revenue in excess of the Class I threshold, (iv) a passenger railroad (intercity or commuter) with another passenger railroad, a Class I railroad, or a Class II railroad; or (v) start-up operations on a rail line or lines in which the commencement of operations would either involve passenger service or produce revenue in excess of the Class II threshold, to file a proposed SIP for the agency's review and approval. (Class I railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, in excess of $250 million per year for a period of three successive years. Class II railroads are rail carriers generating operating revenue, measured in inflation-adjusted 1991 dollars, between $20 million and $250 million.) Concurrently, the STB's proposed rule would have required railroads seeking to engage in all transactions addressed in FRA's NPRM other than start-up operations to file a SIP with the Board for its review and approval.

The proposed rules set out specific procedures governing the development, approval, and implementation of SIPs, and explained that FRA and the Board are jointly responsible for promoting a safe rail transportation system. Under FRA's proposed rules, railroads seeking to consummate a covered transaction would be required to file a proposed SIP with FRA contemporaneously with the filing of the SIP with the STB. FRA would review the proposed SIP and advise the Board as to whether it provides a reasonable assurance of safety for the transaction. The proposed rule required a railroad to have a SIP approved by FRA before it could execute operations over property subject to the transaction. Where the Board has been involved in authorizing the transaction, FRA would consult with the Board at all appropriate stages of implementation.

Likewise, under the STB's proposed rules, rail carriers seeking to carry out a transaction within the Board's jurisdiction that would require a SIP would file their SIP with the Board and FRA. FRA would review the SIP and file written comments with the Board's SEA. After reviewing the SIP, SEA's analysis, and comments provided by interested persons during the Board's environmental review process, the Board would then independently evaluate the transaction and decide whether to approve it. Should the Board approve the transaction, the railroads would coordinate with FRA in implementing the SIP, including any amendments made to the plan, and FRA would monitor the implementation process and apprise the Board about the railroad's progress in carrying out the plan until FRA advised the Board that the proposed integration had been safely completed. Both FRA and the Board

would be authorized to exercise their full independent enforcement remedies should either FRA or the Board reject the proposed SIP or a railroad fail to implement the terms of an approved SIP.

FRA and the STB received written comments on the proposal from 11 entities and conducted a joint public hearing at the request of one of the commenters in Washington, D.C., on May 4, 1999. Based on the comments received, the testimony at the public hearing, and further analysis of the rules proposed, FRA and the Board now publish these joint final rules. As will be discussed below, both agencies underscore the importance of SIPs when Class I railroads seek to engage in mergers, consolidations, or acquisitions. These are railroads transporting large volumes of freight, frequently including hazardous materials. Given the size and complexity of their operations, careful advance planning is critical to ensure that safety is maintained as the transactions are implemented.

The agencies, however, agree with certain of the comments that the final rules should be limited to consolidations, mergers, or acquisitions of control involving either two or more Class I railroads or a Class I railroad and a Class II railroad with which it proposes to ''amalgamate operations'' as defined by FRA at 49 CFR 244.9. (*See also* the STB's final rule at 49 CFR 1106.2.) Only the complexity and difficulty of these very large transactions are now believed to present sufficient dangers to merit a SIP under these rules. This substantially comports with the recommendations of some commenters.

In its final rule, FRA has modified the subject matter areas to be addressed in a SIP to cover those disciplines that a regulated transaction affects, and has decided not to require an applicant to file a SIP when a transaction does not involve an amalgamation of operations. In response to the comments, FRA and the Board have ''fine tuned'' their respective procedures governing the filing, review, and approval of a SIP, and their oversight of an approved plan. The final rules also clarify the respective roles of the two agencies. It is made clearer that (i) the STB is regulating the economic transaction and, in the course of doing so, fulfilling its responsibility to assess environmental impacts, as required by the National Environmental Policy Act (''NEPA''), 42 U.S.C. 4321 *et seq.*, and promote a safe transportation system, and (ii) FRA is regulating the safety of the implementation of any transaction the STB may approve, just as FRA regulates all other aspects of railroad safety. FRA is not approving or disapproving the transaction in any respect, and both agencies state explicitly that FRA has no ''veto power,'' either explicit or implicit as some commenters alleged, over transactions regulated by the STB. If the STB approves a transaction, a railroad must conduct operations over properties that are part of the transaction in compliance with a SIP approved by FRA, just as it must conduct those operations in compliance with the railroad safety statutes and implementing regulations administered by FRA.

Discussion of Comments and Conclusions

FRA and the STB received written comments from various railroads and their representative organizations, labor organizations, and public service organizations. The railroad interests were represented by the Association of American Railroads (''AAR''), American Short Line and Regional Railroad Association (''ASLRRA''), National Railroad Passenger Corporation (''Amtrak''), Guilford Transportation Industries (''GTI''), and the Wheeling & Lake Erie Railway Company (''W&L''). The American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (''ATDD''), Transportation Trades Department, American Federation of Labor-Congress of Industrial Organizations (''TTD''), Brotherhood of Railway Carmen Division of the Transportation Communications International Union (''BRC''), and Brotherhood of Maintenance of Way Employes (''BMWE'') represented the interests of rail labor. The public service organizations were represented by the American Public Transit Association, now the American Public Transportation Association (''APTA''), and the Oklahoma Department of Transportation (''OK DOT''). At the public hearing held on May 4, 1999, two organizations participated: the TTD and the AAR. The commenters raised questions about the proposal itself, suggested alternative language to some of the proposed rule text, and requested clarification about the meaning and application of certain proposed rules. The discussion that follows highlights the principal issues advanced by the commenters and explains how the final rules reflect the comments received. Because many of the comments focus on the rules proposed by one agency and not the other, FRA and the Board present separate sections addressing the comments and each agency's conclusions.

A. FRA's Response to Comments Concerning the Need To Require SIPs for Mergers, Consolidations, and Acquisitions of Control

Several comments addressed the types of transactions that warrant preparation of a SIP under these rules. The ATDD and TTD, for instance, endorsed the breadth of FRA's proposed rule, asserting that that type of rule is necessary to ensure the safety of railroad employees and the public. The ATDD commented that operational changes, *i.e.*, changes in traffic volume and traffic patterns, timetable schedules, and labor reductions, needed to be evaluated for safety concerns. The TTD added that the rulemaking action should be transferred to FRA's Railroad Safety Advisory Committee (''RSAC'') to secure fuller labor input in the development of FRA's final rule. Amtrak also supported the proposition of the SIP rules, agreeing that ''mega-mergers'' present unique safety issues that should be identified and addressed at the application stage to enable FRA and the Board to handle proposed transactions as safely as possible.

GTI disagreed with the premise of the SIP rules. Specifically, GTI claimed that FRA need not issue any regulations governing mergers, consolidations, or acquisitions of control because the agency already has the regulations necessary to ensure safe operations subject to a proposed regulated transaction. GTI further postulated that FRA is without expertise in regulating these transactions and that self-regulation was most appropriate in this instance because merging railroads recognize that unsafe operations lead to increased costs and decreased returns on an investment. In other words, GTI recommended that the agencies terminate this rulemaking action and apply the existing regulations that govern regulated transactions.

The AAR argued that SIPs should be limited to consolidation, merger, and acquisition of control proceedings involving at least two Class I railroads and not to other less complex proceedings. The AAR also argued that only the Board should have approval authority over SIPs and that FRA's role should be limited to advising the Board. According to the AAR, any regulations purporting to vest FRA with authority to approve a SIP would be contrary to law and in derogation of the Board's ''exclusive'' authority to approve merger transactions under 49 U.S.C. 11321.

FRA strongly endorses the concept of the SIP rules and their importance in

regulating the complex railroad transactions involving mergers, consolidations, and acquisitions of large railroads where operations are amalgamated. As the agencies explained in the NPRM, acquisitions, consolidations, and mergers must be carefully planned and implemented to maintain safety. *See* 63 FR 72226–27. Transactions involving Class I railroads significantly change the carrier landscape and raise potential safety issues relating to integrating operations, facilities, personnel, safety practices, and corporate cultures. The NPRM noted FRA's concerns regarding safety problems that resulted from inadequate safety planning before implementation of the merger of the Union Pacific Railroad Company (''UP'') and the Southern Pacific Transportation Company (''SP'') (collectively referred to as ''UP/SP'') and the merger of the Burlington Northern Railroad Company (''BN'') and the Atchison, Topeka and Santa Fe Railway Company (''ATSF'') (collectively referred to as ''BNSF''). *See* 63 FR 72227. The chief executive officers of the Norfolk Southern Railway Company and CSX Transportation, Incorporated, which acquired and divided Consolidated Rail Corporation (''Conrail''), amplified this point when they testified before the STB about the operational and safety difficulties they encountered in implementing their respective transactions, even with the planning and experiences of earlier mergers to guide them and having prepared SIPs. *See Public Views on Major Rail Consolidations,* STB Ex Parte No. 582, slip op. at 4–5 (STB served Mar. 17, 2000).

FRA believes that the final SIP rules accomplish the objective of ensuring safe railroad operations during and after implementation of an approved transaction. First, the regulations set out subject matter areas that are critical to railroad safety that an applicant must address in a proposed SIP. These requirements address safety issues unique to the amalgamation of large, complex railroad operations that are not covered in any existing Federal regulations, necessitating their issuance here. Second, FRA has the necessary expertise in railroad safety to review, analyze, approve, and oversee the implementation of a proposed SIP. FRA has officials and inspectors with knowledge, training, and experience in five railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that cover the ambit of railroad operations. Therefore, the final rules provide for FRA a mechanism to evaluate and approve SIPs and monitor their implementation if the transactions to which they relate are approved by the Board. As discussed in greater detail below, FRA is regulating the safety aspects of how a railroad implements a transaction permitted by the Board and not whether the railroad is permitted to consummate the transaction or on what economic terms. FRA concludes that the SIP rules are a step forward in providing railroad safety and therefore adopts these final rules. Although FRA entertained TTD's suggestion to add this proceeding to those addressed by FRA's RSAC, the agency decided that a joint rulemaking with the Board, using the complementary authority of both agencies, would be the best way to proceed.

B. FRA's Views on Jurisdiction of FRA and the STB To Issue the Final Rules

The AAR and GTI commented that the STB and not FRA is authorized to issue any regulations governing acquisitions, consolidations, and mergers. Relying on statutory authority, 49 U.S.C. 11321, and decisional law, *Schwabacher* v. *United States,* 334 U.S. 182, 197 (1948); *Norfolk & Western Rwy.* v. *ATDA,* 499 U.S. 117, 127–34 (1991); and *City of Auburn* v. *United States,* 154 F.3d 1025 (9th Cir. 1998), *cert. denied,* 527 U.S. 1022 (1999), the AAR claims that the Board is vested with exclusive authority to issue regulations that are within the STB's jurisdictional purview. GTI echoed the AAR's position, maintaining that an application to consummate an acquisition, consolidation, or merger is an economic transaction, which is fully within the Board's authority.

FRA agrees that the Board has sole authority to regulate the economic transactions, but disagrees with these commenters that issuance of FRA's final rule trespasses upon that jurisdiction. FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out. *Tyrrell* v. *Norfolk Southern Rwy. Co.*, 248 F.3d 517, 523 (6th Cir. 2001) (FRA's and the STB's ''complementary exercise of their statutory authority accurately reflects Congress's intent for the (Interstate Commerce Commission Termination Act) and the (Federal Railroad Safety Act) to be construed *in pari materia*''). The Supreme Court provides that ''it is a cardinal principle of construction that * * * when there are two acts upon the same subject, the rule is to give effect to both.'' *United States* v. *Borden Co.*, 308 U.S. 188, 198 (1939). Congressional intent behind one Federal statute should not be thwarted by the application of another Federal statute if it is possible to give effect to both laws, *id.*, and courts should ''construe the relevant statutes in a manner that most fully effectuates the policies to which Congress was committed.'' *Commonwealth of Pennsylvania* v. *Lynn*, 501 F.2d 848, 857 (D.C. Cir. 1974); *see also Food and Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 134 (2000) (a reviewing court should ''examin[e] a particular statutory provision * * * (in) context and with a view to [its] place in the overall statutory scheme''); *Blanchette* v. *Connecticut General Ins. Corp.*, 419 U.S. 102, 133–34 (1974) (statutory repeals by implication are disfavored). The agencies have done so in a manner entirely consistent with the cases cited by the commenters. *Tyrrell*, 248 F.3d at 523 (''while recognizing their joint responsibility for promoting rail safety in their 1998 Safety Integration Plan rulemaking, FRA exercised primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*, while the STB handled economic regulation and environmental impact assessment(,)'' citing the NPRM at n.2).

As FRA and the Board explained in the NPRM:

FRA and STB are jointly responsible for promoting a safe rail transportation system.

Under Federal law, primary jurisdiction, expertise and oversight responsibility in rail safety matters are vested in the Secretary of the Department of Transportation, and delegated to the Federal Railroad Administrator. 49 U.S.C. 20101 *et seq.*; 49 CFR 1.49. FRA has authority to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries. 49 U.S.C. 20101 and 20102. FRA has exercised its jurisdiction to protect the safety of railroad operations through the issuance and enforcement of regulations, partnering with railroad labor organizations and management of particular railroads to identify and develop solutions to safety problems, actively participating in STB rail proceedings, and monitoring railroad operations during the implementation of STB-approved transactions.

The Board is also responsible for promoting a safe rail transportation system. The rail transportation policy (RTP), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), establishes the basic policy directive against which all of the statutory provisions the Board administers must be evaluated. The RTP provides, in relevant part, that, ''(i)n regulating the railroad industry, it is the policy of the United States

Government * * * to promote a safe and efficient rail transportation system'' * * * (by allowing rail carriers to) ''operate transportation facilities and equipment without detriment to the public health and safety * * * .'' 49 U.S.C. 10101(8). The rail transportation policy applies to all transactions subject to the Board's jurisdiction.

Thus, both FRA and STB are vested with authority to ensure safety in the railroad industry. Each agency, however, recognizes the other agency's expertise in regulating the industry. FRA has expertise in the safety of all facets of railroad operations. Concurrently, the Board has expertise in economic regulation and assessment of environmental impacts in the railroad industry. Together, the agencies appreciate that their unique experience and oversight of railroads complement each other's interest in promoting a safe and viable industry.

63 FR 72225–26. FRA believes that each agency's interpretation of its statute is reasonable, reflects a plausible construction of the plain language of the statutes, and gives effect to Congress' expressed intent. *Tyrrell*, 248 F.3d at 523 (statutory construction that FRA has primary authority over national rail safety policy and STB is responsible for encouraging ''safe and suitable working conditions'' properly reflects Congress's purpose in enacting the Federal railway laws).

FRA has ''primary jurisdiction, expertise and oversight responsibility in rail safety matters' under 49 U.S.C. 20101 *et seq.*, as delegated by the Secretary of Transportation to the Federal Railroad Administrator at 49 CFR 1.49, and has the authority ''to issue regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries'' under 49 U.S.C. 20101 and 20102. 63 FR 72225. Specifically, 49 U.S.C. 20103 confers authority on FRA to ''prescribe regulations'' ''for every area of railroad safety,'' 49 U.S.C. 20103(a), and ''in prescribing regulations[,]'' FRA ''shall consider existing relevant safety information and standards.'' 49 U.S.C. 20103(c). Congress intended that FRA would possess the authority to regulate ''all those means of rail transportation as are commonly included within the term * * * in addition to those areas currently regulated.'' H.R. No. 91–1194, Federal Railroad Safety and Hazardous Materials Transportation Control Act of 1970, Pub. L. 91–458, *reprinted in* 1970 USCCAN 4104, 4114 (1970). In other words, Congress authorized FRA to promulgate regulations to ensure railroad safety after analyzing safety data.

A key element in the argument of the AAR and other commenters is that, by approving a SIP, FRA is encroaching upon the STB's jurisdiction, supposedly because approving a SIP is equated with approving a transaction and because the NPRM states that the railroad resulting from a covered transaction ''shall have an FRA approved Safety Integration Plan before changing its operations to implement a proposed transaction * * *.'' *See* proposed 49 CFR 244.21(a) at 63 FR 72241. These commenters have misinterpreted both FRA's intentions and the meaning of the text. FRA has amended the text to eliminate the possibility of interpreting it as giving FRA authority to approve a transaction, and to clarify FRA's intentions. *See* the discussion of § 244.21(a) below. This change makes clear that FRA has no intention of approving or disapproving or vetoing a transaction covered by this part. FRA agrees that approving or disapproving a transaction covered by this part is wholly within the jurisdiction of the STB. FRA's role in the STB's process is an advisory one, providing expert advice to the STB on safety issues presented by a transaction. As the STB said in the NPRM, it relies upon FRA's safety expertise, and it is clearly in the public interest that FRA make its expertise available to the STB.

On the other hand, regulation of ''every area of railroad safety'' is FRA's jurisdiction. In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad implements a transaction permitted by the STB and *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the ''plenary safety authority with respect to the safety of rail operations—before, during, and after a transaction,'' which the AAR acknowledges that FRA enjoys. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction. The commenters' view would require a repeal by implication of some portion of the Federal railroad safety laws (''safety laws''), 49 U.S.C. 5101 *et seq.* and 20101 *et seq.*, to except from them railroad operations conducted during implementation of transactions approved by the STB. Such repeals by implication are strongly disfavored. *See Tyrrell*, 248 F.3d at 523. Here, there is obviously no need to infer any such repeal.

In FRA's view, it is necessary for safety purposes for the agency to approve or disapprove SIPs to provide a baseline for enforcement. First, FRA approval or disapproval denotes whether a railroad has submitted a proposed SIP meeting the requirements of the rule. Upon disapproval of a proposed SIP, FRA can take enforcement action if the railroad does not change its SIP to bring it into compliance with the law. Upon approval of a SIP, FRA can take enforcement action if the railroad fails to implement the SIP. Absent FRA approval, it is hard to see how FRA could take enforcement action in this arena.

FRA believes that the suggestion that FRA could veto a transaction by disapproving a proposed SIP is a red herring because only the STB can approve and veto a transaction. In any event, the standard set by the rule for approval of a proposed SIP can easily be met by any Class I or Class II railroad, and FRA cannot arbitrarily or capriciously reject a SIP that meets the standard. If FRA disapproves a proposed SIP because it fails to be thorough, complete, or clear, FRA must articulate to the railroad what is missing or unclear. If FRA disapproves a proposed SIP because it fails to describe a logical and workable transition or because it is insufficiently detailed, FRA must articulate how the proposed SIP is illogical or unworkable or lacking in detail. In either of those cases, upon receiving FRA's reasons for disapproval, a railroad can readily remedy its submission. In practice, FRA will continue to work informally with railroads proposing a covered transaction to assure that their proposed SIPs comply. It should be easy for applicants to secure FRA approval of their proposed SIPs in time for the Board's SEA to include the proposed SIP in the draft environmental documentation for the STB proceeding. FRA has no interest in blocking transactions and has a powerful interest in seeing that transactions are implemented safely.

The text also makes clear that FRA is not prescribing any particular way to implement covered transactions. Instead, FRA is requiring the railroads involved to be thorough and logical, and to maintain a reasonable assurance of safety at every step of the proposed transaction.

Correspondingly, FRA recognizes that the STB is also vested with authority to promote a safe rail transportation system in determining whether a

proposed transaction should be permitted and, if so, on what economic terms. As discussed in *Tyrrell* and in the NPRM, the rail transportation policy (''RTP''), 49 U.S.C. 10101, which was adopted in the Staggers Rail Act of 1980, Pub. L. 96–448, 94 Stat. 1895, and amended in the Interstate Commerce Commission Termination Act of 1995 (''ICCTA''), Pub. L. 104–88, 109 Stat. 803 (1995), provides the foundation for which all of the statutory provisions the Board administers must be analyzed. *See Tyrrell*, 248 F.3d at 522–23. The RTP provides, in relevant part, that, ''(i)n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system'' * * * (by allowing rail carriers to) ''operate transportation facilities and equipment without detriment to the public health and safety * * *.'' 49 U.S.C. 10101(8). The STB applies the RTP to all transactions within its jurisdiction, authorizing it to consider the impact a merger, consolidation, or acquisition of control has on safety of railroad operations. *See Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), slip op. at 5 (STB served Mar. 31, 2000) (49 U.S.C. 10101, in part, directs the Board to ensure that safety concerns are addressed in railroad merger cases).

FRA submits that the cases AAR cited are misplaced. Read together, *Schwabacher, ATDA*, and *City of Auburn* stand for the proposition that the STB and its predecessor, the Interstate Commerce Commission, have exclusive authority to examine, condition, and approve mergers, consolidations, or acquisitions of control. The statute at issue, 49 U.S.C. 11321 (formerly, 49 U.S.C. 11341), specifically exempts a railroad from complying with all other laws to the extent ''necessary to (let that railroad) carry out an approved transaction,'' *ATDA*, 499 U.S. at 134, thereby preempting any Federal or state law remedies. *City of Auburn*, 154 F.3d at 1030. FRA's SIP rule will not impede or restrict the Board in approving or rejecting a proposed transaction and, since the STB contemplates requiring a SIP when it approves covered transactions, a railroad could not logically assert that an exemption from FRA's rule would be ''necessary to carry out an approved transaction.'' Instead, the rule provides that FRA will determine whether a SIP provides a reasonable assurance of safety for the subject transaction and provide expert advice to the STB on safety issues presented by a proposed transaction. The Board, in turn, will rule on the application based in part on FRA's recommendations. This process employs FRA's plenary authority over railroad safety and respects and complements the Board's role of determining whether a transaction should be approved. At bottom, FRA believes that it and the Board each are fully exercising their respective statutory authorities by examining a transaction for its safety aspects (FRA), and the impact that safety has on an application as a whole (STB).

In FRA's view, the final SIP rule fulfills this objective. The rule responds to critical safety shortcomings and errors in planning and implementation of significant transactions that may have occurred in the past where no SIP was prepared. FRA documented its concerns in the NPRM by examining the difficulties of the BNSF and UP/SP mergers. *See* 63 FR 72227–28. To illustrate, after the UP/SP merger, five employees were killed in accidents during the Summer of 1997, and employee injuries rose nine percent in 1998. FRA determined that the BNSF and UP/SP mergers faced significant challenges in harmonizing information systems; training dispatchers; modifying operational practices and procedures; implementing personnel policies directed toward safety; determining appropriate staffing requirements; and providing adequate rail facilities, infrastructure and rolling stock and equipment.

Likewise, FRA identified serious safety shortcomings in CSX Transportation, Incorporated's (''CSXT''), and the Norfolk Southern Railway Company's (''NS'') initial filings in the *Conrail Acquisition* [1] proceeding before the Board. The agency determined that the railroads had not articulated a detailed plan explaining the manner in which they individually and collectively intended to implement the transaction, and thus they had not thoroughly assessed the safety impacts of the proposed acquisition. As a result, FRA requested that the Board require the carriers to provide information detailing how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction. The Board agreed with FRA's suggestion and directed the applicants to file detailed SIPs pursuant to guidelines developed by FRA.[2] The railroads complied with the STB's order and after FRA approved the respective SIPs, the Board, concluding that applicants had satisfactorily addressed the safety implementation concerns presented by the transaction to date, approved the transaction in 1998. Nevertheless, FRA, while monitoring the railroads' implementation of their respective SIPs,[3] has concluded that more needs to be done, and that, among other things, the railroads should address information technology problems resulting in a lack of hazardous materials documentation on trains, and conduct more advanced safety training of supervisory and operating personnel at designated terminals to ensure adequate staffing and retention of institutional knowledge. *See Conrail Merger Surveillance: NS, CSXT, and CRCX Second Safety Integration Plan/ Safety Update, pp. 1–3 (June 23, 2000) (hereinafter ''SIP Update*''). In short, FRA believes, based on its experience in recent cases, that ''mega-mergers,'' consolidations, or acquisitions of control present safety challenges during implementation, which are best remedied by requiring SIPs for these complex transactions. FRA concludes that SIPs achieve a safety purpose within the purview of 49 U.S.C. 20103, and thus are within FRA's rulemaking authority. *Tyrrell*, 248 F.3d at 523 (FRA's responsibility in the SIP joint rulemaking action focuses on rail safety matters); *see also Brown & Williamson*, 529 U.S. at 134 (''if Congress has not specifically addressed the (precise question at issue), a reviewing court must respect the agency's construction of the statute so long as it is permissible''); *accord Oklahoma Natural Gas Company v. Federal Energy Regulatory Comm'n*, 28 F.3d 1281, 1283–84(D.C. Cir. 1994) (agency is afforded *Chevron* [4] deference in interpreting its statutory authority); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1171 (D.C. Cir. 2000) (judicial review of agency's statutory jurisdiction is premised on *Chevron* standards);

[1] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter ''*Conrail Acquisition*'').

[2] *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997.

[3] A detailed explanation of the SIP process in the *Conrail Acquisition*, including the Memorandum of Understanding the Board executed with FRA in establishing an ongoing monitoring process, is set out in the NPRM at 63 FR 72228.

[4] *Chevron* is shorthand for the landmark Supreme Court case *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), which stands for the proposition that courts must defer to an agency's interpretation of a statute, even if other statutory constructions are more plausible, if the statute is silent or ambiguous with respect to a specific issue.

Transmission Access Policy Study Group v. *Federal Energy Regulatory Comm'n*, 225 F.3d 667, 694 (D.C. Cir. 2000) (''it is the law of (the D.C.) (C)ircuit that the deferential standard of *Chevron* applies to an agency's interpretation of its own statutory jurisdiction'' (citing *Oklahoma Natural Gas*)), *affirmed sub nom. New York* v. *FERC*, 2002 U.S. LEXIS 1380 (U.S. Mar. 4, 2002). *See generally Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979) (regulations issued by an agency must be promulgated pursuant to statutory authority in which ''the grant of authority contemplates the regulations issued'').

C. FRA's Views on Issuance of a Final Rule v. Guidelines

The AAR commented that the SIP process is best employed through the issuance of policy guidelines adopting the model procedures that were used in the *Conrail Acquisition* and Canadian National Railway Company/Illinois Central Railroad Company [5] control transactions, and embodied in the memoranda of understanding (''MOU'') between FRA and the STB entered in these cases. See 63 FR at 72228. Under this approach, the Board would determine when a SIP would be required for a transaction within its jurisdiction.

The AAR based its position on three points. First, this approach would ensure that each agency would respect each other's division of authority and role in overseeing the SIP process. Second, an MOU would offer the flexibility for an applicant to meet changing customer needs and market opportunities, such as staffing levels reached through collective bargaining agreements (''CBAs''), infrastructure improvements for highway-grade crossings, and designating repair facilities and computer software operating systems. Finally, a rule along the lines suggested by the NPRM would, according to AAR, represent government micromanagement of rail operations and implementation programs and could potentially delay integration, leaving an applicant at a competitive disadvantage with other railroads.

FRA respectfully disagrees with the AAR's proposal. The agency believes that the issuance of final rules ensures that all applicants seeking to consummate a regulated transaction will execute a SIP and complete the SIP process as enunciated in the rules. These final rules codify the prescribed requirements and stake out the legal landscape for regulating complex railroad transactions. *See* Attorney General's Manual on the Administrative Procedure Act 14–15 (1947) (''(t)he object of [a] rulemaking proceeding is the implementation or prescription of law or policy for the future * * *.''). In other words, the rules will prescribe substantive and procedural standards that will govern each application filed with the STB to carry out a transaction and the safety of operations during implementation of transactions the STB approves. *Cf.* the Administrative Procedure Act, 5 U.S.C. 551(4), which, in part, defines a rule as ''the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.'' FRA believes that the SIP process should be mandatory in large mergers, acquisitions of control, and consolidations cases because of the unique nature of the transactions involved and the complexity of safely integrating operations that are part and parcel of the transactions.

On the other hand, guidelines are simply recommendations issued by an agency that do not prescribe or mandate any standards on the regulated community. *See Industrial Safety Equipment Ass'n, Inc.* v. *EPA*, 837 F.2d 1115 (D.C. Cir. 1988). Rather than impose a regimen for conduct or action, guidelines do not ''change any law or official policy presently in effect,'' *id.* at 1119–21, nor do they ''implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4); *see also National Ornament & Elec. Light Christmas Ass'n* v. *Consumer Product Safety Comm'n*, 526 F.2d 1368 (2d Cir. 1975). Without sufficient ''effect'' to regulate conduct, guidelines have an ''advisory character'' without any firm commitment to law or policy. FRA believes that the issuance of guidelines would preclude the agencies from mandating standards or binding applicants to meet these requirements, creating an illusion of adequate safety oversight. FRA, like the Board, is committed to safe integration of complex railroad transactions and believes that these rules can best achieve that objective.

FRA also maintains that these rules enable the agencies to articulate interpretations of their respective statutes and reconcile them effectively, thereby preserving and recognizing each agency's authority to regulate aspects of these transactions. *See Tyrrell*, 248 F.3d at 523. The joint rules ensure that the agencies' roles and responsibilities complement each other in establishing SIP procedures and standards, and complete the rulemaking process announced in the NPRM. Lastly, the final rules will provide uniformity in regulating SIPs and preempt other efforts to regulate the safety of implementing transactions. FRA concludes that the issuance of rules is the most effective instrument in defining each agency's function in the SIP process and requirements a railroad must satisfy for transactions that warrant a SIP.

Concurrently, FRA takes issue with the reasons supporting the AAR's recommendation. First, as previously explained, the final rules cement the division of authority and prescribe textual interface between the agencies in regulating SIPs. Next, FRA believes that the SIP contents and subject matter areas capture the operations that are affected by a complex transaction. Although an applicant may propose a flexible plan to address these topics, the SIP elements themselves should not be compromised to ensure a safe transition of operations.

Finally, FRA rejects the notion that the rules represent government micromanagement of rail operations and implementation programs. The premise of the rules focuses on an applicant's preparation, issuance, and implementation of a plan that provides safe integration of rail operations. FRA's and the STB's individual and collective roles are to review and approve the railroad's SIP, and monitor its implementation. The agencies' oversight is to ensure that the SIP provides a reasonable assurance of safety. It is not to ''second guess'' the proposed migration or deployment of resources necessary to carry out a plan. Therefore, FRA characterizes its role as that of a ''gatekeeper'' to cross-check the SIP and its implementation against the safety aspects in integrating operations.

D. FRA's Views on Issues Involving the Framework of the Joint Final Rules

FRA received several comments from interested parties about the framework of the proposed SIP rules. The comments focused on two issues-scope and applicability of the joint rules, and the approval and disapproval process of an application.

FRA proposed to require certain railroads seeking to merge, consolidate, or acquire control of another railroad, or ''start-up'' operations as a railroad to file proposed SIPs with FRA before

[5] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter ''*CN/IC*'').

consummating the regulated transaction. The NPRM proposed covering the following transactions: (1) A Class I railroad, a railroad providing intercity passenger service such as Amtrak, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad; (2) a Class II railroad proposing to consolidate, merge, or acquire another Class II railroad with which it connects so as to involve the integration of operations; (3) any merger, consolidation, or acquisition resulting in operations that would generate revenue in excess of the Class I railroad threshold, except those transactions involving Class III freight only railroads; and (4) all start-up operations involving the establishment of a new line for passenger or freight service generating revenue that would exceed the Class II railroad threshold. Correspondingly, the Board proposed covering all transactions addressed in FRA's NPRM with the exception of ''start-up'' operations.

The AAR, Amtrak, and OK DOT commented that the STB lacks jurisdiction to regulate Amtrak or commuter railroads, citing 49 U.S.C. 10501(c) and *Norfolk & Western Railway Company-Petition for Declaratory Order-Lease of Lines,* STB Finance Docket No. 32279 (STB served February 3, 1999), for the proposition that the Board may not regulate any mass transportation provided by any local governmental authority, and arguing that the Amtrak Reform and Accountability Act of 1997, Pub. L. 105–134, 111 Stat. 2570, 2585, amending 49 U.S.C. 24301(c)(1)(C), prohibits the Board from regulating Amtrak. Accordingly, the commenters recommended that the scope of the joint rules be curtailed.

FRA agrees that the scope of the joint rules should be narrowed to cover unique complex transactions. After considering the comments, the agency has determined that acquisitions, consolidations, or mergers involving large railroads present transactions of significant size and complexity that warrant a SIP. These transactions generally involve substantial changes in railroad operations that impact effective communications, coordination, and execution of operations, *i.e.,* all aspects of safety. The final rules narrow the scope and applicability sections to capture these significant transactions because of the correlation between complexity of large rail entities and operational safety. As a result, the joint final rules only apply to transactions in which a Class I railroad proposes to merge, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations.

Some of the comments addressed each agency's independent approval process for a SIP, and any amendments thereto. The TTD endorsed the proposed two-step disposition process in which FRA and then the Board would review and approve a proposed SIP before an applicant could consummate a transaction. The AAR disagreed, claiming that FRA is without the authority to sanction a transaction that is within the STB's jurisdiction.

FRA believes that the safe transition of integrating operations is best achieved when FRA and the STB work together using their respective jurisdictions. As discussed above and in the NPRM, FRA enjoys primary jurisdiction, expertise, and oversight responsibility in railroad safety matters and is best positioned to ensure that a plan will comply with the safety laws and otherwise provide for safe railroad operations. *See Canadian Pacific Limited, et al.—Purchase and Trackage Rights—Delaware & Hudson Railway Company,* STB Finance Docket No. 31700, slip op. at 1, 5 (served Mar. 2, 2000) (hereinafter ''*CP Purchase*'') (FRA entitled to ''great weight'' in identifying potential safety problems before STB imposes conditions on a transaction). At the same time, the Board, which has expertise in economic regulation and assessment of environmental impacts in the railroad industry, *Tyrrell*, 248 F.3d at 523, considers safety in the transactions that it regulates. *Id.* (STB's ''duty [is] to encourage ''safe and suitable working conditions'' for railway employees through its assessment of individual railway proposals subject to its authority''). FRA believes that these final rules meet the safety objectives of both agencies while interpreting their respective jurisdictions in a complementary way that is in the public interest.

E. Foundation of FRA's Final Rule

FRA received comments from three interested parties about the elements set out in the proposed rule. Generally, the labor organizations supported the subject matter areas contained in the regulatory text because they addressed the ''four adequates''—adequate work force, adequate training, adequate rest, and adequate familiarity with the subject territory. In fact, the TTD went further, contending that an applicant should detail information in the subject matter areas that are required in a SIP to prevent a railroad from pledging vague commitments in filing a plan.

The AAR, however, objected to the proposed rule's SIP elements on two grounds. First, the AAR asserted that the subject matter areas go beyond the scope of assuring safe integration. The AAR maintained that a SIP should center on railroad lines that will experience changes in motive power and equipment, signal and train control, dispatching operations, highway-rail grade crossings, personnel staffing, capital investment, and relationships between freight and passenger service; and changes in operations or traffic volume that will affect a railroad's systems or programs. These requirements, the AAR posited, should be captured in a SIP to enable FRA to review an applicant's practices and procedures to ensure that they provide a ''reasonable assurance of safety.'' The AAR added that the proposed SIP rules impose new standards on the railroad industry that are not required under the existing regulations and serves as a ''back door'' vehicle for issuing substantive regulations that impact selected transactions. These rules, the AAR reflects, impose new burdens, costs, and delays on an applicant, which leaves it at a competitive disadvantage with other railroads.

FRA agrees in part and disagrees in part with the AAR's comments. The agency has amended the subject matter areas in its proposed rule to require an applicant to focus its SIP on changes in railroad operations during the integration phase. The agency believes that a plan must analyze the major changes that will occur as railroads subject to a regulated transaction integrate their operations from commencement to completion. Advance planning will require an applicant to consider the nature of operations involved in the transaction and the migration or transition from two or more entities to one entity. The final rule satisfies these concerns.

FRA disagrees with AAR's characterization that the SIP rules are a ''back door'' approach to regulating subject matter areas that are not already covered under the existing regulations. The integration of very large and complex railroad operations present safety hazards not found (or not found to a degree sufficient to merit regulatory attention) either before a transaction or after operations have been successfully integrated. It is entirely appropriate for FRA to address those hazards in the limited context in which they are found. For example, integrating the operations of two railroads will usually require choosing a set of operating rules that differ in important respects from the operating rules used by one of the

railroads. The employees of that railroad will have to be trained in the new operating rules and will have to overcome the bias common among railroaders that the railroad on which they started had the best way of running a railroad.

There are several essential tasks that affect railroad safety, *e.g.,* training, qualifications, fatigue, hazardous materials inspection programs, and information system compatibility. Failing to address such issues adequately can jeopardize railroad safety, as some recent mergers have demonstrated. FRA believes that UP/SP, for instance, faced increased exposure to accidents, injuries, and fatalities as overworked officials and employees encountered workforce reductions, inadequate infrastructure and equipment, and service delays and disruptions. Between June 22 and August 31, 1997, UP/SP experienced five major train collisions that resulted in the deaths of five UP/SP employees and two trespassers. These accidents were in addition to a series of yard switching accidents that claimed the lives of four UP/SP train crew employees. In connection with the UP/SP merger, for example, FRA launched a comprehensive review of UP/SP's operations, including its dispatching operations. FRA observed inefficient and unsafe practices by supervisors and dispatchers caused by inadequate training and work overload. FRA made specific recommendations, which UP/SP accepted, such as creating additional dispatch operations, realigning dispatcher territories to better balance the workload, hiring new dispatchers, tripling the number of dispatching supervisors, making improvements to the software in UP/SP's CAD computer system, and forming a working group consisting of representatives of FRA, rail labor, and UP/SP management to continually monitor and address dispatching issues that may arise. As a result of FRA's effort, UP/SP's safety performance recovered rapidly; UP/SP's fatalities due to train collisions dropped from seven in 1997 to none in 1998.

Similarly, FRA believes that most of the other recent mergers involving Class I railroads had safety integration problems. The BNSF merger, for example, resulted in the merged entity having incompatible electronic database systems used by BN and ATSF. This incompatibility resulted in terminal offices generating and transmitting inaccurate and incomplete train consist lists and waybills, which compromised the safety of train crews transporting the shipments. Even at a very simple level, BN and ATSF each had locomotives bearing the same number; this problem was not addressed before integrated operations began, resulting in dangerous confusion for dispatchers and train crews. In NS's and CSXT's acquisition of Conrail, both railroads also grappled with information technology shortcomings in preparing hazardous materials shipping papers, and training deficiencies in the computer software programs and the safety laws.

Based on observation, professional experience and judgment, and empirical evidence, FRA believes that there is a nexus between safe integration of large railroads and the subject matter areas identified in the SIP rule. Although filing a SIP will involve certain costs, burdens, and delays, FRA reasons that the safety benefits that will result from the SIP process outweigh these impediments.

Finally, there was some confusion within the regulated community that the SIP rules would impose explicit standards for the elements the railroads would have to address in their SIPs. FRA therefore clarifies that its rule only requires a railroad to identify measures, efforts, commitments, and targeted completion dates that it will take to completely integrate those elements identified in § 244.13. *See* § 244.11 for the contents required in a SIP. FRA's review and approval is predicated on whether the details in executing the elements in the plan provide ''a reasonable assurance of safety.'' 49 CFR 244.19. As enunciated in the NPRM, FRA reiterates that:

> [I]t has no intention of operating the railroad or questioning management decisions implementing the SIP. Instead, the agency sees it[s] role as conducting a rational basis review of the SIP, meaning that the plan must be reasonable.

63 FR 72234. Provided that the SIP comprehensively explains how an applicant intends to proceed from commencement to completion in executing a transaction, FRA will approve the plan, contingent upon fulfillment of the elements enunciated in the plan and execution of those operations. In summary, a SIP must provide for the safety of operations, systems, practices, and programs that are identified in FRA's final rule before FRA will approve the plan.

FRA's Section-by-Section Analysis of Its Final Rule

The final rule contains significant changes from the proposed rule in response to the written comments received, the testimony at the public hearing, and further review and reflection within FRA. This section of the preamble explains the changes made in the final rule to the provisions of the NPRM. FRA informs interested parties that this section focuses on the specific requirements of FRA's proposed and final rules as applied to the coextensive authority of the STB to regulate the transactions identified, and respectfully refers the regulated community to the agency's Section-by-Section Analysis of the NPRM for a full discussion of those aspects of the proposed rule that remain unchanged in the final rule. *See* 63 FR 72228–35.

Subpart A—General

Section 244.1—Scope, Application, and Purpose

Proposed rule: FRA proposed that a railroad seeking to consummate certain discrete transactions would be required to file a SIP. Section 244.1(a)(1) proposed that a Class I railroad, a railroad providing intercity passenger service, or a commuter railroad seeking to acquire, merge, or consolidate with a Class I or Class II railroad, a railroad providing intercity passenger service, or a commuter railroad would be subject to this part. The rule further proposed that a Class II railroad applying to acquire, consolidate, or merge with another Class II railroad with which it would connect so as to involve the integration of operations would also be required to file a SIP. Additionally, part 244 would apply to any merger, consolidation, or acquisition, excluding a transaction involving a Class III freight-only railroad, that would result in operations generating revenue in excess of the Class I railroad threshold, and all start-up operations as defined in § 244.9.

Paragraph (b) of this section explained that the proposed rule was designed to mandate that a railroad detail a plan before it would merge, consolidate, or acquire another railroad to ensure that safety interests were advanced before integrating operations of complex transactions. Section 244.1(c) informed the regulated community that part 244 applied only to FRA's disposition of an application filed pursuant to this part, and did not apply to the STB's rules, 49 CFR part 1106, governing transactions under the STB's authority.

Comments: FRA received several comments addressing a wide range of views on the proposed scope of the SIP rule. The AAR recommended that the rule should cover only Class I—Class I or Class I—passenger operations transactions because of the magnitude and complexity of these transactions and the lack of evidence that the other proposed transactions demonstrated a compromise to railroad safety. The ASLRRA and W&L suggested that the

rule regulate only Class I transactions given that Class II railroad operations are less complex than their Class I counterparts, *e.g.,* lower volume, slower speeds, shorter consists, and more condensed networks, and the weight of the evidence shows that only Class I railroads need to be regulated. The ASLRRA and W&L added that Class II railroads should be regulated on an *ad hoc* basis and that the proposed coverage of start-up operations should be dropped. Amtrak commented on start-ups as well, expressing its position that a SIP should only be required when a start-up involves a new railroad and not existing railroads commencing operations over newly constructed track. APTA opined that the rule should not apply to start-ups covering existing commuter railroads that commence operations over newly constructed track or extending service on existing track.

Conversely, the BMWE, BRC, and TTD suggested that the scope of the rule be expanded to cover Class II and Class III railroads. The BRC, for instance, asserted that although Class III railroads present less complex operations than their Class I counterparts, shortline railroads use less sophisticated roadway equipment and track maintenance practices because of their lower revenue base, and employ workers who may not understand the complexities of Class I rail traffic control systems with which they interchange. The TTD supported its position by claiming that shortline railroads lack sufficient capital resources, training requirements, and staffing levels to execute transactions, and that these railroads have higher casualty and accident rates than Class I railroads.

Final Rule: Having considered the entire spectrum of comments, FRA believes that the SIP rule should apply only whenever a Class I railroad proposes to merge with, consolidate with, or acquire control of another Class I railroad or a Class II railroad with which it also proposes to amalgamate operations. The agency has re-examined the anecdotal and empirical evidence and determined that there is a correlation between large-scale transactions and compromises to railroad safety in the absence of advance planning and the preparation of a SIP. As the recent UP/SP and BNSF mergers illustrated, large-scale transactions present unique challenges in operations that can affect the resulting carrier's ability to conduct business while complying with the safety laws. (Indeed, CSXT and NS may have experienced the same shortcomings in the *Conrail Acquisition* had FRA and the STB not required the railroads to file individual SIPs addressing a systematic plan that assessed the safety effects of the transaction and explaining the manner in which they intended to implement the transaction.) Integrating cultures and differing work rules, migrating work forces, deploying capital resources, and adopting information systems are initial steps that must be planned before consummation and implemented during integration to ensure the safety of railroad employees and the public, and the protection of the environment. Therefore, to combat safety and operational problems associated with complex transactions, FRA is requiring a SIP for Class I—Class I transactions and Class I—Class II transactions when there is an amalgamation of operations. The agency believes that advance safety planning by an applicant will promote safety of its lines and minimize exposure to unnecessary accidents, incidents, injuries, or fatalities.

Although FRA recognizes that transactions not involving Class I railroads (*e.g.,* Class II railroads, passenger railroads, and start-ups) can be sophisticated operations, the agency has decided to withhold regulating these transactions for the time being. Nevertheless, FRA reserves the right to revisit the scope section should evidence or experience warrant expanding the reach of the SIP rule.

FRA also notes that paragraph (b) of this section has been modified from the proposed regulatory text to read, ''This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.'' The meaning and application of this paragraph, however, remains unchanged.

Section 244.3—Preemptive Effect

Proposed Rule: FRA proposed this section to inform the public of its views regarding the preemptive effect of the proposed rule. The rule would provide that 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as the regulations proposed with the exception of a provision directed at an essentially local safety hazard.

Comments: The AAR commented that FRA's reading of the preemption provision of the safety laws is incompatible with the STB's exclusive jurisdiction over economic regulation of railroads.

Final Rule: The final rule adopts the proposed rule in full. (The AAR's comments and FRA's response are discussed in the preamble above.)

Section 244.5—Penalties

Proposed Rule: FRA proposed § 244.5 to identify the penalties that the agency may assess upon any person, including a railroad or employees of a carrier, that violated any requirement of this part. The provision would provide that any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, and FRA may assess a penalty of up to $22,000 per violation where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury. Each day would constitute a separate offense, and the agency could assess civil penalties against individuals for only willful violations of this part. Criminal penalties would be available for persons knowingly and willfully falsifying entries or reports required by the SIP rule.

Paragraph (b) of this section would authorize FRA to exercise any of its other enforcement remedies available under the safety laws if an applicant failed to comply with this part. For instance, FRA could issue an emergency or compliance order or seek the issuance of a mandatory or prohibitory injunction should a railroad violate § 244.21.

Comments: Two parties commented on this section. The TTD suggested that the agency clarify the penalty provision to reflect that an individual may be subject to the maximum penalty under the safety laws. The AAR restated its jurisdictional argument that was discussed earlier, asserting that FRA lacks the authority to assess penalties against an applicant, and that conditions or remedies imposed by the STB, such as a cease and desist order, would suffice to address a noncomplying condition.

Final Rule: FRA adopts the proposed rule in full. FRA refers the TTD to the definition of ''person'' contained in § 244.9, which covers individuals such as managers, supervisors, officials, or other employees or agents of a railroad, and independent contractors providing goods or services to a railroad. As explained earlier in the preamble, the agency believes that the safety laws authorize the issuance of this final rule and its penalty provisions. FRA further reasons that enforcement is a necessary and effective tool to promote compliance with the safety laws. Such enforcement actions include assessing civil penalties, issuing compliance, disqualification, or emergency orders,

seeking equitable remedies in Federal court, or referring selected incidents to the Department of Justice for criminal investigation and prosecution. In the SIP rule, these sanctions are necessary to ensure that applicants obtain agency approval of a proposed SIP before implementing a regulated transaction, and execute all measures provided in an approved plan. FRA approval or disapproval of a SIP serves as a baseline for enforcement. Should the agency disapprove of a SIP or portions thereof, this provision provides various remedies if the railroad does not change its SIP to bring it into compliance with the law. Likewise, FRA can take enforcement action if the railroad fails to implement specific requirements of an approved SIP that currently exist under the safety laws. In summary, FRA believes that this section will ensure compliance with the SIP rule by identifying the legal and equitable remedies available.

At this time, FRA has decided not to include a schedule of civil penalties for this rule. The agency received no comments from interested parties about the appropriate penalties corresponding to the sections violated in the rule. Therefore, FRA will reserve Appendix A to 49 CFR part 244 until further notice. Because such penalty schedules are statements of policy, notice and comment are not required before their issuance. *See* 5 U.S.C. 553(b)(3)(A).

Section 244.7—Waivers

Proposed Rule: Proposed § 244.7 would provide the procedures for seeking a waiver of compliance with the requirements of the SIP rule. Any railroad subject to part 244 could petition for such a waiver, and FRA would conduct its own independent investigation to determine whether an exception to the general criteria existed to warrant granting the waiver, provided that the waiver would not compromise or diminish rail safety.

Comments: The AAR suggested that FRA's waiver provision be modified to meld it with the STB's waiver provision.

Final Rule: The proposed rule is adopted with the addition of paragraph (d). FRA believes that its rule text is closely aligned with the STB's counterpart, but informs interested parties that its waiver provision governs only FRA's disposition of a petition for a waiver. An applicant must still seek a waiver from the STB to be free and clear of any SIP requirements under 49 CFR parts 244 and 1106. This caveat is spelled out in paragraph (d) of this section.

Of special note, FRA informs applicants that a petition for a waiver in which a Class I railroad seeks to consummate a transaction with a small Class II railroad with which it proposes to amalgamate operations may be received more favorably than a waiver request in a transaction involving two Class I railroads. Presently, FRA intends to focus its energies on monitoring transactions involving Class I and large-scale Class II railroad operations, *e.g.,* the Canadian National Railway Company's acquisition of the Wisconsin Central Transportation Corporation,[6] where it believes systemic operating deficiencies are most likely to manifest themselves during the integration phase if no SIP is prepared and implemented. Although transactions involving smaller-scale Class II railroads may present safety challenges, FRA opines that not every merger, consolidation, or acquisition covered in this rule should face a comprehensive SIP review. Rather, FRA invites applicants seeking to execute less complex transactions to petition for a waiver of this rule's requirements. FRA will then review the petition on an *ad hoc* basis and may grant it should the agency determine that it is in the public interest and is consistent with rail safety.

FRA reminds the regulated community that it reserves the right to impose any conditions as it believes are necessary to promote rail safety. The agency further advises that it has plenary authority to approve or reject a petition for a waiver of this rule, and its decision is ''agency discretion by law.'' 5 U.S.C. 701(a)(2); *see also Heckler* v. *Chaney,* 470 U.S. 821 (1985).

Section 244.9—Definitions

Proposed Rule: The NPRM proposed an extensive set of definitions that would introduce the regulations. As FRA explained in the proposed rule, the definitions were issued to clarify the meaning of important terms as employed in the rule text and were designed to minimize any possible misinterpretation of the rule. Because the commenters only responded to two proposed definitions, FRA will focus on these terms. The agency refers interested parties to the NPRM for a complete recitation of the meaning and application of those definitions that are adopted as proposed. *See* 63 FR 72230.

FRA proposed defining ''corporate culture'' to mean the attitudes, commitments, directives, and practices of railroad management with respect to safe railroad operations. The concept was to cover a railroad management's attitudes, directives, planning and resource allocations when safety was at issue. ''Best practices'' was defined to mean the safest and most efficient rules or instructions governing rail operations that a railroad issued.

Comments: FRA received two comments on ''corporate culture.'' The AAR represented that the definition as applied could not be quantified in an objective fashion to place an applicant on notice about the measures that must be taken to comply with this element. At the same time, the BMWE wanted to expand the definition to include modifications or changes to CBAs that were not negotiated under the Railway Labor Act that the applicants wished to have the STB impose under the authority of 49 U.S.C. 11321 (commonly referred to as ''cram downs''). *See* 49 U.S.C. 11324(c).

The AAR also questioned the definition of ''best practices,'' asserting two reservations. First, the AAR asserted that the clause ''railroad industry standards'' is code for FRA practices. Second, the railroad organization claimed that the proposed definition invited the agency to formulate business decisions. In response, the AAR recommended qualifying the definition to permit an applicant to select the ''best practices'' of the parties that are subject to the transaction, which would best promote the safety interests.

Final Rule: FRA amends the proposed definitions. ''Corporate culture'' is now defined as ''the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.'' The notion is to capture the business directives issued by a railroad's management and the practices implementing these directives by labor to encompass a wide range of field operations. These activities include the formulation, development, issuance, and execution of measures and programs related to safe railroad operations that involve consultations between railroad management and railroad employees. The heart of the safety issue involved is that FRA has observed (1) that a railroad tends to operate more safely when all of its employees understand that the railroad has a defined way of operating and comply with it and (2) that employees coming from different railroads will

[6] A SIP was prepared and adopted in that case. *See Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation, et al.,* STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (STB Decision No. 2, served May 9, 2001) (STB order mandates the preparation of a SIP) (hereinafter ''*CN/WCTC*''); and *CN/WCTC,* STB Finance Docket No. 34000 (STB Decision No. 10, served Sept. 7, 2001) (STB adopts the SIP and approves the transaction).

tend to continue to do their jobs as they learned them on their first railroad until they are taught to operate differently. This part of the rule is intended to get the railroads subject to a covered transaction to observe their differences, choose how the resulting railroad is to operate, and assure that their employees adopt the chosen culture. FRA does not intend to impose its own choice of corporate safety culture, but insists that the railroad choose and implement its choice.

FRA grappled with ''corporate culture'' in light of the AAR's comments about how objectively the agency could apply its meaning in evaluating a proposed SIP, and in light of BMWE's suggestion that it be expanded to include ''cram downs.'' FRA believes that ''corporate culture'' quantifies sufficient elements to provide for meaningful and objective agency review, and given the spirited debate over cram downs, and the recent settlement among most Class I railroads and labor organizations representing most rail employees, including the BMWE, on the issue of CBA overrides, FRA cannot adopt the BMWE's suggestion that cram downs be considered a part of the definition of corporate culture.

''Best practices'' is modified to read those ''measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.'' This amended definition incorporates the change recommended by the AAR. To reiterate, FRA does not intend to substitute its judgment for that of a railroad in determining which legally permissible safety and efficiency measures to use, but instead will defer to a railroad's construction and application of its operating rules and practices that promote these interests. Put another way, the agency believes that the railroad has the prerogative in identifying the best practices to be employed within the law.

Subpart B—Safety Integration Plans

Section 244.11—Contents of a Safety Integration Plan

Proposed Rule: FRA proposed § 244.11 to frame the structure of a SIP that a railroad must file. The section would require an applicant to prepare a roadmap or playbook detailing the practices and procedures, financial commitment, and timetable for integrating or commencing field operations identified as subject matter areas under § 244.13. In particular, the NPRM would require a plan to propose a timetable from commencement to completion to implement the transaction.

Comments: Only one interested party commented on this section. The AAR generally agreed with FRA's proposal with one exception. The railroad organization opposed the timetable provision in paragraph (f) because it was perceived as being too rigid to afford flexibility in reaching proposed milestones in the plan. The AAR countered with its own textual proposal to require a general overview of steps and order in which the steps would be implemented.

Final Rule: The rule is adopted as proposed with minor textual changes and paragraphs (c)–(e) redesignated as paragraphs (d), (e), and (c), respectively. Paragraph (a) replaces the conjunctive clause ''and the best practices of these railroads'' with ''including the rules or instructions governing railroad operations of these railroads,'' and paragraph (b) adds the text ''including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction'' at the end of the provision to narrow the scope of the information on integrating operating practices a SIP must provide. Paragraph (f) inserts the word ''targeted'' in lieu of ''stated'' to enable an applicant to set benchmarks for completing the specified elements. FRA understands the dynamics of assimilating disparate operating practices and procedures and recognizes the flexibility needed to achieve their integration. The change of the operative word ''stated'' to ''targeted'' thus assuages the AAR's concern. FRA intends to hold a railroad accountable for conducting front-end planning measures and executing the same within identified milestones to complete the integration of operations.

FRA believes that the final rule should delineate the SIP contents and SIP subject matter areas as separate regulatory functions. The contents provision provides the basis for identifying and addressing the subject matter areas and facilitates a well organized plan that will articulate the execution and implementation of these elements. Section 244.11 best exemplifies the roadmap or playbook concept necessary to address the subject matter areas provided in § 244.13. Accordingly, the section's regulatory heading and introductory text remain unchanged.

Section 244.13—Subjects To Be Addressed in a Safety Integration Plan Involving an Amalgamation of Operations

FRA received several comments expressing a wide variety of opinions about the contents of § 244.13. To improve the flow of this analysis, each paragraph will be treated as a separate section, summarizing the proposal, comments, and final rule. FRA refers interested parties to the NPRM's Section-by-Section Analysis for the background of the elements identified in this section, and the justification for requiring these subject matter areas for transactions that involve an amalgamation of operations. Because FRA received no comments about the basis for or scope of proposed § 244.13, the introductory text of the regulation is adopted as proposed.

Section 244.13(a)—Corporate Culture

Proposed Rule: FRA proposed paragraph (a) to require an applicant to explain the basis for its safety culture. Specifically, the regulation would require a railroad to identify and describe differences in corporate cultures for each safety-related area; describe how these cultures lead to different practices governing rail operations; and explain how the proposed integration of corporate cultures would result in a system of 'best practices' when the proposed transaction was implemented.

Comments: Management and labor organizations commented on the ''corporate culture'' provision. APTA wanted ''corporate culture'' to address the safety of passenger operations, and the TTD suggested that a railroad detail similarities and differences in corporate culture to avoid issuing ''boilerplate language'' in its proposed SIP. Concurrently, the AAR agreed with the proposed rule text because it provided sufficient flexibility in accounting for different organizational structures, styles, and operations.

Final Rule: The proposed rule is adopted with revisions to § 244.13(a)(1), and (3). Subparagraph (1) is refined to mandate that an applicant ''(i)dentify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction(,)'' and subparagraph (3) is changed to read that the railroad must ''(d)escribe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of 'best practices' when the transaction is implemented.'' These provisions draw a closer nexus between safety and corporate culture

than the proposed rule and require a railroad to detail the incremental measures it will take to integrate disparate cultures that will culminate in adopting safe and efficient standards governing railroad operations.

As FRA explained in the proposed rule, safety culture is an instrumental element in achieving rail safety. Acquisitions, consolidations, and mergers of large rail operations are complicated transactions that require a railroad to adopt an operating structure that underscore safety and good communications among management, employees, and the employees' union representatives. Such a structure should unify the different cultures under which railroads operate that draw upon the best practices of each to facilitate the formulation, development, issuance, and implementation of safety practices and procedures within a seamless merged company.

To carry out this task, an applicant needs to describe how it will successfully integrate the underlying priorities, practices, and philosophies while implementing the transaction. For example, UP recently published a three-step directive to its officials. First, the railroad indicated that it would focus, in part, on adequate staffing levels and predictable work schedules. Second, it would direct its attention to values, leadership development, training, and quality. Finally, the railroad pledged that it would build a new relationship with its employees. At the same time, NS has established a culture that elevates training, professionalism, commonality of purpose, and rules compliance to achieve safety on its railroad. NS has acknowledged that rules compliance is most fundamental to avoid accidents or incidents, and has stressed effective communications between management and the rank-and-file workers to implement this measure. CSXT has amplified the importance of safety culture by establishing a cooperative program comprising management officials and labor union members that educates, counsels, and improves the performance of safety-sensitive employees who commit operating rules violations, and instituting safety culture offices that ensure that safety is foremost in job performance. *See* SIP Update at 22.

At bottom, FRA posits that it will not dictate attitudes, directives, planning, or resource allocation criteria under this part. Rather, the agency intends to defer to proposed and implemented planning processes that promote and value railroad safety. It is incumbent on a railroad to resolve different cultures, direct and carry out programs that emphasize safety practices, and engage management and labor to develop, issue, and implement an iteration process to execute these programs. To this end, FRA endorses the corporate culture concept and incorporates the textual standards accordingly.

Section 244.13(b)—Training

Proposed Rule: The proposed rule would require a railroad to discuss its training and educational programs to ensure that its employees and supervisors who are responsible for field operations would be proficient and qualified. FRA identified the employment crafts that would be covered in the NPRM, which were train and engine service employees, dispatchers or operators, roadway workers, signal employees, mechanical officials, and hazardous materials personnel.

Comments: FRA received diverse comments from interested parties. The TTD, for example, wanted the rule to set minimum qualifications and training requirements, and require an applicant to detail the number of class and on-the-job training hours and file a report on hazardous materials training. At the same time, the BRC wanted to establish qualification and training standards for car inspectors when defect ratios exceed three percent for an applicant, and the ATDD suggested training and qualification requirements for dispatchers. The AAR agreed with the regulatory concept, but opposed new training requirements that are not prescribed under the safety laws because such standards do not present an integration issue.

Final Rule: FRA adopts the proposed rule with some substantive changes to the introductory text and paragraph (b)(6). The rule centers on ensuring that designated employees, including information technology personnel affecting hazardous materials transportation, are proficient, qualified, and familiar with the operating rules and operating tasks of territory assigned when these employees are moved to a new territory or the operating rules on a given territory are changed. Training impacts integration of operations when employees are either transferred to new divisions or subdivisions, or when operating rules, timetables, or timetable special instructions, *e.g.*, superintendent bulletins, are changed in an assigned territory. In other words, when operating circumstances change, the ''front line'' employees must be familiar with all aspects of their crafts or occupations. A SIP should also include details identifying the scope and depth of the type of training operating personnel will receive, discuss the resources allocated to conduct and complete training, and a proposed schedule for reaching this milestone.

FRA and the AAR are in agreement about the concept of the SIP rule. It is not the agency's intention to prescribe new substantive standards in this rulemaking action. Instead, the rule requires a railroad seeking to consummate a transaction to inaugurate and implement certain programs when integration commences. In this instance, an applicant needs to make certain that its operating employees are conversant in logistics, operations, and equipment handling in unfamiliar localities, and when operating rules, timetables, or timetable special instructions are changed in an assigned territory. Although FRA is receptive to the labor organizations' recommendations, the agency believes that training standards are more appropriate in another rulemaking action and therefore, declines the invitation.

Section 244.13(c)—Operating Practices

Proposed Rule: FRA proposed requiring a railroad to provide operating practices information that would address operating rules, accidents/incidents, hours of service laws, and the alcohol and drug and locomotive engineer qualification and certification programs. The regulation would also require an applicant to discuss the efforts taken to minimize fatigue of covered service employees, *i.e.*, employees who perform train and engine service, dispatching, or signal system service, to enhance safety in the field and reduce the likelihood of committing errors while performing safety-sensitive functions.

Comments: Four parties filed comments on this proposal. The labor union commenters supported the proposal, but suggested changes. The BMWE wanted the rule to also require a railroad to consider fatigue management of roadway workers because of the physical demands of their labor and the travel necessary to carry out their assigned tasks. The BRC recommended that the proposed accident/incident reporting procedures be amended to require an applicant to certify the integrity of electronic data entered and a security system to reflect any amendments to initial data entries. The TTD supported the provision, but suggested four changes. First, the labor organization wanted a railroad to identify the size of current operating crews and detail the injuries, fatalities, and expenditures on safety-related claims. Second, it recommended that an applicant file a compilation of all

alcohol and drug tests performed and their results for the previous three years, and an explanation of its options for substance abuse treatment. Next, it wanted a railroad to specify the measures necessary to minimize employee fatigue. Lastly, the TTD wanted a SIP to identify how an engineer would be qualified on the physical characteristics to operate over any new territory.

The AAR also commented on paragraph (c). The railroad organization agreed with the operating rules provision because of its integral nature in governing operations on a new railroad system, but opposed the accident/incident reporting and alcohol and drug testing provisions on the ground that they are not integration issues unique to regulated transactions.

Final Rule: FRA adopts the proposed rule with two modifications. The agency amends § 244.13(c)(1) to add ''freight and passenger service'' to the provision requiring a railroad to identify the operating rules, timetables, and timetable special instructions that govern railroad operations. The inclusion of this proviso renders § 244.13(l) redundant, which substantiates its withdrawal from the final rule. FRA also drops proposed paragraph (c)(2) from the final rule, agreeing with the AAR that there is no correlation between accident/incident reporting procedures and safe integration of operations. The agency has determined that accidents/incidents reporting is not a safety problem with the transactions it has reviewed. FRA believes that the current regulations under 49 CFR part 225 achieve the interests of safety for reporting accidents or incidents and establishing an internal control plan under § 225.33. Therefore, the accidents/incidents provision is unnecessary and is withdrawn.

FRA believes that the final rule captures the information a railroad needs to address in a SIP to ensure that operations are performed safely during the integration phase. Although the agency considered expanding the reach of the operating practices area, it decided to focus on those employees and practices that will be most affected by a transaction, particularly those aspects that involve logistics, operations, and equipment handling in unfamiliar territories, and the need to retain institutional knowledge on lines experiencing operational changes. A railroad, for instance, needs to identify the alcohol and drug testing programs that will apply after it consummates operations to facilitate continuity and consistency during the transition period. Again, the rule's objective is to require an applicant to conduct advance planning of operations that impact rail safety. The operating practices enumerated in the rule text are such critical operations that mandate detailed planning. This rationale thus undergirds the requirements contained in this provision.

Section 244.13(d)—Motive Power and Equipment

Proposed Rule: Section 244.13(d) would require an applicant to identify the qualification standards for employees who inspect, maintain, or repair rolling stock and designate the facilities that will repair the rolling equipment, and provide adequate assurances that mechanical officials who are responsible for performing required inspections and tests of the equipment are proficient in mechanical practices to safeguard the use of freight or passenger cars and locomotives on a railroad.

Comments: The AAR, BRC, and TTD shared their respective comments with FRA about the proposed rule. The AAR agreed that the regulation should be adopted with the proviso that a railroad be afforded flexibility to change the designation of repair facilities without the need of agency approval. The BRC took issue with the provision ''designation of facilities that will repair such equipment'' because it implies that a railroad would be authorized to assign repair facility locations irrespective of safety concerns. The BRC recommended that the sentence read, in part, that an applicant must identify ''all facilities being used, and that will be used following consummation of the transaction, to repair such equipment,'' to enable FRA to determine whether a railroad is eliminating redundant repair facilities or increasing the distance noncomplying cars may be permitted to travel. The TTD also wanted to amend the provision to require a railroad to identify the average and mean age of engines owned by an applicant and the location of new repair facilities.

Final Rule: FRA agrees with the BRC that a SIP must identify all repair facilities that are being used or will be used after a transaction is consummated. The agency is concerned about the safety of rolling stock and believes that the modification will enable it to determine whether an applicant is eliminating redundant repair facilities or increasing the distance in which noncomplying rolling equipment may travel, thereby compromising rail safety. FRA thus rewords the last clause in the provision to read ''the designated facilities used, or to be used, to repair such equipment'' to reflect this amendment.

Section 244.13(e)—Signal and Train Control

Proposed Rule: The NPRM would require a railroad to identify the signal and train control systems used, and maintenance, capital improvement, and research and development projects planned for signal and train control operations.

Comments: The TTD supported the proposed requirement, but recommended that the rule should also require an applicant to identify signal malfunctions and false signal reports, dark territory, and accidents in signal and non-signal territory. The AAR opposed the TTD's suggestion to require a railroad to identify signal malfunction reports, asserting that it does not present an integration issue.

Final Rule: FRA agrees with the AAR that the TTD's proposal does not present an integration issue but instead, an operational issue affecting the routine movement of engines, equipment, or trains. The TTD's suggestion is therefore not adopted. The final rule tailors the proposed rule text to require a railroad to address ''any planned amendments or modifications to capital improvement'' to focus an applicant on advance planning of signal systems integration to prevent any incompatibility between signal and train control systems and reconcile or harmonize signal practices and standards when dissimilar systems exist.

Section 244.13(f)—Track Safety Standards and Bridge Structures

Proposed Rule: FRA would require a railroad to identify the maintenance and inspection programs for track and bridges to ensure that its infrastructure was safe or would be repaired, rehabilitated, or replaced, if necessary.

Comments: The labor organizations, led by the BMWE and TTD, wanted the regulation to require an applicant to identify the qualification standards for trackside workers to track the requirements contained in § 244.13(d). The AAR opposed the NPRM, claiming that Track Safety Standards and bridge structures do not present an integration issue.

Final Rule: Based on FRA's recent assessment of the *Conrail Acquisition*, the agency believes that track safety does present an integration issue that should be addressed in the final rule. FRA's audit found that CSXT experienced track maintenance and inspection practices shortcomings after the implementation of the *Conrail Acquisition*. In 1999, FRA determined

that the railroad's track defects ratios did not improve from the previous year, and track-related accidents remained a problem on its lines. These accidents were caused by wide gage and defective switch points and track hardware at turn-outs, which were easily preventable and evidence the need for the railroad to redouble its efforts in upgrading its track program. *See* SIP Update at 24. Because track maintenance and inspection programs are essential elements to promote safe rail operations during integration, FRA believes that the roadway or trackside workers should be qualified in carrying out these tasks. As a result, the final rule adopts the labor organizations' recommendation by requiring a SIP to identify the qualification standards for these workers.

Section 244.13(g)—Hazardous Materials

Proposed Rule: Section 244.13(g) proposed requiring an applicant to address hazardous materials in a SIP. First, a railroad would have to identify a hazardous materials inspection program that covered field inspection practices, communication standards, and emergency response procedures. Second, the applicant would have to discuss its development and deployment of an automated system at designated locations for immediate retrieval of hazardous materials shipping papers.

Comments: Three parties commented on the proposal. The BMWE and TTD wanted an applicant to provide an emergency action hazardous materials plan. Conversely, the AAR opposed the requirement of developing and delivering computer software operating systems because there was insufficient evidence that the regulation would promote the safe integration of hazardous materials safety programs.

Final Rule: FRA has reorganized paragraph (g) by requiring a railroad to identify a hazardous materials inspection program that covers four discrete areas. The first three are identical to the proposed rule. The fourth area reconfigures proposed § 244.13(g)(2) to require the program to address information technology (''IT'') systems and employees who are responsible for shipping papers accompanying hazardous materials shipments. The provision also stipulates that a SIP should identify preventive measures that an applicant will use in responding to IT integration and hazardous materials documentation problems.

FRA believes that IT systems that transmit and receive hazardous materials information must employ programs that properly place cars in train consists and identify the contents of hazardous materials shipments to the hostler and train and engine crews. The agency documented several IT deficiencies in implementing the *Conrail Acquisition*, finding improper hazardous materials shipping papers and inaccurate train consists hauling hazardous materials shipments because of, in part, the lack of familiarity with the data systems used to process hazardous materials documentation. *See* SIP Update at 2, 25, and 28. To prevent recurrences, FRA believes that a railroad should test the computer systems that will be responsible for handling hazardous materials paperwork to detect and eliminate any incompatibility problems found and provide for information accuracy. FRA's revision captures the lesson learned from a recent transaction.

Section 244.13(h)—Dispatching Operations

Proposed Rule: Paragraph (h) would require a railroad to identify the dispatching system to be adopted, the migration of the existing system to the adopted one, if applicable, the qualifications for determining duties performed by dispatchers or operators, and the volume of work assigned to the dispatchers or operators.

Comments: The ATDD and AAR provided disparate comments on this proposal. The ATDD opined that a railroad should be required to address the familiarity of the dispatchers with the territory that is subject to the transaction, whereas the AAR opposed this recommendation because no current substantive regulation exists and proper training alone may provide adequate territory familiarization. The AAR also asserted that the dispatching requirements should apply only to operations that are affected by the transaction.

Final Rule: FRA adopts the suggestions that were provided. The proposals are incorporated in § 244.13(b) introductory text and § 244.13(b)(4) by requiring a SIP to identify training programs for dispatchers to ensure familiarity with the operating tasks of the territory assigned when these employees are assigned to a new territory or the rules governing an assigned territory are changed. Otherwise, the term ''workload'' is added to paragraph (h)(3) and paragraph (h)(4) is withdrawn. This cosmetic change retains the sum and substance of the information on dispatcher workloads in a SIP without setting out a separate regulatory function.

Section 244.13(i)—Highway-Rail Grade Crossing Systems

Proposed Rule: The NPRM would require a SIP to address highway-rail grade crossing signal system safety, emergency response measures, public education initiatives, and proposals to improve grade crossings and grade crossing system warning devices.

Comments: Only one party commented on the proposal. The AAR maintained that the proposed regulation was inappropriate because railroads already discuss grade crossing issues and upgrades with state highway departments, and FRA's insertion into the process may create conflicts with these government agencies and impose unnecessary burdens on an applicant. Alternatively, the AAR suggested that a SIP require a railroad to discuss grade crossing safety programs and the integration of the programs in a transaction.

Final Rule: The final rule adopts the AAR's suggestion in part and breaks out the information required in a SIP in more detail. The regulation mandates that an applicant identify the grade crossings that will experience an increase in traffic as a result of the transaction, the existing grade crossing programs of the railroads as they apply to these crossings, the integration of the grade crossing programs of the railroads that are subject to the transaction to the extent the programs differ, emergency response action plans, measures to avoid blocking or obstructing grade crossing systems, and signs used for changes to rail traffic patterns.

FRA believes that grade crossing safety is a critical element that a SIP must address. As was explained in the NPRM, statistics show that the vast majority of fatalities and injuries during railroad operations occur at grade crossings due to collisions or trespass incidents. 63 FR 72233. A complex transaction presents its own challenges given that a railroad acquiring, consolidating, or merging with another railroad will dedicate traffic on certain corridors or lines. The SIP rule requires an applicant to consider the impact of increased traffic density in a territory on the safety of grade crossings.

Again, FRA's role is not to approve or reject specific measures, such as upgrading grade crossings, a railroad may take during the course of a transaction. Rather, the agency reviews the applicant's proposed plan within the context of providing a ''reasonable assurance of safety.'' FRA does not foresee that such a review process will interfere with a railroad's consultations with a state highway agency or impose

a substantial burden on the railroad. The interests of safety direct an applicant to develop and implement a grade crossing program that will reduce accidents, incidents, injuries, and fatalities that occur at crossings. The grade crossing element is thus retained in the final rule.

The rule also sets out discrete new items-avoidance of blocked crossings and signs used for changes in traffic patterns-that a railroad must address in its grade crossing program. Blocked crossings are of particular concern to FRA and communities that will experience increased rail traffic over its crossings. To illustrate, the agency found that a significant number of NS crossings were blocked for extended periods of time in the State of Ohio during the end of 1999. *See* SIP Update at 20. The agency has determined that this deficiency is more systematic and frequent than previously believed, creating unnecessary challenges for emergency response vehicles and creating congestion at crossings. To reduce the likelihood of similar problems occurring in the future, FRA believes that a railroad should identify in its SIP practices to alleviate blocked crossings, which may include identifying additional sidings required, crew change points, and other actions or construction needed. (The agency notes that this requirement is similar to the STB regulations requiring applicants to submit evidence about potentially blocked grade crossings as a result of anticipated merger-related traffic increases. *See* 49 CFR 1105.7(e)(7) and 49 CFR 1180.1(f)(3)(ii) and 1180.8(a)(2), requiring an applicant to identify specific measures to be employed to avoid blocking crossings that may result otherwise due to the consummation of a transaction, at 66 FR 32582, 32585 and 32589, June 15, 2001.) The SIP must also discuss the signs used for changes in traffic patterns. FRA believes that these signs serve to advise motorists and pedestrians of the frequency of rail traffic traversing crossings to protect them from possible collisions.

Section 244.13(j)—Personnel Staffing

Proposed Rule: Paragraph (j) would require a SIP to cover personnel staffing in terms of the number of employees, both current and proposed, for certain occupations carrying out safety-sensitive service in the railroad industry.

Comments: FRA received two comments to this proposal. The ATDD agreed with the regulatory text as proposed. The AAR wanted to clarify the proposal by authorizing a railroad to file a copy of its Labor Impact Exhibit that is filed with an application to the STB under 49 CFR part 1180 to avoid any redundancies in information provided pursuant to an application.

Final Rule: FRA adopts the proposed rule with one minor modification. An applicant need only address the personnel staffing element when it projects a change of operations that will impact workforce duties or responsibilities. A railroad may omit this section if it expects operations will remain constant after the transaction is consummated. Otherwise, it must address the full litany of job functions that are provided in subparagraphs (1)–(8).

FRA declines to accept AAR's suggestion in authorizing a railroad to file a copy of its Labor Impact Exhibit to satisfy this provision. Under 49 CFR 1180.6(a)(2)(v), also known as the Labor Impact Exhibit requirement, the STB only requires an applicant to address projected changes that a transaction will impact on its employees by class or craft, the geographic locations where the impact will occur, the timeframe of the impact, and whether any employee protection agreements have been reached. The Board's regulation thus does not cover current employees and does not enunciate specific job duties that are prescribed here. Because the two regulations are not congruent, the filing of a Labor Impact Exhibit alone will fall short of the requirements enumerated in this section. Nevertheless, a railroad may use the same information provided in its Labor Impact Exhibit to meet portions of this regulation where appropriate.

Section 244.13(k)—Capital Investment

Proposed Rule: Paragraph (k) would require an applicant to explain its capital investment program by describing its intended investments in the company's infrastructure and addressing changes to existing investment forecasts.

Comments: The TTD agreed with the capital investment proposal.

Final Rule: FRA adopts the rule as proposed.

Section 244.13(l)—Relationship Between Freight and Passenger Service

Proposed Rule: FRA proposed requiring a railroad to describe the relationship of freight and passenger service on railroad lines subject to a transaction.

Comments: The agency received comments from APTA and OK DOT about proposed paragraph (l). APTA requested that the regulation enunciate the schedule changes involving commuter and freight service on operations subject to the transaction. OK DOT, on the other hand, wanted the provision to require an applicant to address the density of combined freight and passenger operations.

Final Rule: Upon further consideration, FRA has concluded that freight and passenger service should be addressed within the context of the operating rules that will govern their operations. The agency reasons that safe integration is premised on identifying those rules and practices that will govern these services on property that is the subject of a transaction. Service alone does not present an integration issue that warrants separate analysis and requiring a railroad to address schedule changes or density concerns serves to ''micromanage'' an application, which is contrary to the purpose of the SIP rule. Service falls within the rubric of railroad operations that must be evaluated to identify the potential safety impact and the measures directed to minimize any consequences during integration. Based on this analysis, FRA withdraws proposed paragraph (l) and transfers ''freight or passenger service'' to paragraph (c)(1).

Section 244.13(m) (Now Section 244.13(l))—Information Systems Compatibility

Proposed Rule: Section 244.13(m) proposed requiring a railroad to address the steps it intended to execute to provide a single interface of data on train consists, freight car and locomotive movements and movement history, also known as ''wheel reports,'' dispatching operations, accident/incident reporting and recordkeeping requirements, and emergency cessation of operations.

Comments: Both the BMWE and TTD suggested expanding the regulation to require information systems to address movement and movement history of roadway equipment and hi-rail vehicles.

Final Rule: FRA adopts the proposed rule, now redesignated as § 244.13(l), with two changes. First, the final rule removes proposed subparagraph (4), which addressed accident/incident reporting and recordkeeping requirements within the information systems context. As explained in its discussion of Section 244.13(c)(2) above, FRA has concluded that accidents/incidents reporting is not a problem warranting a SIP. The agency therefore believes that requiring an applicant to explain the transmission and receipt of such information when integrating computer technologies is unnecessary. Consequently, the provision is withdrawn.

Second, this section adds one provision. A SIP must also address the compatibility of information systems that are responsible for transporting hazardous materials to ensure their safe movement while a railroad is switching or converting hardware, software, or program systems. The agency found that both NS and CSXT experienced difficulties in identifying and tracking hazardous materials shipments through their respective computer systems after they switched over from Conrail's ''CATS'' system in June 1999. *See, e.g.*, SIP Update at 25, 28, and 32. For example, CRCX employees, who work for the Shared Assets Areas in the *Conrail Acquisition*, reportedly had difficulty in obtaining documentation from CSXT and NS computer systems to properly place hazardous materials shipments in train consists. *Id.* at 32. Hazardous materials shipping papers must represent the contents of shipments being transported on the railroad. To this end, the IT systems must be capable of receiving and transmitting accurate hazardous materials documentation to ensure the seamless and efficient flow of information during the interchange of shipments. FRA, however, disagrees with expanding the regulation to include roadway equipment or hi-rail vehicles. There has been no evidence of problems associated with these service vehicles during the integration of complex transactions. Therefore, FRA demurs on the suggestion.

Section 244.15—Subjects To Be Addressed in a Safety Integration Plan Not Involving an Amalgamation of Operations

Proposed Rule: FRA proposed, in part, requiring a railroad engaging in a transaction that did not involve an amalgamation of operations to file a SIP that covered only the training, personnel staffing, and capital investment elements.

Comments: The AAR opposed requiring a SIP for a ''paper transaction'' because such a transaction does not present operational changes and only serves to impose an unnecessary burden on an applicant without any consummate safety benefit. In response, the AAR proposed revising the provision to require a SIP on an *ad hoc* basis when no operational changes exist.

Final Rule: FRA agrees with the AAR's rationale that a ''paper transaction'' presents minimal changes in operations that will affect rail safety and revises the regulation as suggested. An applicant seeking to consummate a transaction that does not propose an amalgamation of operations need not file a SIP unless FRA directs the railroad to do so.

As we explained in the NPRM, FRA distinguishes ''operational transactions'' that present a migration of personnel or equipment, or infrastructure changes from ''paper transactions'' that are limited to changes in company letterhead. *See* 63 FR 72234. FRA advises interested parties, however, that changes in operating rules, timetables, bulletins, special instructions, or any other written directives that affect the movement of locomotives or rolling stock impact safety and are therefore designated as ''operational transactions,'' requiring the filing of a SIP. FRA thus adopts a broad interpretation of ''amalgamation of operations'' by mandating a SIP for transactions that propose only changes in practices or procedures governing railroad operations.

Section 244.17—Procedures

Proposed Rule: The NPRM proposed a set of procedures that would govern the filing and handling of an application to carry out a transaction. Section 244.17(a) provided that a railroad would be required to file a SIP with FRA and the STB no later than the date it submitted its request for authority to the Board. Under paragraphs (b) and (c), FRA would review and comment on the proposed SIP, and the railroad would provide additional information supporting its plan should the agency require it. Paragraph (d) proposed requiring FRA to issue its factual findings and conclusions on the proposed SIP to the STB before the Board ruled on the application. Section 244.17(e) would require a railroad to coordinate with FRA in implementing a proposed SIP approved by FRA and the STB until integration was complete. The proposed rule also set out the interplay between FRA and the Board during the implementation phase of the transaction in paragraph (f).

Comments: The AAR maintained that the proposal to require the contemporaneous filing of a proposed SIP and a request for authority with the STB was unrealistic, as the same employees generally would write both the operating plan for the STB application and the SIP. The organization also questioned the proposal because it may compromise the quality of the SIP and was inconsistent with the *Conrail Acquisition* proceeding in which the STB gave NS and CSXT four months to file their separate plans after they filed their respective applications. As an alternative, the AAR proposed that the rule provide a railroad 30–90 days after it files its application with the Board to file a proposed SIP.

The AAR further opposed proposed paragraph (b) on the ground that the regulatory text called for information that was beyond the scope of the rule. The organization recommended amending the text to authorize FRA to obtain additional information on matters that address specific safety concerns. Finally, the AAR requested that proposed paragraph (f) be amended to establish a three-year window of regulatory oversight of a railroad's SIP implementation, and that the section add a provision covering the confidential treatment of information provided by an applicant to the agency to safeguard proprietary and competitively sensitive information.

Final Rule: FRA revises § 244.17 to reflect the proposals advanced by the AAR and to clarify the procedural requirements governing the SIP process. Paragraph (a) is amended to give a railroad up to 60 days after it files an application with the STB to file a proposed SIP with FRA. FRA believes that a two-month interim will provide sufficient time for the company to complete its SIP after filing its operating plan. The agency also adds the phrase ''to satisfy the requirements of this part'' to paragraph (b) to assuage the AAR's concerns. Restated, the regulation now requires a railroad to provide additional information in a SIP that FRA may require to meet the rule's requirements, such as the operational elements within the framework of the plan's contents as provided in § 244.11. The final rule also has been revised to delete the reference to ''exemptions'' filed with the STB, because Class I carriers typically file applications in consolidation transactions.

FRA adds paragraph (f) to § 244.17 to require a railroad to communicate with the agency about any changes and refinements to its plan in response to unfolding developments, and file any amendments to its plan with FRA for approval. Proposed paragraph (f) is redesignated paragraph (g), and the last sentence of the proposed provision is amended to reflect that FRA will oversee the implementation of a SIP for a period of five years, for a period prescribed by an order issued by the Board, or when FRA advises the Board in writing that the integration of operations is complete, whichever is shorter. The oversight period is necessary to ensure that the SIP is being implemented as intended, that the railroads are adhering to the representations made in the SIP, that no unforeseen circumstances have arisen

requiring FRA to exercise any of its enforcement remedies, and that the milestones established in the SIP are being met in a timely fashion.

Finally, the agency adds paragraph (h) to provide a procedural mechanism for an applicant to request that advance drafts of a proposed SIP and information filed in support of the proposed or approved plan receive confidential treatment should an outside party submit a request for the documents under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The regulation directs the railroad to comply with the procedures enumerated under 49 CFR 209.11 to petition for such treatment. Nevertheless, FRA reminds the regulated community that the agency alone will decide whether to grant or deny a request, but that it will afford a company whose request was denied an opportunity to respond no less than five days before the agency discloses the information. *See* 49 CFR 209.11(e). It should be noted, however, that FRA, like the STB, will not treat a proposed or approved SIP that is filed pursuant to the regulations prescribed under 49 CFR 244.17(a) and 1106.4(a) as confidential because the proposed plan will be incorporated in the Board's environmental documentation, which will be made available for public review and comment.

Section 244.19—Disposition

Proposed Rule: Section 244.19 would enunciate FRA's review and approval process of a proposed SIP. The regulation proposed requiring a plan that detailed a logical and workable transition from conditions existing before the proposed transaction to conditions intended to exist after the transaction was consummated. FRA would review the SIP on a ''reasonable assurance of safety'' standard, meaning that the agency would conduct rational basis review of the plan to ensure that it was reasonably sufficient to comply with the safety laws, provide for safe railroad operations, and satisfy expectations of integration of operations. The agency would then issue its notice of approval should the SIP prove satisfactory, provided that the railroad implemented the plan as proposed.

The rule also would authorize amendments to a SIP. A railroad could amend its plan as needed with FRA's approval or the agency could mandate changes consistent with rail safety should it identify deficiencies during implementation of an approved plan that were unforeseen while the plan was under review. Again, SIP approval would be contingent on a railroad's fulfillment of the subject matter elements in the plan and the execution of operations necessary to implement the plan.

Comments: The AAR was the only commenter to the proposed section. The railroad organization opposed FRA's formal review and approval process of a SIP, and any amendments thereto, on the grounds of the agency's lack of jurisdiction to consider transactions within the STB's scope of authority, and the need to maximize flexibility in updating and improving safety plans and minimize the burdens imposed by the rule. The AAR proposed four revisions to the section. First, FRA would advise the Board in reviewing a proposed SIP on practices and procedures relating to rail safety, with the STB to determine whether to approve or disapprove of a plan based on its adequacy after FRA comments on it. Second, an applicant would be permitted to file any amendments with FRA and explain the need for the changes should the agency request the same. Third, the section would authorize amendments to take effect within 20 days after they are filed with the agency and remove the review process of amendments. Finally, the AAR recommended modifying paragraph (b) by replacing ''later developments'' with ''amendments to a SIP.''

Final Rule: FRA adopts the core of the proposed rule and certain changes advanced by the AAR. Paragraph (a) is rewritten to articulate the standard of review for a proposed SIP, and any amendments thereto, up front. The rule further explains the structure of the plan to be filed, which the NPRM set out. Recast, the SIP must be thorough, complete, and clear; and address a logical and workable transition of railroad operations from conditions before the transaction to conditions intended after the transaction is consummated that provide a reasonable assurance of safety at every step during implementation. FRA intends to work informally with an applicant both before and after the transaction is approved and consummated to ensure that the SIP complies with the regulations and that the transaction is safely implemented.

Consistent with the AAR's proposal, FRA amends paragraph (b) by inserting ''any amendments to the plan approved by FRA'' in lieu of ''all later developments subject to FRA approval that could not be completed before approval of it.'' This revision clarifies an applicant's role in fulfilling the elements of an approved SIP by requiring it to implement all of the plan's measures and any amendments to the plan. The agency notes that it may approve portions of a SIP while disapproving other portions if it concludes that the actions under the plan can be segregated without jeopardizing safety.

Section 244.19(c) is also amended by requiring a railroad to substantiate any changes to its SIP and communicate with the agency to resolve any comments about the amendments. The regulation also prescribes that any amendments approved by FRA will take effect within 20 days of approval, and the agency may ''request'' rather than ''require'' a railroad to amend its approved plan should circumstances dictate. The operative word ''request'' is inserted to afford the agency discretionary review of the plan while it is being implemented and sufficient leverage to proffer a change that promotes safety interests.

FRA takes issue with the AAR's suggestion that the agency lacks authority to adopt a formal review and approval process of SIPs. As FRA explained earlier, the agency believes that it has the authority to regulate railroad safety during implementation of mergers, consolidations, and acquisitions that are approved by the STB. FRA has always done so for the hazards presented by railroading generally. In this rule, FRA is exercising its existing jurisdiction and expertise in regulating the safety hazards presented by the proposed integration of operations of different railroads. *See* 49 U.S.C. 20103. In short, the transaction that is approved by the STB is the context within which the potential safety hazards are presented and dealt with, but the transaction itself is not regulated by FRA. The rule does not authorize FRA to sanction or veto a transaction subject to STB approval or to impose conditions upon which approval of the transaction is authorized because those functions are exclusively vested with the STB. *See* 49 U.S.C. 11321–24.

FRA believes that there is a need to codify an ongoing SIP approval process to allow for appropriate enforcement. There are two parts to this process. First, a railroad must submit a proposed SIP for agency review and approval to determine whether the plan meets the requirements of the rule. Second, assuming the proposed SIP, including any amendments thereto, is approved, the railroad must implement the SIP as approved. Should FRA disapprove a SIP, or portions thereof, or the railroad fail to implement the SIP, the rule authorizes the agency to take enforcement action to ensure safety. *See* 49 CFR 244.21(b).

Section 244.21—Compliance and Enforcement

Proposed Rule: Proposed § 244.21 would require a railroad to have an FRA-approved SIP before it could change its operations to implement a transaction. Additionally, the rule would authorize the agency to use any of its enforcement remedies available under the safety laws should the railroad either change its operations without an approved plan or fail to execute any measure in an approved plan. The regulation also provided that FRA would consult with the STB at all appropriate stages of SIP implementation for a transaction that involved Board authorization.

Comments: The AAR objected to this proposal, asserting that FRA is not authorized to take any enforcement action against a railroad under this part because the STB is the only agency with jurisdiction to approve or disapprove a proposed SIP.

Final Rule: FRA revises § 244.21(a) to clarify that, in approving a SIP, FRA is regulating the safety of railroad operations and is neither approving nor disapproving the transaction before the STB nor exercising an alleged veto over whether that transaction can be consummated if it should be approved by the STB. FRA also withdraws proposed paragraph (c) because it duplicates the requirements provided under § 244.17(g). The regulation now requires a railroad implementing a transaction to operate in compliance with the SIP approved by FRA until all of its operations are completely integrated. The rule is rewritten in this fashion to eliminate the possibility of interpreting the rule, as some commenters did, to equate FRA's approval or disapproval of a SIP with approving or disapproving an application to the STB to approve a transaction. As explained above, FRA agrees that the STB has exclusive authority to approve or disapprove a transaction covered by this part.

Correspondingly, FRA's role in the STB's process is to advise the Board on safety issues identified in a transaction. Indeed, the Board's own proposed and final rule relies upon the FRA's safety expertise as the Board evaluates the merits of a transaction and disposes of an application. *See* 49 CFR 1106.4; *see also* Tyrrell, 248 F.3d at 523; *CP Purchase,* slip op. at 5–6 (the STB gives ''great weight'' to FRA's expert view on rail safety in determining whether to impose any conditions on a proceeding).

Briefly stated, regulation of ''every area of railroad safety'' is FRA's jurisdiction. *Tyrrell,* 248 F.3d at 523 (''FRA exercise[s] primary authority over rail safety matters under 49 U.S.C. 20101 *et seq.*''). In approving or disapproving a SIP under this part, and enforcing one, FRA is regulating *the safety aspects of how* a railroad operates while implementing a transaction permitted by the STB, *not whether* the railroad is permitted to consummate the transaction or on what economic terms. This is an appropriate exercise of the ''plenary safety authority with respect to the safety of rail operations-before, during, and after a transaction'' which the AAR acknowledges that FRA has. AAR comments at 9. In that regard, approval of a SIP is no different than approval of an engineer certification program under 49 CFR part 240. There is no question that a railroad must have an engineer certification program approved by FRA and operate in accordance with it at all times, whether or not the railroad is involved in a transaction within the STB's jurisdiction.

In summary, FRA is authorized to exercise any of its legal or equitable enforcement remedies should a railroad either not operate in accordance with an approved SIP or not comply with any element provided in that plan.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA is adopting rules that will require merging or acquiring railroads to adopt SIPs before commencing merged operations. Two railroads, NS and CSXT, prepared such plans for their acquisition of the Conrail system. One of those railroads has informed FRA that its SIP cost $300,000, the other said it cost $212,000. The main difference is that the more expensive plan was developed almost exclusively by a contractor, while the other was mostly done in-house. It is unlikely that any SIP would cost much more. It is possible that a SIP for a smaller Class I railroad might cost less. A likely range for the cost of a SIP is $150,000 to $400,000. A SIP for a Class II railroad might cost much less. The Class II railroad's business plan will be smaller, and the safety information will be easier to gather. A SIP for a Class II might cost $25,000 to $100,000. It is a one-time expense for any railroad. The assumed total cost of the SIP rule to a railroad is twice the initial cost of preparing the SIP, to account for such vagaries as SIP modifications and restrictions on training.

Although FRA cannot with certainty say which of the several accidents following mergers were the result of poor planning, it appears extremely likely that at least one of them could have been prevented with a SIP. Assuming that the SIP would prevent two fatalities and $600,000 in damage implies that a SIP for the UP/SP merger would have saved at least $6,000,000 in accident costs. FRA believes that one or more of these accidents could have been prevented based on its findings when it did a detailed analysis of the UP/SP operations. For other railroads the accident savings might vary. For a larger railroad, the accident savings might be twice as much ($12,000,000), while for smaller Class I railroads the safety benefits might be one-fourth that much ($1,500,000). FRA does not have as much information on Class II railroads, but it appears that the accident savings on a Class II railroad might be one percent ($60,000) or as much as twenty percent ($1,200,000) of the savings that would have been available for the UP/SP. These figures are roughly based on ratios of reported accidents, noting that when railroads merge, they become larger entities than they are now.

FRA's careful review of the impacts of mergers that have taken place in the recent past has clearly revealed that mergers and acquisitions disrupt existing safety and operating patterns. Because these transactions are generally justified in significant part by cost savings, there is pressure to close redundant facilities and eliminate positions. This can lead to degradation of safety programs unless formal, written, systematic, and detailed plans are prepared to ensure that safety programs are continued and closely followed. Any less attention to safety could produce catastrophic results, both in terms of economic cost and, more importantly, loss of life.

The final rule will cost $300,000 to $800,000, and will prevent $1,500,000 to $12,000,000 in accident costs for Class I railroads, and will cost $50,000 to $200,000, and will prevent $60,000 to $1,200,000 for Class II railroads. The final rule will not apply to small entities, *i.e.,* the Class III railroads. In addition, the railroad may avoid substantial service difficulties by carrying through the safety planning process. This could save the railroad hundreds of millions or billions of dollars. In the first three quarters of 1998, UP reported losses exceeding $900,000,000 due to service difficulties. The societal losses of these delays is probably much greater, as the figures only account for costs to UP. FRA notes that although numerous parties have submitted data to the STB regarding the impact of the service difficulties, the Board has not attempted to quantify the

societal costs of these service problems. *See Rail Service in the Western United States,* STB Ex Parte No. 573 (STB Decision served Feb. 25, 1998).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on ''small entities.'' The final rule relates to acquisitions, consolidations, and mergers involving only Class I railroads and a Class I railroad with a Class II railroad where there is a proposed amalgamation of operations. Given FRA's recently published interim policy establishing ''small entities'' as being railroads that meet the line haulage revenue requirements of a Class III railroad, FRA certifies that this proceeding will not have a significant economic impact on a substantial number of small businesses. *See* Interim Statement of Policy Concerning Small Entities Subject to the Railroad Safety Laws, 62 FR 43024, Aug. 11, 1997.

Paperwork Reduction Act

The information collection requirements (''ICRs'') in this final rule have been submitted for approval to the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the ICRs and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual reponses	Average time per response	Total annual burden (in hours)	Total annual burden cost
244.13—Subjects to be addressed in a Safety Integration Plan (SIP) involving an amalgamation of operations.	8 railroads	1 SIP (plan)	360 hours	360	$22,224
244.17—Procedures	8 railroads	25 reports	40 hours/2 hours	92	$5,152
—Coordinating Implementation of Approved SIP with FRA.	8 railroads	50 phone calls	10 minutes	4	$224
—Request For Confidential Treatment	8 railroads	.5 request	8 hours	8	1,224
244.19—Disposition	8 railroads	2 communications	16 hours	32	1,792

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning whether these ICRs are necessary for the proper performance of the agency's function, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Organizations and individuals desiring to submit comments on the ICRs should direct them to the Office of Management and Budget, FRA Desk Officer, Washington, DC 20503. OMB is required to make a decision concerning the ICRs contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA hereby notices that it cannot impose a penalty on persons for violating ICRs that do not display a current OMB control number, if required. FRA intends to obtain a current OMB control number for any new ICRs resulting from this rulemaking action before the effective date of the agency's final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated the final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by NEPA, other environmental statutes, Executive Orders, and related directives. This rule meets the criteria that establish this action as a non-major action for environmental purposes.

Federalism Implications

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as ''significant energy actions.'' FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

STB's Statement of Basis

The circumstances that led to the promulgation of these rules are set out in the NPRM. As explained there, in the advance notice of proposed rulemaking (''ANPRM'') published in the **Federal Register** on December 4, 1997, at 62 FR 64193, the Board requested comments on the extent to which railroads should be required to provide information pertaining to the manner in which they intend to provide for the safe implementation of merger and acquisition authority granted by the Board. The Board explained that for several years the Board and its predecessor agency, the Interstate Commerce Commission (''ICC''), have considered the issue of safety along with other relevant issues in individual cases. As particularly pertinent here, in the Conrail Acquisition proceeding,[7] the Board for the first time required applicants to submit detailed information on how they proposed to provide for the safe integration of their corporate cultures and operating systems, if the Board were to approve the proposed transaction.[8] (The Board required the same type of showing in the CN/IC merger,[9] which the Board approved on May 25, 1999. A SIP also

[7] *Conrail Acquisition*, STB Finance Docket No. 33388 (STB Decision No. 52, served Nov. 3, 1997).

[8] The Board did so at the suggestion of FRA and rail labor interests.

[9] *CN/IC*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998).

was prepared and adopted in the CN/WCTC merger proceeding. [10]

Specifically, the Board's practice in recent railroad merger proceedings involving Class I and Class II railroads has been to require applicants to file detailed SIPs based on guidelines issued by FRA. The railroads' submissions are made part of the environmental record in those proceedings and addressed in the ongoing environmental review process in those proceedings. This allows review and comment by FRA, other interested parties, and the public. The Board's environmental staff, SEA, also independently reviews the plans.

Moreover, the Board has entered into an MOU with FRA, with DOT's concurrence, to establish an ongoing monitoring process during implementation of these transactions. The MOU clarifies the actions that FRA and the Board will take to ensure the successful implementation of the SIP. Under the terms of the MOU, FRA monitors, evaluates, and reviews the applicants' progress in implementing the approved SIP. The MOU provides that FRA may request action by the Board in the exercise of its oversight authority over the applicants to correct safety deficiencies identified and to address other safety-related concerns resulting from the approved transaction. FRA also agrees to report to the Board at least on a biannual basis regarding the applicants' implementation of the SIP. In those circumstances in which FRA informs the Board of safety deficiencies that may require Board action, FRA will identify the deficiencies and provide recommendations for correcting them. FRA's reporting will continue until FRA advises the Board in writing that the proposed integration of operations has been safely completed.

The Board's ANPRM explained that, having developed a vehicle by which to evaluate safety integration issues in the *Conrail Acquisition*, it was appropriate to consider promulgating rules extending this process to other rail transactions subject to the Board's jurisdiction. Accordingly, the Board solicited comments from FRA and any other interested persons on how the Board should proceed to ensure the safe implementation of rail transactions subject to its jurisdiction (*i.e.*, whether the STB should proceed broadly by general rule or exclusively on a case-by-case basis, and whether procedures other than those adopted in *Conrail Acquisition* might be preferable in Board-approved transactions outside the merger area). [11]

Based on the comments received and the Board's experience with the SIP process in *Conrail Acquisition*, the Board issued its decision served on July 27, 1998, finding sufficient merit to warrant further exploration of establishing regulations addressing the safe implementation of Board approved transactions. *Safe Implementation of Board-Approved Transactions*, STB Ex Parte No. 574 (STB served July 27, 1998). The Board directed its staff to develop a joint notice of proposed rulemaking with FRA that would address the issues that have arisen in this proceeding and that are of concern to FRA.

Following the issuance of the Board's July 27, 1998, decision, the Board's staff met informally with FRA staff regarding the development of an appropriate proposal that would accomplish the objectives of both agencies, avoid gaps and inconsistencies in the two agencies' regulatory requirements, and impose as little burden as possible on the participating parties. The NPRM was published in the **Federal Register** on December 31, 1998, at 63 FR 72225. On May 4, 1999, a public hearing was held jointly with FRA to hear testimony on the proposed rules.[12]

As noted, eleven parties representing labor, freight and passenger railroads, and state departments of transportation filed comments on the NPRM. Many of the commenters endorsed the objectives of the SIP rules and indicated that they were generally satisfied with the approach used in the *Conrail Acquisition* and *CN/IC* proceedings.[13] However, they offered a number of recommendations on how the proposed rules could be clarified and improved. In issuing final rules, the Board has taken into account all the concerns raised in the parties' written comments and presented at the hearing. As discussed below, the Board is adopting some of the suggestions offered.

STB's Analysis of the Comments Pertaining to the Scope of the Rules

A number of commenters expressed concerns about the scope of the STB's proposed rules. The AAR and Amtrak asserted that the proposed inclusion of transactions that involve a passenger railroad or commuter service in a metropolitan area would exceed the Board's jurisdiction. [14] (*See* proposed 49 CFR 1106.2.) In response to the comments, the definitions of ''applicant'' and ''transaction'' in § 1106.2 have been amended. The new definitions clarify that the SIP requirement applies only to a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad or a Class II railroad with which it proposes to ''amalgamate operations,'' as defined in FRA's regulations at 49 CFR 244.9. (The Board also adds FRA's definition of ''amalgamation of operations'' to its rule.) The changed definitions coincide with the scope of the transactions covered by FRA's final rule, which will promote consistency and efficiency in the interplay between FRA and the Board.

Rail labor interests took the position that the Board's SIP rule should apply to transactions involving Class III carriers, [15] *i.e.,* those railroads that generate revenue, measured in 1991 dollars, of less than $20 million per year, whereas the railroad interests argued that it is not necessary to require the preparation of a SIP for transactions that do not involve two or more Class I railroads. [16] Commenters also suggested that freight traffic density or combined freight and passenger traffic (rather than the Class of railroad) could

[10] *See CN/WCTC*, STB Finance Docket No. 34000 (STB Decisions Nos. 2, 9, and 10 served May 9, August 2, and September 7, 2001, respectively) (hereinafter ''*CN/WCTC Decisions*'').

[11] The administrative process permits the Board to proceed either on a case-by-case basis or by rule, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

[12] AAR and TTD presented testimony at the oral hearing. AAR filed supplemental comments following the hearing.

[13] *See also Major Rail Consolidation Procedures,* STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001) (''*Major Rail Consolidation Procedures*''), slip op. at 36–37 (practice of requiring applicants to work with FRA to formulate SIPs in major mergers received wide public support, and no opposition, in proceeding adopting new rules for major rail consolidations). Indeed, some commenters including the AAR questioned whether formal rules in this area were necessary because the Board could continue to work with FRA on a case-by-case basis, as in the *Conrail Acquisition* and *CN/IC* proceedings. The Board agrees with the AAR that the SIP process used in these proceedings generally has been successful and is publishing final rules to codify existing practices and FRA's role in advising the Board on safety integration matters in transactions that the Board regulates.

[14] Under 49 U.S.C. 10501(c), the Board does not have jurisdiction over mass transportation (commuter service) provided by a local governmental entity. Thus, a transaction involving a railroad subject to the STB's jurisdiction and a commuter railroad ''is now a one-railroad transaction over which [the Board does] not have jurisdiction under 49 U.S.C. 11323.'' *Norfolk & Western Railway Company—Petition for Declaratory Order—Lease of Line in Cook & Will Counties, IL. To Commuter Rail Division of the Regional Transp. Auth. of Northeast Illinois,* STB Finance Docket No. 32279 (STB served Feb. 3, 1999). Moreover, except for certain provisions not relevant here, Amtrak is not subject to the Board's jurisdiction. 49 U.S.C. 24301(c).

[15] *See* the comments of TTD, ATDD, BRC, and BMWE.

[16] *See* the comments of AAR, ASLRRA, and W&LE.

serve as a benchmark for determining the necessity of a SIP.[17]

The Board's final rule covers Class I railroads and Class II railroads that will have their operations amalgamated by a Class I railroad. The Board believes that this scope of coverage is reasonable because it is consistent with the scope of FRA's rule and Congress has treated Class II railroads more like Class I railroads than like Class III railroads in ICCTA.[18] The Board believes that it would be unduly burdensome to expand the proposed rules to cover transactions involving Class II railroads or Class III railroads as a matter of course. Under §§ 1106.5 and 1106.6 of the final rule, however, the Board retains the flexibility to require a SIP for such transactions if warranted, or to waive or modify SIP requirements on a case-by-case basis, if it concludes that doing so is appropriate for particular transactions.[19]

AAR indicated that the Board should allow an additional 30 to 90 days for preparing and filing a proposed SIP, rather than requiring the SIP to be submitted simultaneously with the application. This request is reasonable. Therefore, section 1106.4(a) of the STB's final rule provides 60 days from the date of the application[20] for the filing of a proposed SIP.

The BMWE urged that the Board clarify proposed § 1106.4(b)(4), which, it argued, could be construed to give the Board discretion to approve a transaction without a SIP or without requiring compliance with the SIP. To eliminate any possible confusion, the Board's final rule has been clarified to specifically state that, if the Board approves the transaction and adopts the SIP, the Board will require compliance with the SIP as a condition to its approval of the transaction.

STB's Section-By-Section Analysis of Its Final Rule

§ 1106.1 Purpose.

The regulations are designed to assure adequate and coordinated consideration of safety integration issues by the Board and FRA in implementing certain transactions subject to the Board's jurisdiction.

§ 1106.2 Definitions.

This section sets forth definitions used in this part; these definitions are self explanatory.

§ 1106.3 Actions for Which Safety Integration Plan is Required.

This section explains which transactions require a railroad to file a SIP with the Board. As noted above, a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations, as defined in FRA's rule at 49 CFR 244.9, will be subject to the requirements of this rule. Where the filing of a SIP is required by the Board's rules, the Board will enforce the requirement with appropriate sanctions, including suspending the processing of the application or, in extreme cases, dismissing the application itself.

§ 1106.4 The Safety Integration Plan Process

Section 1106.4 sets out the procedures for an applicant to file a proposed SIP, and the procedures by which the Board will consider a proposed SIP in connection with its approval of transactions for which the Board has concluded such consideration is required. A railroad seeking to carry out a covered transaction must file a proposed SIP prepared in accordance with FRA's regulations with the STB's SEA and FRA no later than 60 days from the date the application is filed with the Board. The proposed SIP will become part of the environmental documentation in the Board proceeding, and will be considered in the Board's environmental review process conducted in accordance with NEPA and the Board's environmental rules at 49 CFR part 1105. Generally, covered transactions will be subject to environmental review because the nature of the transaction involves operational changes that exceed the regulatory thresholds established under 49 CFR 1105.7(e)(4) or (5). *See* 49 CFR 1105.6(b)(4)(i). In the event that a SIP should be required in a transaction that would not be subject to environmental review, *see* 49 CFR 1105.6(c)(2), the Board intends to develop appropriate case-specific SIP procedures.[21]

After FRA reviews the proposed SIP, FRA will issue its findings and conclusions on the adequacy of the plan and will provide its analysis of the proposed SIP early enough to permit incorporation in the Board's draft environmental assessment or draft environmental impact statement. Nevertheless, recognizing that the SIP is an ongoing and fluid process, as in the *Conrail Acquisition* proceeding, FRA may comment on the plan and on an applicant's progress in completing a SIP, without endorsing the plan in full. The Board agrees with FRA that flexible procedures for FRA's response are necessary to enable an applicant to complete a comprehensive plan.

Additionally, this approach will enable the Board to incorporate FRA's comments in its draft environmental documentation, which, in turn, will encourage the public to review and comment on the proposed SIP. SEA will then independently review the proposed SIP and respond to comments received on the plan in its final environmental documentation. Finally, the Board will consider the entire environmental record, including information concerning the SIP, in deciding whether to approve the proposed transaction. Should the Board approve the transaction and adopt the SIP, it will require that the applicants comply with the SIP as a condition to its approval and require each applicant to coordinate with FRA in implementing the SIP, including any amendments to the plan, if necessary. (*See* FRA's Section-By-Section Analysis

[17] *For example,* OK DOT notes that the Board's environmental regulations at 49 CFR 1105.7(e)(5) consider the amount of increased traffic on a line in determining whether there is a need for environmental review.

[18] The Board's recently adopted new rules for major railroad mergers and consolidations involving two or more Class I railroads, published at 66 FR 32582, June 15, 2001, require Class I applicants to bear a substantially heavier burden in demonstrating that a merger proposal is in the public interest. The agency concluded that the current merger regulations at 49 CFR part 1180, subpart A, are not adequate to address future major rail merger proposals that, if approved, would likely result in the creation of two North American transcontinental railroads. But although the economic and service issues that drove the Board's action in *Major Rail Consolidation Procedures* are of concern principally when two Class I railroads merge, the safety considerations underlying SIPs also apply to mergers, consolidations, and acquisitions involving a Class I railroad and a Class II railroad with which it proposes to amalgamate operations.

[19] In the NPRM, the Board specifically solicited comments from interested parties as to whether the final rule should cover Class III railroads. The comments did not persuade the Board that transactions involving Class III railroads typically create sufficient safety problems to warrant requiring the preparation of a SIP. However, the Board's final rule at 49 CFR 1106.6 would allow the agency to require a SIP in particular cases involving Class III railroads if it concluded that doing so is necessary in its proper consideration of the proposed transaction.

[20] Because the Board is narrowing the scope of transactions that require a SIP to those filed under 49 U.S.C. 11323(a) involving Class I railroads and Class II railroads that will have their operations amalgamated with Class I railroads, the final rule eliminates the reference to ''exemptions'' in § 1106.4(a)(1). The reference to ''applications'' and ''other requests for authority'' in the definition of ''transaction'' in § 1106.2, and in the reservation of jurisdiction provision in § 1106.6, however, give the Board the flexibility to require a SIP in cases filed by exemption as well as by application should it be appropriate to do so.

[21] *See CN/WCTC Decisions,* STB Finance Docket No. 34000 (STB Decision Nos. 2 and 9, served May 9 and Aug. 2, 2001, respectively) (SIP prepared even though no environmental review was required).

discussing amendments to 49 CFR 244.17 for a more complete discussion.)

As explained in FRA's Section-By-Section Analysis of § 244.17(g), FRA will advise the Board about its findings on the ongoing implementation process in accordance with an agreement that the agencies will enter into and execute (1) over a five-year period, (2) during any other oversight period for the transaction established by the Board, or (3) until FRA advises the Board that, in its view, the proposed integration of the applicants' operations has been safely completed, whichever is shortest.[22] Should FRA identify shortcomings or deficiencies during the integration process, the Board reserves jurisdiction to reopen the proceeding and impose terms and conditions on the transaction to ensure that the transaction is safely implemented.

§ 1106.5 Waiver.

The Board can waive or modify the requirements of this part where a carrier shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require the filing of a SIP in transactions other than those provided in this part or to adopt modified SIP requirements in individual cases if it concludes that doing so is necessary to properly consider an application or other request for authority.

Regulatory Flexibility Act

The Board certifies that its decision to adopt regulations requiring Class I and Class II railroads to prepare safety integration plans under certain circumstances will not have a significant effect on a substantial number of small entities.

Environmental Impact

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Statement of Energy Effects

Even though the Board is an independent regulatory agency, it recognizes the importance of the policy objective in Executive Order 13212 to expedite consideration of projects that would increase the production, transmission, or conservation of energy. The SIP rulemaking action, however, should not affect the production, transmission, or conservation of energy.

[22] The Board's new rules at 49 CFR 1180.1(g) provide for at least a five-year oversight period for major railroad mergers and consolidations involving two or more Class I railroads.

Federal Railroad Administration 49 CFR Chapter II

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends chapter II of title 49, Code of Federal Regulations, to read as follows:

1. Part 244 is added to read as follows:

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Subpart A—General

Sec.
244.1 Scope, application, and purpose.
244.3 Preemptive effect.
244.5 Penalties.
244.7 Waivers.
244.9 Definitions.

Subpart B—Safety Integration Plans

244.11 Contents of a Safety Integration Plan.
244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.
244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.
244.17 Procedures.
244.19 Disposition.
244.21 Compliance and Enforcement.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

Subpart A—General

§ 244.1 Scope, application, and purpose.

(a) This part prescribes requirements for filing and implementing a Safety Integration Plan with FRA whenever a Class I railroad proposes to consolidate with, merge with, or acquire control of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations.

(b) The purpose of this part is to achieve a reasonable level of railroad safety during the implementation of transactions described in paragraph (a) of this section. This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.

(c) The requirements prescribed under this part apply only to FRA's disposition of a regulated transaction filed by an applicant. The transactions covered by this part also require separate filing with and approval by the Surface Transportation Board. *See* 49 CFR part 1106.

§ 244.3 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that:

(a) Is necessary to eliminate or reduce an essentially local safety hazard;

(b) Is not incompatible with a law, regulation, or order of the United States Government; and

(c) Does not unreasonably burden interstate commerce.

§ 244.5 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $11,000 per day, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) As specified in § 244.21, FRA may also exercise any of its other enforcement remedies if a railroad fails to comply with § 244.21.

(c) Any person who knowingly and willfully makes a false entry in a record or report required by this part shall be subject to criminal penalties under 49 U.S.C. 21311.

§ 244.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with any requirement of this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement pending action on such a petition.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

(d) The procedures governing a petition for a waiver that are prescribed under this part apply only to FRA's

disposition of such a petition. A person seeking a waiver of a Surface Transportation Board regulation would need to file a petition for a waiver with the Board. (*See* 49 CFR 1106.5.)

§ 244.9 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Amalgamation of operations means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.*, changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Best practices means measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.

Class I or Class II railroad has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Corporate culture means the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.

Control means actual control, legal control, or the power to exercise control through:

(1) Common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(2) Any other means. *See* 49 U.S.C. 10102.

Consolidation means the creation of a new Class I railroad by combining existing Class I railroads or a Class I railroad and a Class II railroad where there is an amalgamation of operations, or by a railroad or a corporate parent of a Class I railroad taking over the assets or assuming the liabilities, or both, of another Class I railroad such that the resulting unified entity has the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its constituents.

Environmental documentation means either an Environmental Assessment or Environmental Impact Statement prepared in accordance with the Surface Transportation Board's environmental rules at 49 CFR part 1105.

Merger means the acquisition of one Class I railroad or Class II railroad where there is amalgamation of operations by a Class I railroad such that the acquiring railroad or a corporate parent of that railroad acquires the stock, assets, liabilities, powers, subsidiaries and affiliates of the railroad acquired.

Person means an entity of any type covered under 1 U.S.C. 1, including the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Safety Integration Plan means a comprehensive written plan submitted to and approved by FRA in compliance with this part that demonstrates in required detail how an applicant will provide for safe railroad operations during and after any transaction covered by this part, and otherwise assure compliance with the Federal railroad safety laws.

Section of Environmental Analysis or ''SEA'' means the Section of the Surface Transportation Board that prepares its environmental documentation and analyses.

Transaction means a consolidation, merger, or acquisition of control subject to the requirements of this part.

Subpart B—Safety Integration Plans

§ 244.11 Contents of a Safety Integration Plan.

Each Safety Integration Plan shall contain the following information for each subject matter identified in § 244.13 or § 244.15:

(a) A detailed description of how the applicant differs from each railroad it proposes to acquire or with which the applicant proposes to consolidate or merge, including the rules or instructions governing railroad operations of these railroads;

(b) A detailed description of the proposed manner of operations of the resulting railroad, including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction;

(c) The measures to be taken to comply with applicable Federal railroad safety laws and regulations;

(d) The proposed specific measures, expressed step-by-step, for each relevant subject matter that the applicant believes will result in safe implementation of the proposed transaction consistent with the requirements of this part;

(e) The allocation of resources, expressed as human and capital resources within designated operating budgets, directed to complete safety-relevant operations subject to the transaction; and

(f) The timetable, targeted in specific terms from commencement to completion, for implementing paragraphs (c), (d) and (e) of this section.

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

Each Safety Integration Plan involving an amalgamation of operations shall address the following subjects for railroad operations conducted on property subject to the transaction:

(a) *Corporate culture.* Each applicant shall:

(1) Identify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction;

(2) Describe how these cultures lead to different practices governing rail operations; and

(3) Describe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of ''best practices'' when the transaction is implemented.

(b) *Training.* Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency, qualification, and familiarity with the operating rules and operating tasks of territory assigned of the following employees, either when these employees are assigned to a new territory or the operating rules on a given territory are changed:

(1) Employees who perform train and engine service;

(2) Employees who inspect and maintain track and bridges;

(3) Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;

(4) Dispatchers or operators;

(5) Employees who inspect and maintain signal and train control devices and systems;

(6) Hazardous materials personnel, including information technology personnel who affect the transportation of hazardous materials;

(7) Employees who maintain or upgrade communication systems affecting rail operations; and

(8) Supervisors of employees enumerated in paragraphs (b)(1) through (7) of this section.

(c) *Operating practices.*

(1) *Operating rules.* Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations and freight or passenger service.

(2) *Alcohol and drug.* Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219.

(3) *Qualification and certification of locomotive engineers.* Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR part 240.

(4) *Hours of service laws.* Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

(d) *Motive power and equipment.* Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and the designated facilities used, or to be used, to repair such equipment.

(e) *Signal and train control.* Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, and any planned amendments or modifications to capital improvement and research and development projects for signal and train control operations.

(f) *Track Safety Standards and bridge structures.* Each applicant shall identify the maintenance and inspection programs for track and bridges, and the qualification standards for roadway workers.

(g) *Hazardous Materials.* Each applicant shall identify an inspection program covering the following areas:

(1) Field inspection practices;

(2) Hazardous materials communication standards;

(3) Emergency response procedures; and

(4) Information technology systems and personnel employed for transmitting or receiving information accompanying hazardous materials shipments. The inspection program should identify preventive measures that will be employed to respond to potential information technology integration and hazardous materials documentation deficiencies.

(h) *Dispatching operations.* Each applicant shall identify:

(1) The railroad dispatching system to be adopted;

(2) The migration of the existing dispatching systems to the adopted system, if applicable; and

(3) The criteria used to determine workload and duties performed by operators or dispatchers employed to execute operations.

(i) *Highway-rail grade crossing systems.* Each applicant shall identify a program, including its development and implementation, covering the following:

(1) Identification of the highway-rail grade crossings at which there will be an increase in rail traffic resulting from the transaction;

(2) An applicant's existing grade-crossing programs as they apply to grade crossings identified in paragraph (i)(1) of this section;

(3) Integration of the grade crossing programs of the railroads subject to the transaction to the extent the programs may be different;

(4) Emergency response actions;

(5) Avoidance of blocked or obstructed highway-rail crossing systems by trains, locomotives, railroad cars, or other pieces of rolling equipment; and

(6) Signs employed for changes in rail traffic patterns.

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform each of the following types of function when there is a projected change of operations that will impact workforce duties or responsibilities:

(1) Train and engine service;

(2) Yard and terminal service;

(3) Dispatching operations;

(4) Roadway maintenance;

(5) Freight car and locomotive maintenance;

(6) Maintenance of signal and train control systems, devices, and appliances;

(7) Hazardous materials operations; and

(8) Managers responsible for oversight of safety programs.

(k) *Capital investment.* Each applicant shall identify the capital investment program, clearly displaying planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall describe any differences from the program currently in place on each of the railroads involved in the transaction.

(l) *Information systems compatibility.* Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:

(1) Train consists;

(2) Movements and movement history of locomotives and railroad freight cars;

(3) Dispatching operations;

(4) Emergency termination of operations; and

(5) Transportation of hazardous materials.

§ 244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.

If an applicant does not propose an amalgamation of operations conducted on properties subject to the transaction, the applicant shall not be required to file a Safety Integration Plan unless directed to do so by FRA.

§ 244.17 Procedures.

(a) Each applicant shall file one original of a proposed Safety Integration Plan with the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC, 20590, no later than 60 days after the date it files its application with the Surface Transportation Board.

(b) The applicant shall submit such additional information necessary to support its proposed Safety Integration Plan as FRA may require to satisfy the requirements of this part.

(c) The applicant shall coordinate with FRA to resolve FRA's comments on the proposed Safety Integration Plan until such plan is approved.

(d) FRA will file its findings and conclusions on the proposed Safety Integration Plan with the Board's Section of Environmental Analysis at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(e) Assuming FRA approves the proposed Safety Integration Plan and the Surface Transportation Board approves the transaction and adopts the

Plan, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan.

(f) During implementation of an approved Safety Integration Plan, FRA expects that an applicant may change and refine its Safety Integration Plan in response to unforeseen developments. An applicant shall communicate with FRA about such developments and submit amendments to its Safety Integration Plan to FRA for approval.

(g) During implementation of an approved Safety Integration Plan, FRA will inform the Surface Transportation Board about implementation of the plan at times and in a manner designed to aid the Board's exercise of its continuing jurisdiction over the approved transaction in accordance with an agreement that FRA and the Board will enter into and execute. Pursuant to such agreement, FRA will consult with the Board at all appropriate stages of implementation, and will advise the Board on the status of the implementation process:

(1) For a period of no more than five years after the Board approves the transaction,

(2) For an oversight period for the transaction established by the Board, or

(3) Until FRA advises the Board in writing that the integration of operations subject to the transaction is complete, whichever is shorter.

(h) *Request for Confidential Treatment.* Each applicant requesting that advanced drafts of the proposed Safety Integration Plan and information in support of the proposed and approved plan that are filed with FRA receive confidential treatment shall comply with the procedures enumerated at 49 CFR 209.11.

§ 244.19 Disposition.

(a) *Standard of review.* FRA reviews an applicant's Safety Integration Plan, and any amendments thereto, to determine whether it provides a reasonable assurance of safety at every step of the transaction. In making this determination, FRA will consider whether the plan:

(1) Is thorough, complete, and clear; and

(2) Describes in adequate detail a logical and workable transition from conditions existing before the transaction to conditions intended to exist after consummation of the transaction.

(b) *Approval of the Safety Integration Plan and Amendments Thereto.* FRA approves a Safety Integration Plan, and any amendments thereto, that meets the standard set forth in paragraph (a) of this section. The approval will be conditioned on an applicant's execution of all of the elements contained in the plan, including any amendments to the plan approved by FRA.

(c) *Amendment.*—(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the amendment. Any amendment is subject to the approval of FRA as prescribed in paragraph (b) of this section, and shall take effect within 20 days of approval. The applicant shall communicate with FRA to resolve any FRA comments on the proposed amendment until it is approved.

(2) *By FRA.* FRA may request an applicant to amend its approved Safety Integration Plan from time to time should circumstances warrant.

§ 244.21 Compliance and Enforcement.

(a) After the Surface Transportation Board has approved a transaction subject to this part, a railroad implementing a transaction subject to this part shall operate in accordance with the Safety Implementation Plan approved by FRA until the properties involved in the transaction are completely integrated into the form contemplated in the Surface Transportation Board's approval of the transaction.

(b) FRA may exercise any or all of its enforcement remedies authorized by the Federal railroad safety laws if a railroad fails to comply with paragraph (a) of this section or to execute any measure contained in a Safety Implementation Plan approved by FRA.

Appendix A to Part 244—Schedule of Civil Penalties [Reserved]

Issued in Washington, DC, on March 8, 2002.

Allan Rutter,

Federal Railroad Administrator.

Surface Transportation Board 49 CFR Chapter X

List of Subjects in 49 CFR Part 1106

Railroad Safety, Railroads, Safety Integration Plans.

For the reasons set forth in the preamble, in title 49, subtitle IV, part 1106 is added to read as follows:

PART 1106—PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

Sec.

1106.1 Purpose.
1106.2 Definitions.
1106.3 Actions for which Safety Integration Plan is Required.
1106.4 The Safety Integration Plan Process.
1106.5 Waiver.
1106.6 Reservation of jurisdiction.

Authority: 5 U.S.C. 553; 5 U.S.C. 559; 49 U.S.C. 721; 49 U.S.C. 10101; 49 U.S.C. 11323–11325; 42 U.S.C. 4332.

§ 1106.1 Purpose.

This part is designed to ensure adequate and coordinated consideration of safety integration issues, by both the Board and the Federal Railroad Administration, the agency within the Department of Transportation responsible for the enforcement of railroad safety, in the implementation of rail transactions subject to the Board's jurisdiction. It establishes the procedures by which the Board will consider safety integration plans in connection with its approval and authorization of transactions for which the Board has concluded such consideration is required.

§ 1106.2 Definitions.

The following definitions apply to this part:

Act means the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995).

Amalgamation of operations, as defined by the Federal Railroad Administration at 49 CFR 244.9, means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (*e.g.,* changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

Applicant means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

Board means the Surface Transportation Board.

Class I or Class II railroad has the meaning assigned by the Board's regulations (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

Environmental documentation means either an Environmental Assessment or an Environmental Impact Statement prepared in accordance with the National Environmental Policy Act and Board's environmental rules at 49 CFR part 1105.

Federal Railroad Administration (''FRA'') means the agency within the

Department of Transportation responsible for railroad safety.

Safety Integration Plan (''SIP'') means a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the transaction that requires a SIP.

Section of Environmental Analysis (''SEA'') means the Section that prepares the Board's environmental documents and analyses.

Transaction means an application by a Class I railroad that proposes to consolidate with, merge with, or acquire control under 49 U.S.C. 11323(a) of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations, as defined by FRA's regulations at 49 CFR 244.9. ''Transaction'' also includes a proceeding other than those specified above if the Board concludes that a SIP is necessary in its proper consideration of the application or other request for authority.

§ 1106.3 Actions for which Safety Integration Plan is required.

A SIP shall be filed by any applicant requesting authority to undertake a transaction as defined under § 1106.2 of this part.

§ 1106.4 The Safety Integration Plan process.

(a) Each applicant in a transaction subject to this part shall file a proposed SIP in accordance with the informational requirements prescribed at 49 CFR part 244, or other FRA guidelines or requirements regarding the contents of a SIP, with SEA and FRA no later than 60 days from the date the application is filed with the Board.

(b) The proposed SIP shall be made part of the environmental record in the Board proceeding and dealt with in the ongoing environmental review process under 49 CFR part 1105. The procedures governing the process shall be as follows:

(1) In accordance with 49 CFR 244.17, FRA will provide its findings and conclusions on the adequacy of the proposed SIP (*i.e.,* assess whether the proposed SIP establishes a process that provides a reasonable assurance of safety in executing the proposed transaction) to SEA at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(2) The draft environmental documentation shall incorporate the proposed SIP, any revisions or modifications to it based on further consultations with FRA, and FRA's written comments regarding the SIP. The public may review and comment on the draft environmental documentation within the time limits prescribed by SEA.

(3) SEA will independently review each proposed SIP. In its final environmental documentation, SEA will address written comments on the proposed SIP received during the time established for submitting comments on the draft environmental documentation. The Board then will consider the full environmental record, including the information concerning the SIP, in arriving at its decision in the case.

(4) If the Board approves the transaction and adopts the SIP, it will require compliance with the SIP as a condition to its approval. Each applicant involved in the transaction then shall coordinate with FRA in implementing the approved SIP, including any amendments thereto. FRA has provided in its rules at 49 CFR 244.17(g) for submitting information to the Board during implementation of an approved transaction that will assist the Board in exercising its continuing jurisdiction over the transaction. FRA also has agreed to advise the Board when, in its view, the integration of the applicants' operations has been safely completed.

(c) If a SIP is required in transactions that would not be subject to environmental review under the Board's environmental rules at 49 CFR part 1105, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented.

§ 1106.5 Waiver.

The SIP requirements established by this part may be waived or modified by the Board where a railroad shows that relief is warranted or appropriate.

§ 1106.6 Reservation of Jurisdiction.

The Board reserves the right to require a SIP in cases other than those enumerated in this part, or to adopt modified SIP requirements in individual cases, if it concludes that doing so is necessary in its proper consideration of the application or other request for authority.

Decided: March 6, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6046 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304-01; I.D. 031202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2002, until 1200 hrs, A.l.t., August 25, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20 (a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 mt. For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest at the beginning of the next season(s) shall be subtracted from or added to the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not

exceed 15,187 mt in any single season. The B season allowance of the pollock TAC in Statistical Area 610 of the GOA is 2,916 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002). The Regional Administrator hereby reduces the B season pollock TAC by 141 mt. This amount is the A season pollock over harvest in Statistical Area 610 and provides for an aggregate B season allowance in the Central and Western Regulatory Areas that does not exceed 15,187 mt. In accordance with § 679.20 (a)(5)(ii)(C), the B season allowance of pollock TAC in Statistical Area 610 is 2,775 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,725 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 B season pollock TAC specified for Statistical Area 610 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6275 Filed 3–12–02; 3:00 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. 98–030–3]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: We are proposing additional changes related to an earlier proposed rule to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This supplemental proposed rule concerns the use of radiation indicators on packaging of irradiated articles and additional provisions for monitoring foreign irradiation facilities.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 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. 98–030–3, 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. 98–030–3. 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. 98–030–3'' 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: For general information on program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799. For information on technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113–34125, Docket No. 98–030–1), we proposed a framework for the use of irradiation as a phytosanitary treatment for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98–030–2). We received 2,212 comments by the end of the comment period, including many form letters and form postcards.

Several of those comments suggested that the proposed rule establish certain requirements not included in the proposal. We are publishing this supplemental proposed rule to allow an opportunity for public comment on these issues that were not included in the earlier proposed rule. After evaluating any comments received on this supplemental proposal, we will publish a final rule addressing comments received on both the earlier proposed rule and this supplemental proposed rule.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign facilities where treatments are conducted is crucial to ensure that treatments are safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested that the activities that foreign plant protection services would conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

Furthermore, commenters suggested that APHIS should develop documentation to demonstrate that the requirements APHIS imposes for importation of irradiated articles are consistent from country to country, and are consistent with the requirements other countries apply to imported irradiated articles, in accordance with the equivalence principle of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. They suggested that, in addition to establishing the level of monitoring required at individual foreign irradiation facilities, APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country.

We agree with these comments, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent

monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (*e.g.*, importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff).

We also agree that the activities of foreign plant protection services with regard to irradiation facilities in their countries in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS. We further agree that, in support of the equivalence principle, APHIS and each foreign plant protection service should sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

We propose to revise the monitoring section of the proposed rule, § 305.2(f), published on May 26, 2000, at 65 FR 49770, to allow APHIS to provide an appropriate level of monitoring at irradiation facilities, depending on the situations in different countries, to require that APHIS and foreign plant protection services sign work plans, and to establish trust fund agreements with national plant protection organizations to reimburse APHIS expenses. The new proposed paragraph (f) would read as follows:

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation treatment operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables into that country;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

Much of this language is similar to the language already contained in APHIS regulations for programs where it has been necessary to establish trust fund agreements with foreign plant protection services to reimburse APHIS for inspection and monitoring activities necessary to allow importation of fruits and vegetables into the United States.

Indicators and Tests To Identify Irradiated Fruit

Several commenters suggested that we should require that, prior to treatment, irradiation indicators be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard, and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several inexpensive devices and dye-impregnated labels that react to radiation at various doses in the 100–250 gray range. Such tools could aid Federal and State inspectors who may find live larvae in shipments where the accompanying paperwork claims the shipment was irradiated.

We agree that carton indicators could be a useful enforcement tool. They could not serve as primary documentation that articles have been irradiated in accordance with the regulations, because such indicators are not as sensitive or accurate as the dosimetry systems required by the regulations, and because it would be relatively easy to produce fraudulent indicators (*e.g.*, by subjecting a large number of indicators to irradiation and then attaching them to cartons that have not been irradiated). However, we believe that such indicators can be useful when used in conjunction with the other documentation and system controls required by the regulations. In particular, they can be a useful ''cross check'' when personnel at irradiation facilities are distinguishing irradiated cartons from non-irradiated cartons, and when inspectors at ports of entry are correlating the required import documents with the cartons referred to in the documents.

Therefore, we propose to add additional language to § 305.2(g)(1) of

the proposed rule published on May 26, 2000, at 65 FR 49770, to state that ''each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.''

Executive Order 12866 and Regulatory Flexibility Act

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

This action supplements a proposed rule published in the **Federal Register** on May 26, 2000, that proposed to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The economic analysis for the earlier proposed rule was set forth in that proposed rule. It included a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The economic effects of this supplemental proposed rule lie in two areas: The establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries and the requirement for radiation indicators to be attached to cartons holding irradiated articles.

Trust Fund Agreements

APHIS proposes that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement would be to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States to cover the costs. In this sense, the trust fund requirement would have an adverse differential effect on foreign producers relative to domestic producers. However, the cost of the trust fund agreement for APHIS services could be distributed among many foreign producers treating a large volume of products, and would probably result in a price increase for imported articles of only a few cents per pound. Therefore, trust fund agreement costs are expected to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

Irradiated Carton Indicators

APHIS proposes that indicators be put on cartons to show that irradiation has taken place. Prototypes that have already been developed are based on dosimeter technology, but are much less expensive to manufacture than dosimeters because no precise measurement is involved, only an indication that irradiation has occurred.

A phosphor-based technology for irradiation indication produces an invisible fluorescence that can be easily detected by an inexpensive hand-held ''light-pen'' reader. According to the manufacturer, a ''light-pen'' reader can be thought of as a hand-held product similar to a common barcode reader. When the indicator has received a dose above 100 Gy, the hand held ''light-pen'' reader will activate a signal, such as an audible beep or a light. The indicator is able to be read easily and inexpensively.

Indicators could also be incorporated into a white-on-white bar code that would only become apparent (darkened background) after irradiation. Bar code information could record lot number or other marketing information that could prove useful in tracing a carton back to its source. As a safeguard against repeated use of the same indicator, they could be applied with one-time-only adhesive. Or, as an alternative, an indicator might not provide any visual indication at all that the carton has been irradiated, thereby reducing any chance of counterfeited indicators.

The manufacturer expects to be able to produce indicators in large quantities at a low unit cost—pennies per indicator—with a reader cost comparable to that of hand-held barcode readers. The cost of the indicators, once they are produced in volume, would be negligible compared to the value of the produce shipped, and would add at most a few cents per pound to the retail price of the irradiated fruits and vegetables.

Costs and Benefits

As discussed above, the proposed trust fund and carton indicator requirements contained in this supplemental proposed rule involve moderate costs distributed among many importers, with an end result of an increase of a few cents per pound in the retail price of irradiated articles. The benefits of the proposed changes accrue because the proposed changes would increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated, either because trust fund agreements to monitor treatments were not in effect, or because carton indicators were not employed as a monitoring tool. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements and indicators over several years.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. In this case, entities that would be most affected by the proposed rule are the operators of foreign irradiation facilities. Under the Small Business Administration's Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning), a firm would qualify as a small entity if it had annual revenues of $5 million or less. None of the foreign irradiation companies that have submitted comments on previous irradiation proposed rules, or that have expressed interest in the current rulemaking, are small by this standard.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings would not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–030–3. Please send a copy of your comments to: (1) Docket No. 98–030–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require that the national plant protection service of each country from which irradiated articles are imported into the United States must sign a trust fund agreement with APHIS, and must submit an annual work plan to APHIS describing the activities the plant protection service will carry out to meet the requirements of the regulations. These documents would be drafted jointly by the foreign plant protection service and APHIS. We estimate that developing and approving each document would require about 20 hours of development and review time by the submitting foreign plant protection service.

These information collection requirements would be in addition to information collection activities that we described in the original proposal published August 21, 2000 (65 FR 47908, Docket No. 98–030–1), including a compliance agreement, labeling requirements, 24-hour notification, dosimetry recordings, requests for dosimetry device approval, recordkeeping requirements, and requests for facility approval.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.08411 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel.

Estimated annual number of respondents: 124.77.

Estimated annual number of responses per respondent: 1001.

Estimated annual number of responses: 124,895.

Estimated total annual burden on respondents: 10,505 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose to amend part 305 as set out in the proposed rule published on May 26, 2000 (65 FR 34113–34125), as follows:

1. The authority citation for part 305 would be revised to read as follows:

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

2. In § 305.2, paragraphs (f) and (g)(1) are revised to read as follows:

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

* * * * *

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That

agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) * * *

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables. Each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.

* * * * *

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6267 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02–915–2 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884: telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or

equivalent to $0.20 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 9, 2002, and unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $187,384. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The Florida Lime Administrative Committee and the Avocado Administrative Committee have shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to generate more assessment funds to cover the increased expenses, and to reduce the amount of reserve funds the avocado committee would have to use to pay those expenses. Without the assessment rate increase, the avocado committee would have to use $26,582 of its operating reserve to cover the estimated expenses. With the increase, the avocado committee would only have to use $17,082 of its operating reserve to cover expenses.

The major expenditures recommended by the Committee for the 2002–03 year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expense by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 950,000 bushels which should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $96,633) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers or avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Florida Agricultural Statistics Service, the average f.o.b. price for fresh avocados during the 2000–01 season was $14.60 per 55-pound bushel container or equivalent for all domestic shipments and total shipments were 1,005,000 bushels. Using these prices, virtually all avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container. The proposed assessment rate of $0.20 is $0.01 higher than the 2001–02 rate. The quantity of assessable avocados for the 2002–03 season is estimated at 950,000. Thus, the $0.20 rate should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The Florida Lime Administrative Committee and the Avocado Administrative Committee shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs

was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue fro the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on April 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past year.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6139 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2001–2002 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2001–2002 crop year. The percentages are 59 percent free and 41 percent restricted and would establish the proportion of cherries from the 2001 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite

2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2001–2002 crop year, beginning July 1, 2001, through June 30, 2002. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District eight—Washington. Districts five, six, seven, and nine (Oregon, Utah, Pennsylvania, and Wisconsin, respectively), would not be regulated for the 2001–2002 season.

The order prescribes under § 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2001–2002 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because Utah's production is less than the 50 percent of the previous 5-year production average, handlers in Utah also would not be subject to volume regulation during the 2001–2002 crop year. Production from District four (New York) was not regulated last crop year, but, as mentioned above, will be regulated in 2001–2002. This would be the first year of regulation for District eight (Washington), since the order was promulgated.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into canned or frozen products, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a

preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board must announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2001, and computed, for the 2001–2002 crop year, an optimum supply of 219 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 356 million pounds; a 33 million pound carryin added to that estimate results in a total available supply of 389 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 219 million pounds from the total estimated available supply results in a surplus of 170 million pounds of tart cherries. An adjustment for changed economic conditions of 50 million pounds was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 120 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million pounds) and resulted in a restricted percentage of 36 percent for the 2001–2002 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2001–2002 year:

		Millions of pounds
Optimum Supply Formula:		
(1) Average sales of the prior three years		219
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board at the June meeting		219
Preliminary Percentages:		
(4) USDA crop estimate		356
(5) Plus carryin held by handlers as of July 1, 2000.		33
(6) Total available supply for current crop year		389
(7) Surplus (item 6 minus item 3)		170
(8) Economic adjustment to surplus		50
(9) Adjusted surplus (item 7 minus item 8)		120
(10) USDA crop estimate for regulated districts		338
Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

On September 17, 2001, the Board conducted a telephone meeting and voted unanimously to establish interim percentages since the September 13, 2001, meeting was postponed until October due to the tragic events on September 11, 2001. The Board recommended an interim free percentage of 57 percent and an interim restrictive percentage of 43 percent. These percentages were based on the actual production for the 2001–2002 crop year of 366 million pounds, and more up-to-date sales and carryin inventory amounts.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. Because of the events of September 11, 2001, and subsequent flight delays, the Board met on October 12, 2001, and recommended final free and restricted percentages of 59 percent and 41 percent, respectively. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the interim percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 217 million pounds, instead of 219 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2001 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each month of the 3-year period.

The actual production reported by the Board was 366 million pounds, which is a 10 million pound increase from the USDA crop estimate of 356 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Washington). For 2001–2002, production in the regulated districts totaled 336 million pounds, 2 million pounds less than the USDA estimate of 338 million pounds.

A 39 million pound carryin (actual carryin as opposed to the 33 million pounds originally estimated in June) was added to the Board's reported production of 366 million pounds, yielding a total available supply for the current crop year of 405 million pounds. The optimum supply of 217 million pounds was subtracted from the total available supply which resulted in a 188 million pound surplus. An adjustment of 50 million pounds for changed economic conditions was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed

later in this document. After the adjustment, the resulting total surplus is 138 million pounds of tart cherries. The total surplus of 138 million pounds is divided by the 336 million-pound volume of tart cherries produced in the regulated districts. This results in a 41 percent restricted percentage and a corresponding 59 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in October for the 2001–2002 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	217
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	217
Final Percentages:	
(4) Board reported production	366
(5) Plus carryin held by handlers as of July 1, 2001	39
(6) Tonnage available for current crop year	405
(7) Surplus (item 6 minus item 3)	188
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus 8)	138
(10) Production in regulated districts	336

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	59	41

As previously mentioned, the Board recommended an economic adjustment of 50 million pounds in computing both the preliminary and final percentages for the 2001–2002 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions. The Board recommended the adjustment to reflect the impact of USDA surplus removal purchases might have on the sales component of the optimum supply formula.

Purchases by USDA and other government agencies are part of the average sales history for the industry. In recent years, USDA and other government purchases of tart cherry products have averaged about 17 million pounds and these have been factored into the optimum supply formula. In 2000–2001, USDA announced the acceptance of bids for a large surplus removal purchase. The amount of the purchases is expected to total 50 million pounds and be delivered during the 2001–2002 crop year. The Board discussed how this purchase should be accounted for in the optimum supply formula. The Board decided on a full 50-million pound economic adjustment because it results in a smaller restricted percentage than with no adjustment. With the adjustment, the restricted percentage is 41 percent. Without the adjustment, the restricted percentage would have been 56 percent.

By recommending this marketing policy modification, the Board believes that fewer cherries would have to be diverted and more cherries would be available to meet market needs. This modification is intended to further facilitate and encourage market expansion. It is also expected to benefit growers who receive higher payments for free tonnage cherries.

In May 2001, reserve release provisions were added to the administrative rules and regulations in § 930.154. The provisions provide that if USDA or any other governmental agency initiates an invitation to purchase product for surplus removal (as a non-entitlement purchase), the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve. These provisions were not effective prior to the initiation of the invitation to bid on USDA's planned 50 million pound surplus removal purchase. Therefore, reserve cherries could not be released from the inventory reserve pursuant to § 930.154 and the cherries had to be supplied from free tonnage, not reserve tonnage. Consequently, the Board recommended the economic adjustment of 50 million pounds to account for the free tonnage cherries delivered from the 2001–2002 crop to satisfy the purchase. If an invitation to bid on a surplus removal purchase is initiated by USDA or another government agency during the 2001–2002 crop year, or subsequent season, a like quantity of reserve tonnage would be released under § 930.154 and no economic adjustment would be necessary to account for those cherries. The Board believes that such releases will equitably spread the benefit of such purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA or other government agencies, will benefit from the surplus removal of tart cherry purchases.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 22 million

pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

The 2001 crop is the second largest ever harvested in the United States at 366.3 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than 15 million

pounds. Currently, only the three districts in Michigan, New York, and Washington are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, New York and Washington are the only restricted areas for this crop year and their combined total production is 336 million pounds. A 41 percent restriction means 198 million pounds is available to be shipped to primary markets from these three states. Production levels of 2 million pounds for Oregon, 4 million pounds for Pennsylvania, 12 million pounds for Utah, and 13 million pounds for Wisconsin results in an additional 31 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 22 million pounds being available for the primary market. The 198 million pounds from Michigan, New York and Washington, the 31 million pounds from the other producing states, and the 22 million pound release gives a total of 251 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.10 per pound. With volume controls, the estimated grower price would increase to approximately $0.15 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $36.6 million in 2001/02. In this scenario, production is 366 million pounds and price, without regulation, is estimated to be $0.10 per pound. With regulation, growers' revenues from processed cherries are estimated to be $46.5 million. In this scenario, 251 million pounds are available for the primary markets with an estimated price of $0.15 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are greater than $0.11 per pound, then growers' are better off with the regulation. With a price of $0.11 per pound, the estimated revenues under no regulation would be similar to the revenues with a 41 percent restricted regulation.

It is concluded that the 41 percent volume control would not unduly burden producers, particularly smaller growers. The 41 percent restriction is only applied to the growers in Michigan, New York, and Washington. The growers in the other 4 regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001/02 crop year.

Recent grower prices have been as high as $0.21 per pound. At current production levels, the cost of production is reported to be $0.25 per pound. Thus, the estimated $0.15 per pound received by growers remains below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0029 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2001–2002 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in October 2001 of the restricted percentages proposed in this rule (59 percent free and 41 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries.

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2001–2002 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110

percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2001–2002 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2001–2002 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2001, which shall be free and restricted, respectively, are designated as follows: Free percentage, 59 percent and restricted percentage, 41 percent.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6136 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound. It also would increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable tart cherries beginning July 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would be increased from $0.0006 to $0.000875 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2001–2002.

The Board met on January 25, 2001, and unanimously recommended 2001–2002 expenditures of $442,500. The Board also recommended an assessment rate of $0.00175 per pound of tart cherries utilized in the production of tart cherry products other than juice, juice concentrate and puree products and an assessment rate of $0.000875 per pound for juice, juice concentrate and puree products. In comparison, last year's budgeted expenditures were $455,000. The recommended assessment rates of $0.00175 and $0.000875 are higher than the current rates of $0.0012 and $0.0006, respectively. The Board recommended increased assessment rates to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rates established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2001–2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy,

AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2001–2002 expenditures of $442,500 and assessment rate increases from $0.0012 to $0.00175 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.0006 to $0.000875 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. The Board unanimously recommended 2001–2002 expenditures of $442,500. The quantity of assessable tart cherries expected to be produced during the 2001–2002 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

This action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate increases the burden on handlers, and may increase the burden on producers. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 25, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2001–2002 fiscal period began on July 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously

recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.00175 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.000875 per pound.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6137 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 2002–03 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2002–03 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the excess of dried prunes by approximately 3,800 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 15, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for inventory management. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening would be increased from 28/32 to 30/32 of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule would be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

Authority for Undersized Regulations for Inventory Management

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also

provides that the USDA upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes.'' * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the USDA on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

History of Undersized Regulations Used for Inventory Management

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by USDA at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, including the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments during the 2000–01 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation would be in effect from August 1, 2002, through July 31, 2003.

The Committee estimated that there would be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This proposed rule would continue to remove small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes would be removed from human consumption channels during the 2002–03 crop year. This would leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing this century (estimated at 317,628 natural condition tons by the year 2006); (3) a

continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. There already have been efforts to reduce burdensome supplies. Through an industry-funded tree removal program that was initiated in the fall of 2001, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. A proposed rule with request for comments was published by USDA in the December 17, 2001, **Federal Register** (66 FR 64918). The proposed changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10 years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 139,000 natural condition tons. The Committee recently estimated that another large crop of about 200,000 natural condition tons could be expected for the 2002–03 crop year, because of new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/32 of an inch in diameter French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about $20 to $40 per ton for the 24/32 of an inch in diameter French prunes, which is about $270–$290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this proposal is to remove small sizes which have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer returns currently are below the cost of production and the proposal would assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when income for agricultural producers and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action would not impact the dried prune import regulation because the action would affect inventory management, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as

those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

As recommended by the Committee, this proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation would result in more of the smaller-sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as proposed for 2002–2003 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of $763 per ton for the 2001–02 crop year. This compares to $845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The $763 average grower price is substantially below total cost of production of $1,724 per ton and the total variable cost of production of $985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels exceeding the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of the industry's desired inventory of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

This action would result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that this proposed rule would strengthen growers' prices modestly by $11 per ton. This price is still expected to be less than the cost of production for 2002–2003, estimated at $1,032 per ton.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to disproportionately impact small handlers or producers. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 3,800 tons) to non-human consumption outlets. These costs are expected to be minimal and would be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handler and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about $270–$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for 24/32 screen French prunes are expected to be about $20 to $40 per ton. This price is similar to the $20–$40 price received during the 2001–02 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton for a total cost of about $310 per ton. This equates to a loss of about $270–$290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation would help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, and producers continue to implement improved cultural and

thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of $809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry-funded program which removed about 3,500 acres, and the proposed tree removal program to be funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented ''across the board'' as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a comparatively cumbersome, expensive-to-administer alternative to changing the undersized rule as proposed. A third alternative discussed was to advance to a 25/32 screen undersized regulation for French prunes. However, handlers expressed concern that this would reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This would increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

The Committee requested a comment period through April 15, 2002, to allow interested persons to respond to this proposal. This longer comment period is needed to give the Committee more time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes that are deemed appropriate. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 993.409 is added to read as follows:

§ 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 02–6144 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment 2 to Certificate of Compliance (CoC)

Number 1025. This amendment would allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications would include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes would also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC would be revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) would also be revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: Comments on the proposed rule must be received on or before April 15, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013480571. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail, *RWB@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

SAR Submitted by: NAC International.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC-MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6227 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 259–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the ''Inmate Trust Fund Accounts and Commissary Record System'' (JUSTICE/BOP–006), as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to ensure the safety of inmates, Bureau personnel and the public; to protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717 and 9701.

2. Section is amended by adding paragraphs (l) and (m) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(l) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Trust Fund Accounts and Commissary Record System, (JUSTICE/BOP–006).

(m) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance as an investigation progresses or with the passage of time, and could be relevant to future law enforcement decisions. In addition, amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject or other criminal justice agencies. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6202 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 257–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the ''Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007)'', as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure

the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Section 16.97 is amended by adding paragraphs (n) and (o) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access

* * * * *

(n) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007).

(o) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from sources outside the Bureau of Prisons, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the health care of the inmates and the safety and security of the prisons and the public.

Dated February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6204 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify the regulations for obtaining copies of the Nixon White House tape recordings which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. These regulations apply to the public.

DATES: Comments are due by May 14, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via email to comments@nara.gov. See the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–7360, ext. 240, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA is updating the regulations affecting research use of the Nixon Presidential Materials in NARA custody to reflect a change in the 1996 Nixon Tapes Settlement Agreement. NARA is amending § 1275.64, § 1275.66, and Appendix A of the regulations.

- The proposed § 1275.64 includes a provision allowing for the reproduction of tape recordings opened to the public. Effective April 20, 2001, the Nixon estate agreed to allow NARA to make available for sale and copying all tape recordings of conversations from the Nixon presidency that have been previously opened. Prior to April 20, 2001, NARA only permitted the public to obtain copies of selected tape recordings through a vendor. Self-service copying was not permitted. These changes to the negotiated Nixon Tapes Settlement Agreement are not applicable to tapes that have not yet been released.
- The proposed § 1275.66 is expanded to include tape recordings. This change allows the self-service copying of tape recordings.
- The proposed introductory paragraph to Appendix A—Settlement Agreement, waives paragraph 11 of the Agreement. The rule in paragraph 11 states that the public has to wait until January 1, 2003, to copy tapes not made publicly available before April 12, 1996. This rule is no longer applicable.

Please submit email comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 3095–AB07 and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been

reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend § 1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

3. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

4. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

Appendix A to Part 1275—Settlement Agreement

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: February 8, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–6190 Filed 3–14–02; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA072–FOA, FRL–7158–1]

Proposed Finding of Failure To Attain; State of California, San Joaquin Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to find that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM–10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001. This proposed finding is based on monitored air quality data for the PM–10 NAAQS from 1999 through September 2001.

If EPA finalizes, after public notice and comment, the failure to attain finding, the San Joaquin Valley must submit by December 31, 2002, plan provisions that provide for attainment of the PM–10 air quality standards and that achieve percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

DATES: Comments on the proposed action must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; or to *bloomfield.celia@epa.gov.*

A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's Web site, *http://www.epa.gov/region09/air.* The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 947–4148 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 947–4148, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; *bloomfield.celia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 EPA revised the health-based national ambient air quality standards (NAAQS) (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

The San Joaquin Valley, which is made up of 8 counties (Stockton County, Stanislaus County, Merced County, Madera County, Fresno County, Kings County, Tulare County, and Kern County), has had a PM–10 problem for more than a decade. The area violates both the 24-hour and annual PM–10 standards. Exceedances are recorded throughout the Valley but tend to peek in the fall and winter. (See Tables 1 and 2 below in Section II.B). The violations are caused by both primary particulates (dust) and secondary particulates (other pollutants that react in the atmosphere to form particulate matter).

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA

codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious. As a serious PM–10 nonattainment area, the San Joaquin Valley acquired a new attainment deadline of December 31, 2001 (CAA section 188(c)(2)).

II. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM–10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM–10 NAAQS is achieved when the expected annual arithmetic mean PM–10 concentration is less than or equal to the level of the standard (50 μg/m^3). Attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 μg/m^3) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

B. Ambient Air Monitoring Data

1. Annual PM–10 Standard

According to data currently in AIRS, three monitoring sites in the San Joaquin Valley are in violation of the annual PM–10 NAAQS. These data cover the period 1999 through September 30, 2001. While the nonattainment status of the Corcoran and Visalia monitors could still be affected by end of year data, even under the best case scenario (using values of 0.0 μg/m^3 for the sampling days in the last quarter of 2001), the Bakersfield Golden State Highway site would still register an annual arithmetic mean of 53 μg/m^3, which violates the annual NAAQS.[1]

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM_{10} NAAQS (1999–2001 *)

Site name	3 year annual mean ** μg/m^3
Bakersfield—Golden State	*** 58
Corcoran	51
Visalia	51

* 2001 data available through September 30, 2001.

** The annual mean reported here is based on data through September 30, 2001. The actual 3 year mean could change based on a complete data set for calendar year 2001.

*** 3rd quarter 2001 data do not meet EPA data completeness requirements.

2. 24-Hour PM–10 Standard

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average above 150 μg/m^3 is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number exceedances in each calendar year and then averaging them over the past three calendar years. This means that if a monitoring site has four or more observed or estimated exceedances in a three-year period then it is in violation of the 24-hour PM–10 NAAQS. Generally, if PM–10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR part 50, appendix K, § 3.1.

In spite of the lack of data for the fourth quarter in 2001, there are ten monitoring sites in the San Joaquin Valley that are in violation of the 24-hour PM–10 NAAQS. The following table shows the number of estimated exceedances at the 10 sites after adjusting for incomplete sampling. All of the sites listed in Table 2 operate on a one in six day schedule. Table 2 lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1999–2001 exceeds one.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Fresno East Drummond	8	0	6	4.7
Fresno First St	0	0	6	2

[1] The expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM–10 concentration for the past three calendar years. The procedure for calculating the annual arithmetic mean is discussed in 40 CFR part 50, appendix K, § 4.0.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *—Continued

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3	0	6	3
Corcoran	6	0	6	4
Hanford	0	0	6	2
Turlock	11	0	0	3.7
Modesto	0	0	6	2

* Data available through September 2001.

III. Summary of Proposed Action

A. Proposed Finding of Failure to Attain

EPA is proposing a finding that the San Joaquin Valley did not attain the annual or 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline as discussed above in Section II.

B. SIP Consequences

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, ''plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.'' Since the applicable attainment date was December 31, 2001, the deadline for the 5 percent plan will be December 31, 2002 if EPA's proposed finding of failure to attain is finalized.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this proposed 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 proposed rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's proposed action 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). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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. Because this proposed finding of failure to attain is a factual determination based on air quality considerations, 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 proposed 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, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–6271 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–066–7223; A–1–FRL–7158–3]

Full Approval of Operating Permit Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 13, 2001, EPA proposed to approve changes that the State of Connecticut made to its operating permit program that addressed issues identified in EPA's interim approval action in 1997. Today, EPA is proposing to approve all other changes the state has made to its operating permit program regulations since EPA granted interim approval on March 24, 1997. With the combination of the August 2001 proposal and this proposal, EPA is proposing to fully approve Connecticut's entire title V program. Even though the earlier proposal was limited to the program changes necessary to address interim approval issues, EPA received several comments on Connecticut's title V program that went beyond the interim approval issues. In a future rulemaking document, EPA will address all comments we receive as a result of this document, as well as any comments that we have already received on Connecticut's program that concern the state's title V program. Connecticut's operating permit program was created to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the state's jurisdiction.

DATES: Comments on this notice must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and other supporting documentation relevant to this action are available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.* and sections 7661–7661e), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

II. In 1995, What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (section 22a–174–33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut stating that the laws of the state provide adequate legal authority to carry out all aspects of the program, and a description of how the state would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of part 70.

III. What Was EPA's Action on Connecticut's 1995 Submittal and How Did Connecticut Respond?

EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA worked closely with the state to develop all of the rule changes necessary to address EPA's interim approval issues. Connecticut proposed for public comment regulatory amendments that addressed EPA's interim approval issues on July 17, 2001. Based on the state's proposal, EPA in parallel proposed to approve those amendments because they addressed the interim approval issues. EPA's August 13, 2001 (66 FR 42496) proposal discussed those interim approval issues and the state's proposed regulations to address them, and this notice will not repeat that discussion. EPA notes, however, that Connecticut did adopt final regulations addressing the interim approval issues that were consistent with the changes EPA proposed to approve, and EPA continues to propose to approve these elements of the state's program for the reasons stated in our August 2001 proposal.

IV. In 2002, What Did Connecticut Submit To Revise Its Title V Permit Program?

On January 11, 2002, Connecticut submitted regulatory amendments to its title V operating permit program. The amendments to the state's regulations not only addressed the interim approval issues, but included changes to the balance of the state's program, largely designed to clarify the program requirements EPA had already approved in 1997. EPA has reviewed the remaining amendments, which the state made throughout portions of R.C.S.A. sections 22a–174–1 (the general definitions for DEP's air regulations), 22a–174–2a (air permitting procedural requirements), and 22a–174–33 (title V operating permit program requirements). Aside from minor alterations throughout these sections to clarify the operation of the title V program, the most important changes Connecticut has made include a major restructuring of the permit processing and modification requirements, which moves those provisions from section 33 to section 2a. In addition, to clarify its rules, in several areas the state incorporated by reference important sections of part 70. We propose that these changes meet title V permit program requirements, and that Connecticut's program should be fully approved under part 70. (This notice will generally simply cite to the section in part 70 for references to 40 CFR part 70 and will cite to the relevant section in Connecticut's air pollution control

regulations for references to R.C.S.A. 22a–174.)

V. Explanation of Certain Provisions in Connecticut's Regulatory Amendments To Its Title V Program

EPA believes that the following amendments to Connecticut's Title V program merit detailed discussion in light of Title V, part 70, and Connecticut law.

1. Section 22a–174–2a(f)(2)(D) in Connecticut's rule provides that the state can use its ''permit revision'' process not only to increase the frequency of monitoring, but also to add ''additional monitoring'' to the permit. EPA has consulted with DEP concerning the meaning of this provision, and the Department agrees that the plain reading of this language is that it allows DEP to add monitoring in addition to the monitoring already provided for in the permit using what is equivalent to EPA's administrative amendment process in § 70.7(d). Importantly, DEP confirms that this provision may not be used to change or in any way alter any existing monitoring requirements already provided for in the permit terms and conditions. Furthermore, DEP agrees that any monitoring added using this provision would be ''additional'' in the sense that it is in addition to any monitoring that is already required to be in the permit under the Act, its applicable requirements, and part 70. Therefore, this provision cannot be used to add monitoring necessary to meet the monitoring requirements of an applicable requirement, of § 70.6(a)(3)(B) regarding periodic monitoring, or of § 70.6(c)(1) regarding monitoring sufficient to assure compliance with the permit. Essentially, monitoring added under section 22a–174–2a(f)(2)(D) will be above and beyond what is required in the Act where DEP concludes that such data would be useful. An example of the kind of use DEP expects to make of this provision would be: a municipal waste combustor has a permit with sufficient periodic monitoring consistent with applicable requirements, but the state and source agree that they want to try a novel and experimental continuous emissions monitor to track hazardous VOC emissions. Section 22a–174–2a(f)(2)(D) would allow DEP to authorize installation of the CEM expeditiously to try it out without any permit shield.

This provision does not correspond exactly to the types of administrative amendments already provided for in § 70.7(d)(1). But § 70.7(d)(1)(vi) allows EPA to approve other types of permit changes that can be processed as administrative amendments, provided EPA determines that the change is similar to the changes specifically listed in § 70.7(d)(1)(i)–(iv). EPA is proposing to use this authority to approve the ability for Connecticut to add ''additional monitoring'' to a title V permit, beyond the monitoring already provided for in the permit, using the state's ''permit revision'' process in section 22a–174–2a(f)(2)(D). EPA is relying on the fact that an existing permit will already contain monitoring which the public and EPA have had an opportunity to review and which must be consistent with the applicable requirements and Part 70's monitoring requirements. See sections 22a–174–33(j)(1)(K) and (L). Additionally, DEP cannot use this provision to affect monitoring that is required under the Act. EPA believes this type of change is similar to the type of changes listed in §§ 70.7(d)(1)(i)–(v) because it will not alter the requirements or stringency of the existing permit, it will generally increase the rigor of the compliance requirements in the permit, and it cannot affect monitoring requirements mandated under the Act. This very limited authority is similar to the concept of increasing the frequency of monitoring under § 70.7(d)(1)(iii), which allows monitoring to be adjusted in a way that will tend to increase its rigor and will not undercut the monitoring required to meet the Act's requirements. Therefore, EPA proposes to approve section 22a–174–2a(f)(2)(D) pursuant to § 70.7(d)(1)(vi) because it is similar in kind to types of changes in §§ 70.7(d)(1)(i)–(v).

2. Section 22a–174–2a(d)(4)(C) of Connecticut's regulations specifically requires the equivalent of a significant permit modification procedure under § 70.7(e)(4) (a ''non-minor modification'' as denominated in section 22a–174–2a(d)) to ''relax the form or type of or any reduction in the frequency of any monitoring, reporting or recordkeeping required by the title V permit.'' This provision is not identical to the requirement in § 70.7(e)(4) that ''every significant change in existing monitoring'' must undergo the significant permit modification procedure. It could be unclear, for example, how one must process a significant change in monitoring that has an indeterminate effect on the rigor of the permit, i.e. which may or may not ''relax'' the monitoring. Nonetheless, EPA interprets section 2a to mean that all significant monitoring changes must go through the ''non-minor modification'' process, and Connecticut agrees with EPA's interpretation. Section 22a–174–2a(e)(2)(B), a provision of Connecticut's ''minor permit modification'' regulations, excludes any significant change to monitoring from the minor permit modification track, by way of incorporating the exclusions in EPA's rule, including § 70.7(e)(2)(i)(A)(2). It is equally clear that significant changes in monitoring do not qualify for the administrative amendment track, or a ''permit revision'' under section 22a–174–2a(f) of Connecticut's rule. Pursuant to section 22a–174–2a(d)(4)(D), any change that does not qualify under the other permit modification tracks must be made using significant modification procedures under the ''non-minor modification'' track of 22a–174–2a(d). Therefore, section 22a–174–2a handles significant changes in monitoring consistent with § 70.7(e)(4).

3. Connecticut's provision for administrative permit amendments, or ''permit revisions'' under section 22a–174–2a(f), includes ''a fuel conversion described in section 22a–174–3a(a)(A)(iv) or (v)'' in the list of changes that can be made administratively. Section 22a–174–2a(f)(2)(G). [1] This cross reference is to a provision in the state's revised new source review program that exempts from preconstruction permitting certain limited conversions from oil to natural gas or from residual oil to distillate oil. While it is expected that these conversions to cleaner fuels will generally result in beneficial emissions reductions, on the face of the regulation this exemption allows for actual emissions increases of up to fifteen tons per year. As a result, it is difficult to reconcile the terms of this fuel conversion provision with the sort of administrative amendment changes provided for in § 70.7(d)(1), which are designed to have no emissions impact. However, another provision of Connecticut's regulations, section 22a–174–2a(e)(2), requires these fuel conversions to undergo a minor permit modification. Specifically, section 22a–174–2a(e)(2)(A) allows only those changes covered by ''2a(f)(2)(A) through (F), inclusive'' to avoid a minor permit modification, with no reference to section 2a(f)(2)(G). Therefore, the fuel conversions provided for in section 22a–174–2a(f)(2)(G) are captured as minor permit amendments, not administrative amendments, which is consistent with §§ 70.7(d) and (e)(2).

4. Connecticut's definition of ''applicable requirements'' at section 22a–174–33(a)(2) does not include a

[1] It appears that the cross reference is probably intended to read ''section 22a–174–3a(a)(A)(iii) or (iv).''

reference to the national ambient air quality standards as they would apply to temporary sources, as provided for in § 70.2. See ''applicable requirement,'' clause (12). Connecticut's program is nevertheless consistent with part 70 and the Act because the state does not permit temporary sources under its section 33 regulation. Section 504(e) of the Act allows, but does not require, states to issue a single permit authorizing emissions from similar operations at multiple temporary locations. Connecticut has chosen not to implement this provision. Section 22a–174–33(c)(1) requires that ''every Title V source'' apply for a permit. Section 22a–174–33(a)(10) defines a Title V source to be at a ''premises.'' Section 22a–174–1(88) defines ''premises'' to be the ''grouping of all stationary sources *at any one location*'' (emphasis added). Having required a source to receive a section 33 permit for any one location, Connecticut lacks the authority to permit temporary sources at multiple locations pursuant to section 504(e) of the Act. Accordingly, Connecticut is not required to address ambient standards as an applicable requirement under section 22a–174–33 for temporary sources at multiple locations.

5. Section 22a–174–33(j)(1)(I) is the provision in Connecticut's program designed to implement § 70.6(a)(1)(iii) of EPA's regulation, providing for a title V permit to establish alternative emission limits to the extent allowed in the underlying implementation plan. The previous version of Connecticut's regulation provided for the title V permit to address ''allowable alternative emission limits,'' which was consistent on its face with the requirement that these alternative limits must be allowed in the underlying applicable requirement. The new version of this section provides for the permit to address ''alternative emission limits or means of compliance *allowed by the Commissioner*'' (emphasis added). This new formulation creates the unintended implication that Connecticut is providing the Commissioner with broad discretion to use the title V permit to fashion alternative limits, even where they are not provided for in the underlying implementation plan. Connecticut did not intend this language change to create such discretion, and the surrounding provisions in section 22a–174–33 make this clear. Section 22a–174–33(j)(1)(H) requires each permit to impose the terms of each applicable requirement to each emission unit, and section 22a–174–33(j)(1)(J) requires all alternative operating scenarios to meet all applicable requirements. Nothing in section 22a–174–33(j)(1)(I) waives these requirements that a permit must impose the applicable requirements, and Connecticut agrees that alternative emission limits addressed under 22a–174–33(j)(1)(I) must be allowed under the applicable requirements. Therefore, this section is consistent with § 70.6(a)(1)(iii).

6. In section 22a–174–2a(f)(2)(F) the state incorporates § 70.7(d)(1)(v) which allows Connecticut to add the terms of a new source review permit to the title V permit using the state's permit revision (or administrative amendment) track if the new source review permit program meets procedural requirements substantially equivalent to §§ 70.7 and 70.8 and permit content requirements substantially equivalent to § 70.6. Connecticut's new source review program does not currently meet the requirements of §§ 70.6, 70.7 and 70.8. Therefore, the state cannot incorporate new source review permits into a title V permit using its permit revision track. EPA understands that section 22a–174–2a(f)(2)(F) is essentially a place-holder that would allow the state to bring a new source review permit onto the title V permit administratively in the event Connecticut augments its new source review regulation to incorporate the relevant part 70 procedural and substantive requirements. Connecticut agrees with this understanding and with the limitation on its authority under section 22a–174–2a(f)(2)(F).

VI. Proposed Action and Opportunity to Comment

EPA is proposing to approve the balance of the changes Connecticut has made to its title V operating permit program, along with those changes already discussed in our August 2001 notice. Interested members of the public may comment on those changes, as described above. Note that most of the comments EPA received in response to our August 2001 proposal concerning the interim approval issues included comments addressing the entirety of Connecticut's title V program changes. EPA will be responding to all those comments when we take final action on the August 2001 proposal and this proposal. The public need not resubmit comments already made in response to our August 2001 proposal.

In particular, EPA solicits comments from the State of Connecticut. In this proposal, EPA has interpreted various Connecticut regulations in a manner that EPA believes to be most consistent with the Act and part 70. If Connecticut disagrees with or wishes to support EPA's interpretations, EPA encourages the state to comment during the public comment period so that EPA may respond when we take final action on this proposal and the August 2001 proposal.

VII. 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 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 permit program 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 clear authority to

disapprove a permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a permit program submission, to use VCS in place of a program 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 70

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

Dated: March 6, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–6273 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7153–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or ''delist'') certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's proposed rule proposes to grant DOE–SR's petition to delist its F006 and F028 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until April 29, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by April 1, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Caolina 29801, and one copy to Shelly Sherritt, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Identify your comments at the top with this regulatory docket number: R4–01–02–DOESRSP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8190; South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Carolina 29801, Myra C. Reece, Director, Phone: (803) 641–7670; and DOE Public Reading Room, Gregg-Graniteville Library, University of South Carolina at Aiken, 171 University Parkway, Aiken, South Carolina 29801, Phone: (803) 641–3465.

The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Lower Savannah District Environmental Quality Control Office of the South Carolina Department of Health and Environmental Control is located a block north of U.S. Highway 78 on Beaufort Street (State Road 118) which is near the eastern boundary of Aiken. The University of South Carolina at Aiken is located on University Parkway (also State Road 118), on northwest boundary of Aiken, between Interstate Highway 20 and U.S. Highway

78 and about a half-mile west of State Road 19.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
B. How did EPA Evaluate this Petition?
1. What is the EPACML model that EPA used in the past for determining delisting levels?
2. What is the DRAS that uses the newer EPACMTP model to calculate not only delisting levels, but also to evaluate the effects of the waste on human health and the environment?
3. Why is the EPACMTP an improvement over the EPACML?
4. Where can technical details on the EPACMTP be found?
5. What methods is EPA proposing to use to determine delisting levels for this petitioned waste?
II. Disposition of Delisting Petition
A. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina
B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?
C. How Did EPA Use the Multiple Extraction Procedure (MEP) to Evaluate This Delisting Petition?
D. Conclusion
III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?
IV. State Authorization
A Statutory Authority
B. Effect on State Authorization
V. Effective Date
VI. Administrative Assessments
A. Executive Order 12866
B. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 *et. seq.*
C. Unfunded Mandates Reform Act
D. Federalism—Applicability of Executive Order 13132
E. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
F. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
G. National Technology Transfer Advancement Act of 1995
H. Executive Order 12898
I. Executive Order 13211 (Energy Effects)
J. Paperwork Reduction Act

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in Sec. 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006 and F028. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the Newer EPACMTP Model To Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a newer model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of DOE–SR's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Register**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. DOE–SR's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide,* Office of Solid Waste, U. S. EPA, Washington, D.C., September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors,* U. S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist DOE–SR's F006 and F028 waste, DOE–SR must meet the delisting levels and dispose of the waste

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm

3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm

4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills,* Westat, 1987.

in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. Because of its radioactivity, DOE–SR's waste when delisted must be disposed in a low-level radioactive landfill in accordance with the Atomic Energy Act.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML. The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide,* Office of Solid Waste, U. S. EPA, Washington, D.C., September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov.*

The EPACML accounts for: one-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations.

The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

DOE–SR submitted to the EPA analytical data from its Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste consists of treated F006 and F027 waste from the M–Area of SRS, where nuclear reactor components were produced. The M–Area waste was treated by vitrification and DOE–SR petitioned EPA to delist the vitrified waste treatment residue, classified as F006 and F028, because it was derived from the treatment of F006 and F027 waste. DOE–SR's petitioned waste also included a small volume of non-vitrified waste treatment residue consisting of cementitious treatability samples (EPA Hazardous Waste No. F006). DOE–SR's delisting petition is based on analytical results for untreated waste, laboratory scale treatability studies, pilot scale testing, and testing of the vitrified waste from the full-scale vitrification unit. A summary of analytical data is presented in Table 2 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and vitrification feed materials that DOE–SR submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for DOE–SR's petitioned waste.

EPA also requests comment on three additional methods of evaluating DOE–SR's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[4] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) comparing total concentrations of constituents in the waste to the results obtained by DRAS for total concentrations; and (3) comparing concentrations of constituents in the waste and waste leachate to the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for DOE–SR's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; *Barium:* 21 mg/l TCLP; *Beryllium:* 1.22 mg/l TCLP;

Cadmium: 0.11 mg/l TCLP; *Chromium:* 0.60 mg/l TCLP; *Lead:* 0.75 mg/l TCLP;

Nickel: 11 mg/l TCLP; *Silver:* 0.14 mg/l TCLP; and *Acetonitrile:* 38 mg/kg.

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina

DOE–SR is seeking a delisting for vitrified radioactive mixed waste (RMW) generated at the Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste meets the listing definitions of F006 and F028 in Section 261.31 [5] and was generated by vitrification treatment of F006 and F027 [6] waste from the SRS M-Area where nuclear reactor components were produced. The petitioned waste also includes a small volume of non-vitrified waste which consists of cementitious treatability samples (EPA Hazardous Waste No. F006).

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude this F006 and F028 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern [7] for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). F028 was listed for tetra-, penta-, and hexachlorodibenzo-*p*-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts. DOE–SR petitioned the EPA to exclude its F028 waste (generated from thermal treatment of F027 waste) and F006 waste because DOE–SR believes that the petitioned waste does not meet the criteria for which the waste was listed. DOE–SR claims that its F006 and F028 waste will not be hazardous because the constituents of concern for which F006 and F028 are listed are either not present or present only at such low concentrations that the waste does not meet the criteria in Section 261.11(a)(3) for listing a waste as hazardous. DOE–SR also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous [8]). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of DOE–SR's petition.

In support of its petition, DOE–SR submitted: (1) Descriptions [9] of the waste streams that contributed to the petitioned waste, the areas where the contributing waste streams were generated, and the vitrification treatment process that generated the petitioned waste; (2) Material Safety Data Sheets (MSDSs) for all chemicals used in processes that generated the waste streams from which the petitioned waste was derived and the vitrification process that generated the petitioned waste; (3) the total volume of petitioned waste generated; (4) results of analysis of untreated waste and the petitioned waste for all constituents in Appendix VIII of 40 CFR part 261 or Appendix IX of part 264; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from the petitioned waste and historical results obtained by the Extraction Procedure Toxicity leaching method ((EPTox), SW–846 Method 1310); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; and (7) results of the MEP analysis of the petitioned waste.

The SRS vitrification unit treated all of the M-Area waste streams from October 1996 through March 22, 1999, pursuant to the Land Disposal Restrictions—Federal Facility Compliance Agreement (LDR–FFCA) of March 13, 1991, between EPA and DOE. Forty-four batches, a total of 2,960 metric tons, of M-Area waste streams were treated.[10] The LDR–FFCA required that the treatment residue meet LDR treatment standards. The petitioned waste is this treatment residue and, except for a small volume of cementitious treatability samples is the glass that formed after cooling and shaping molten glass made from the M-Area waste streams and glass-making additives. The vitrification unit, called the Vendor Treatment Facility (VTF) Melter, was an electric joule-heated glass melter, with a capacity of 5 to 6 tons per day, which maintained the molten glass at 1150°C for an average of 4 to 5 days. The total amount of vitrified waste generated was 538 cubic yards, classified as F006 and F028 because it was derived from F006 and F027 M-Area waste streams. Table 1 presents a summary of the M-Area waste streams and their generation dates.

In addition to the vitrified waste, the DOE–SR requested the delisting of a small volume of cementitious treatability samples (EPA Hazardous

[4] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

[5] F006: ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.''

F028: ''Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027.''

[6] F027: ''Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-tri-chlorophenol as the sole component.)'

[7] The hazardous constituents of concern for every listed waste are in *Appendix VII to Part 261—Basis for Listing Hazardous Waste.*

[8] Note that the waste remains subject to the Atomic Energy Act because of its radioactivity.

[9] Detailed descriptions may be found in the DOE–SR's Approved Site Treatment Plan (1996), developed pursuant to the Federal Facility Compliance Act of 1992.

[10] The RCRA Docket, R4–01–02–DOESRSP, for today's proposed rule contains the letter, dated June 15, 1999, to David E. Wilson from J. V. Odum, which documents the treatment of the petitioned waste to LDR treatment standards.

Waste No. F006). These samples were generated during treatability studies on stabilization conducted by the Savannah River Technology Center (between 1988–1991), and amounted to a total of 24 gallons (approximately 0.12 cubic yards). Analytical data were presented in the delisting petition which indicated that concentrations of hazardous constituents in these cementitious treatability samples were well below levels of concern. DOE–SR reported that these treatability samples might have been size reduced and vitrified in the VTF melter, but VTF operations personnel were concerned that the size reduced samples might not dissolve in the molten glass, and might plug the discharge ports. Therefore, the 0.12 cubic yard of cementitious treatability samples was not vitrified, but was included in the delisting petition (Section 2.1.5.2) as a separate waste stream in addition to the 538 cubic yards of vitrified M-Area wastes.

TABLE 1.—M-AREA WASTE STREAMS OF SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA

Stream name	Stream designation in site treatment plan	EPA hazardous waste number (waste code) for listed waste	Dates generated
Plating Line Sludge from Supernate Treatment.	W–004	F006	June 1990–Apr. 1995.
Mark 15 Filter Cake	W–005	F006	Apr. 1983–July 1983.
Sludge Treatability Samples (glass and cementitious).	W–029	F006	1988–1994.
Uranium/Chromium Solution	W–031	Not listed, but hazardous by characteristic	1990–1992.
High Nickel Plating Line Sludge	W–037	F006	June 1985–Sept. 1988.
Plating Line Sump Material	W–038	Not listed, but hazardous by characteristic	Oct. 1988.
Nickel Plating Line	W–039	Not listed, but hazardous by characteristic	Feb. 1992.
Soils from Spill Remediation and Sampling Programs.	W–048	Not listed, but hazardous by characteristic	1983–1985.
Uranium/Lead Solution	W–054	Not listed, but hazardous by characteristic	1986–1988.
Soils from Chemicals, Metals, and Pesticides Pits Excavation.	W–082	F027	1984.
Dilute Effluent Treatment Facility (DETF) Filtercake from VTF off-gas condensate.	Not Applicable	F006	1996–1999.

Table 1B below summarizes the hazardous constituents and their concentrations in DOE–SR's petitioned waste.

TABLE 1B.—SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA: PROFILE OF VITRIFIED M-AREA WASTE

Parameters [1]	1 2	2 10	3 15	4 21	5 26	6 33	7 39	8 44	Maximum [3]	Mean	Standard deviation	Coefficient of variation (%)
Metals												
Arsenic [2] (mg/kg)	2.37	4.84	2.01	2.42	2.54	2.09	1.81	1.52	4.84	2.45	1.02	41.8
Arsenic—TCLP	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	NA	NA	NA
Barium (mg/kg)	79.6	116	101	127	104	83.3	85.3	101	127	99.6	16.5	16.6
Barium—TCLP	0.018J	0.010J	0.013J	0.011J	0.009J	0.010J	0.0083J	0.0082J	0.018J	0.011	0.0032	30
Beryllium (mg/kg)	0.52	0.73	0.67	0.82	0.65	0.52	0.56	1.0	1.0	0.68	0.16	24
Beryllium—TCLP	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0008J	0.0008J	NA	NA	NA
Cadmium (mg/kg)	1.3	2.0	1.0	1.2	2.1	1.8	2.4	1.1	2.4	1.6	0.53	33
Cadmium—TCLP	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.0008J	NA	NA	NA
Chromi-um (mg/kg)	293	401	131	163	224	218	443	449	449	290	126	43.6
Chromi-um—TCLP	0.18J	0.007J	0.007J	0.006U	0.006J	0.010J	0.010J	0.015J	0.18J	0.030	0.061	200
Lead (mg/kg)	53.5	74.9	59.2	99.2	94.0	61.5	76.0	33.6	99.2	69.0	21.6	31.3
Lead—TCLP	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	NA	NA	NA	NA
Nickel (mg/kg)	4,450	6,270	3,990	6,130	9,800	6,420	8,680	1,540	9,800	5,910	2,620	44.4
Nickel—TCLP	0.32	0.19	0.41	0.37	0.35	0.34	0.46	0.072	0.46	0.31	0.12	40
Silver (mg/kg)	7.4	11.5	5.3	6.0	10.2	10.2	8.3	1.5	11.5	7.55	3.26	43.2
Silver—TCLP	0.010J	0.011J	0.014J	0.012J	0.015J	0.013J	0.016J	0.017J	0.017J	0.014	0.0024	18
Organics												
Aceto-nitrile (μg/kg)	8.8J	3.70J	9.60J	5.70J	8.54J	9.85J	9.4J	6.2J	9.85J	7.7	2.2	29
Aceto-nitrile-TCLP									NA	NA	NA	NA
Non-Metal Inorganics												
Fluoride	0.20U	0.24U	0.23U	0.45J	0.19U	0.270J	0.20U	0.23J	0.45J	0.25	0.084	35

Notes to Table 1B:

[1] Parameters are the chemicals or properties analyzed.

[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg) for metals and micrograms per kilogram (μg/kg) for organics. ''Total analysis'' means analysis of unextracted waste. The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by ''—TCLP.'' U = Not detected above the method detection limit, which is the value preceding the U. J = Detected at a concentration greater than the detection limit but less than the reporting limit.—= not analyzed. The metals, antimony, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Acetonitrile was the only organic compound detected and is the only organic compound included in the table. Acetonitrile was not detected above the laboratory reporting limit. Columns 2 through 9 in the table heading contain sample identification numbers. The samples were composite samples for total analysis and grab samples for TCLP from one or more of the VTF batches associated with the composite sample. The top numbers in Columns 2 through 9 are composite sample numbers and the bottom numbers are TCLP grab sample numbers that identify a VTF batch number that was grab-sampled for TCLP. Sampling and analysis details are in Sections 4 and 5 of the petition.

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean) divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

EPA concluded after reviewing DOE–SR's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in DOE–SR's petitioned waste. In addition, on the basis of test results and other information provided by DOE–SR, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of DOE–SR's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from DOE–SR's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of DOE–SR's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at low-level radioactive waste landfills can effectively control runoff. DOE–SR plans to dispose the petitioned waste at the bottom of a 30 foot deep burial trench, so it does not anticipate that runoff from rainwater will directly contact the disposed waste. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Compliance with Atomic Energy Act requirements would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. The input values required by DRAS were the chemical constituents in DOE–SR's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (Values in Table 1B, Preamble Section II.A.); the maximum one-time volume to be land-disposed (538 cubic yards); the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents in the waste are arsenic, beryllium, and cadmium. Beryllium and cadmium also have non-carcinogenic toxic effects. Allowable concentrations in the TCLP leachate of the waste, as calculated by DRAS, are higher than the Toxicity Characteristic (TC) levels for all TC constituents except arsenic. Therefore, the delisting levels for all TC constituents except arsenic are capped at the TC regulatory level. The maximum TCLP concentrations found by DOE–SRS for the petitioned waste are all well below the TC levels and are also below the Universal Treatment Standards (UTS) of the Land Disposal Restrictions (LDR). All total concentrations reported for the unextracted petitioned waste are also many orders of magnitude below the DRAS-calculated total levels. The maximum reported total concentrations for DOE–SR's petitioned waste were all below the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead-200; Nickel-10,000; Silver-20; Acetonitrile-1.0, and Fluoride-1.0

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Arsenic	0.0649	1,330	3.47×10^{-7}	
Barium	5,070*; 3,860 Based on MCL	1,930		566×10^{-6}.
Beryllium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation 28.8 Based on MCL.	7.21×10^{3}	2.13×10^{-11}	
Beryllium (Non-Carcinogenic Effect).	541 28.8 Based on MCL	7.21×10^{3}		2.16×10^{-6}.
Cadmium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 10.4 Based on MCL.	2,080	4.17×10^{-15}	
Cadmium (Non-Carcinogenic Effect).	39* 10.4 Based on MCL	2,080		1.15×10^{-4}.
Chromium (Hexavalent; Carcinogenic Effect).	Not Enough Information: Effect Based on Inhalation; 107 Based on MCL.	1,070	5.30×10^{-12}	
Chromium (Not Hexavalent; Non-Carcinogenic Effect).	1.50×10^{7}*, 2.67×10^{4} Based on MCL.	2.67×10^{5}		5.48×10^{-7}.

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE—Continued

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Lead	5,200*	3.46×10^{5}		Not Enough Information: There is No Reference Dose for Lead.
Nickel	1.960	2,610		5.64×10^{-4}.
Silver	266*	1420		3.71×10^{-5}.
Fluoride	Not Enough Information; 4,990 Based on MCL.	1,250		Not Enough Information.
Acetonitrile	847	1,320		6.00×10^{-7}.
total Hazard Quotient for All Waste Constituents.				1.09×10^{-3}.
Total Carcinogenic Risk for the Waste (due to Arsenic, Beryllium, Cadmium, and Hexavalent Chromium)).			3.48×10^{-7}	

*These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; 5.0 for Lead; and 5.0 for Silver. MCL = Maximum Contaminant Level of National Primary Drinking Water Standards.

C. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The synthetic acid rain extraction fluid was developed to determine the effect of ''natural'' acid rain on a hazardous waste inappropriately disposed, i.e., directly exposed to rainfall. The standard TCLP extraction fluid was developed to simulate the leaching of a hazardous waste disposed in a landfill, with the simulated extractant having a pH of 4.93. During the MEP test, the original sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these synthetic acid rain extractions would simulate approximately 1,000 years of rainfall. (See 47 *FR* 52687, Nov. 22, 1982.) 1982.) DOE–SR modified the MEP procedure for the petitioned waste by using the TCLP extraction fluid with pH = 4.93 for all the extractions, instead of using the synthetic acid rain for the nine extractions following the initial TCLP extraction. DOE–SR believed that the TCLP would represent more accurately the long term leaching from the SRS low-level radioactive waste landfill in which the waste would not be exposed to direct rainfall leaching. Table 3 below presents the results of analysis of modified MEP extracts.

The modified MEP data in Table 3 indicate that the petitioned waste would be expected to leach metals at low and decreasing concentrations for a period of at least 100 years, and much less than 10 per cent of the total amount of metal in the waste would leach during this time period.[11] The average life of a landfill is approximately 20 years. (See 56 *FR* 32993, July 18, 1991; and 56 *FR* 67197, Dec. 30, 1991.)

TABLE 3.—MULTIPLE EXTRACTION PROCEDURE (MODIFIED SW–846 METHOD 1320) RESULTS FOR DOE–SR'S PETITIONED WASTE

Extract No.	Nickel (Ni) concentration (mg/1 TCLP)
1 (Initial TCLP)	0.46
2 (First TCLP extraction of the modified MEP)	0.33
3	0.34
4	0.29

[11] This estimate is based on the following calculation for nickel: % nickel leached out over more than 100 years=100×(total number of milligrams of nickel in all of the 2-liter sample MEP extracts)÷the number of milligrams of nickel in the 100-gram sample that was extracted by the MEP: $100 \times 2 \times (0.46 + 0.33 + 0.34 + 0.29 + 0.32 + 0.30 + 0.31 + 0.31 + 0.33 + 0.33) \div 954 = 100 \times 6.64 \div 954 = 0.70\%$.

TABLE 3.—MULTIPLE EXTRACTION PROCEDURE (MODIFIED SW–846 METHOD 1320) RESULTS FOR DOE–SR'S PETITIONED WASTE—Continued

Extract No.	Nickel (Ni) concentration (mg/1 TCLP)
5	0.32
6	0.30
7	0.31
8	0.31
9	0.33
10 (Ninth TCLP extraction of the modified MEP)	0.33

D. Conclusion

After reviewing DOE-SR's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in DOE-SR's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that DOE-SR's petitioned waste will not harm human health and the environment when disposed in a low-level radioactive waste landfill.

EPA proposes to exclude DOE-SR's petitioned waste from being listed as F006 and F028, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that DOE-SR's petitioned waste must be disposed in accordance with the Atomic Energy Act. If the proposed rule

becomes effective, the exclusion will be valid if the petitioner disposes of the waste in a low-level radioactive waste landfill in accordance with the Atomic Energy Act, as required by the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves the disposal method, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA and a low-level radioactive waste under the Atomic Energy Act. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management and low-level radioactive waste regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to verify reported analytical data.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, SRS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. State Authorization

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's proposal would be promulgated pursuant to HSWA authority, and contains provisions that are less stringent than the current Federal program. The proposed exclusion for DOE–SR's petitioned waste would be less stringent. Consequently, States would not be required to adopt the proposed exclusion, if it becomes final, as a condition of authorization of their hazardous waste programs.

V. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866. This proposed rule is not a ''significant regulatory action,'' because it applies to a single facility.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule is de-regulatory in nature, and, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility.

Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 must prepare a written analysis, 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. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

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 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 will not significantly or uniquely affect small governments. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. There are no information collection requirements for this proposed rule that require an ICR. Furthermore, only one facility is affected by this proposal. 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.

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB Control Number 2050–0053.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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 proposed 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, as specified in Executive Order 13175. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 *FR* 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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 proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. 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 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).

Today's proposed rule pertains to treated waste at a single facility. EPA does not believe this petitioned waste would pose a risk to any community, whether minority, low-income, middle-income, non-minority, or affluent. The petitioned waste, if excluded from regulation as a hazardous waste under RCRA, must comply with the Atomic Energy Act and all federal, state, and local solid waste regulations. Therefore, this proposed rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

We encourage all stakeholders including members of the environmental justice community and members of the regulated community to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

I. Executive Order 13211 (Energy Effects)

This proposal is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposal will not have any adverse energy effects. It is a de-regulatory proposal that will affect a single facility.

J. Federalism—Applicability of Executive Order 13132

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.''

Today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 27, 2002.

Jewell Harper,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under Secs. 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Savannah River Site (SRS)	Aiken, South Carolina	Vitrified waste (EPA Hazardous Waste Nos. F006 South and F028) that the United States Department of Energy Savannah River Operations Office (DOE–SR) generated by treating the following waste streams from the M-Area of the Savannah River Site (SRS) in Aiken, South Carolina, as designated in the SRS Site Treatment Plan: W–004, Plating Line Sludge from Supernate Treatment; W–995, Mark 15 Filter Cake; W–029, Sludge Treatability Samples (glass and cementitious); W–031, Uranium/Chromium Solution; W–037, High Nickel Plating Line Sludge; W–038, Plating Line Sump Material; W–039, Nickel Plating Line Solution; W–048, Soils from Spill Remediation and Sampling Programs; W–054, Uranium/Lead Solution; W–082, Soils from Chemicals, Metals, and Pesticides Pits Excavation; and Dilute Effluent Treatment Facility (DETF) Filtercake (no Site Treatment Plan code). This is a one-time exclusion for 538 cubic yards of waste (hereinafter referred to as ''DOE–SR Vitrified Waste'') that was generated from 1996 through 1999 and 0.12 cubic yard of cementitious treatability samples (hereinafter referred to as ''CTS'') generated from 1988 through 1991 (EPA Hazardous Waste No. F006). The one-time exclusion for these wastes is contingent on their being disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act, after [insert date of final rule.] DOE–SR has demonstrated that concentrations of toxic constituents in the DOE–SR Vitrified Waste and CTS do not exceed the following levels. (1) *TCLP Concentrations:* All leachable concentrations for these metals did not exceed the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS): (mg/l TCLP): Arsenic-5.0; Barium-21; Beryllium-1.22; Cadmium-0.11; Chromium-0.60; Lead-0.75; Nickel-11; and Silver-0.14. In addition, none of the metals in the DOE–SR Vitrified Waste exceeded the allowable delisting levels of the EPA, Region 6 Delisting Risk Assessment Software (DRAS): (mg/l TCLP): Arsenic-0.0649; Barium-100.0; Beryllium-0.40; Cadmium-1.0; Chromium-5.0; Lead-5.0; Nickel-10.0; and Silver-5.0. These metal concentrations were measured in the waste leachate obtained by the method specified in 40 CFR 261.24. *Total Concentrations in Unextracted Waste:* The total concentrations in the DOE–SR Vitrified Waste, not the waste leachate, did not exceed the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead- 200; Nickel-10,000; Silver-20; Acetonitrile-1.0, which is below the LDR UTS of 38 mg/kg; and Fluoride-1.0

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Data Records:* Records of analytical data for the petitioned waste must be maintained by DOE–SR for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be maintained with a signed copy of the certification statement in 40 CFR 260.22(i)(12). (3) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, DOE–SR possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent is identified at a level higher than the delisting level allowed by EPA in granting the petition, DOE–SR must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (3)(A) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If EPA determines that the reported information does require Agency action, EPA will notify the facility. The notice shall include a statement of the proposed action and a statement providing DOE–SR with an opportunity to present information as to why the proposed action is not necessary. DOE–SR shall have 10 days from the date of EPA's notice to present such information.(E) Following the receipt of information from DOE–SR, as described in paragraph (3)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (3)(A) or (3)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (4) *Notification Requirements:* DOE–SR must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

[FR Doc. 02–6153 Filed 3–14–02; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. 98–030–3]

RIN 0579–AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: We are proposing additional changes related to an earlier proposed rule to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This supplemental proposed rule concerns the use of radiation indicators on packaging of irradiated articles and additional provisions for monitoring foreign irradiation facilities.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 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. 98–030–3, 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. 98–030–3. 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. 98–030–3'' 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: For general information on program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799. For information on technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113–34125, Docket No. 98–030–1), we proposed a framework for the use of irradiation as a phytosanitary treatment for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98–030–2). We received 2,212 comments by the end of the comment period, including many form letters and form postcards.

Several of those comments suggested that the proposed rule establish certain requirements not included in the proposal. We are publishing this supplemental proposed rule to allow an opportunity for public comment on these issues that were not included in the earlier proposed rule. After evaluating any comments received on this supplemental proposal, we will publish a final rule addressing comments received on both the earlier proposed rule and this supplemental proposed rule.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign facilities where treatments are conducted is crucial to ensure that treatments are safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested that the activities that foreign plant protection services would conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

Furthermore, commenters suggested that APHIS should develop documentation to demonstrate that the requirements APHIS imposes for importation of irradiated articles are consistent from country to country, and are consistent with the requirements other countries apply to imported irradiated articles, in accordance with the equivalence principle of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. They suggested that, in addition to establishing the level of monitoring required at individual foreign irradiation facilities, APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country.

We agree with these comments, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent

monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (*e.g.*, importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff).

We also agree that the activities of foreign plant protection services with regard to irradiation facilities in their countries in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS. We further agree that, in support of the equivalence principle, APHIS and each foreign plant protection service should sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

We propose to revise the monitoring section of the proposed rule, § 305.2(f), published on May 26, 2000, at 65 FR 49770, to allow APHIS to provide an appropriate level of monitoring at irradiation facilities, depending on the situations in different countries, to require that APHIS and foreign plant protection services sign work plans, and to establish trust fund agreements with national plant protection organizations to reimburse APHIS expenses. The new proposed paragraph (f) would read as follows:

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation treatment operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables into that country;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

Much of this language is similar to the language already contained in APHIS regulations for programs where it has been necessary to establish trust fund agreements with foreign plant protection services to reimburse APHIS for inspection and monitoring activities necessary to allow importation of fruits and vegetables into the United States.

Indicators and Tests To Identify Irradiated Fruit

Several commenters suggested that we should require that, prior to treatment, irradiation indicators be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard, and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several inexpensive devices and dye-impregnated labels that react to radiation at various doses in the 100–250 gray range. Such tools could aid Federal and State inspectors who may find live larvae in shipments where the accompanying paperwork claims the shipment was irradiated.

We agree that carton indicators could be a useful enforcement tool. They could not serve as primary documentation that articles have been irradiated in accordance with the regulations, because such indicators are not as sensitive or accurate as the dosimetry systems required by the regulations, and because it would be relatively easy to produce fraudulent indicators (*e.g.*, by subjecting a large number of indicators to irradiation and then attaching them to cartons that have not been irradiated). However, we believe that such indicators can be useful when used in conjunction with the other documentation and system controls required by the regulations. In particular, they can be a useful ''cross check'' when personnel at irradiation facilities are distinguishing irradiated cartons from non-irradiated cartons, and when inspectors at ports of entry are correlating the required import documents with the cartons referred to in the documents.

Therefore, we propose to add additional language to § 305.2(g)(1) of

the proposed rule published on May 26, 2000, at 65 FR 49770, to state that ''each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.''

Executive Order 12866 and Regulatory Flexibility Act

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

This action supplements a proposed rule published in the **Federal Register** on May 26, 2000, that proposed to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The economic analysis for the earlier proposed rule was set forth in that proposed rule. It included a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The economic effects of this supplemental proposed rule lie in two areas: The establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries and the requirement for radiation indicators to be attached to cartons holding irradiated articles.

Trust Fund Agreements

APHIS proposes that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement would be to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States to cover the costs. In this sense, the trust fund requirement would have an adverse differential effect on foreign producers relative to domestic producers. However, the cost of the trust fund agreement for APHIS services could be distributed among many foreign producers treating a large volume of products, and would probably result in a price increase for imported articles of only a few cents per pound. Therefore, trust fund agreement costs are expected to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

Irradiated Carton Indicators

APHIS proposes that indicators be put on cartons to show that irradiation has taken place. Prototypes that have already been developed are based on dosimeter technology, but are much less expensive to manufacture than dosimeters because no precise measurement is involved, only an indication that irradiation has occurred.

A phosphor-based technology for irradiation indication produces an invisible fluorescence that can be easily detected by an inexpensive hand-held ''light-pen'' reader. According to the manufacturer, a ''light-pen'' reader can be thought of as a hand-held product similar to a common barcode reader. When the indicator has received a dose above 100 Gy, the hand held ''light-pen'' reader will activate a signal, such as an audible beep or a light. The indicator is able to be read easily and inexpensively.

Indicators could also be incorporated into a white-on-white bar code that would only become apparent (darkened background) after irradiation. Bar code information could record lot number or other marketing information that could prove useful in tracing a carton back to its source. As a safeguard against repeated use of the same indicator, they could be applied with one-time-only adhesive. Or, as an alternative, an indicator might not provide any visual indication at all that the carton has been irradiated, thereby reducing any chance of counterfeited indicators.

The manufacturer expects to be able to produce indicators in large quantities at a low unit cost—pennies per indicator—with a reader cost comparable to that of hand-held barcode readers. The cost of the indicators, once they are produced in volume, would be negligible compared to the value of the produce shipped, and would add at most a few cents per pound to the retail price of the irradiated fruits and vegetables.

Costs and Benefits

As discussed above, the proposed trust fund and carton indicator requirements contained in this supplemental proposed rule involve moderate costs distributed among many importers, with an end result of an increase of a few cents per pound in the retail price of irradiated articles. The benefits of the proposed changes accrue because the proposed changes would increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated, either because trust fund agreements to monitor treatments were not in effect, or because carton indicators were not employed as a monitoring tool. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements and indicators over several years.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. In this case, entities that would be most affected by the proposed rule are the operators of foreign irradiation facilities. Under the Small Business Administration's Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning), a firm would qualify as a small entity if it had annual revenues of $5 million or less. None of the foreign irradiation companies that have submitted comments on previous irradiation proposed rules, or that have expressed interest in the current rulemaking, are small by this standard.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings would not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–030–3. Please send a copy of your comments to: (1) Docket No. 98–030–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require that the national plant protection service of each country from which irradiated articles are imported into the United States must sign a trust fund agreement with APHIS, and must submit an annual work plan to APHIS describing the activities the plant protection service will carry out to meet the requirements of the regulations. These documents would be drafted jointly by the foreign plant protection service and APHIS. We estimate that developing and approving each document would require about 20 hours of development and review time by the submitting foreign plant protection service.

These information collection requirements would be in addition to information collection activities that we described in the original proposal published August 21, 2000 (65 FR 47908, Docket No. 98–030–1), including a compliance agreement, labeling requirements, 24-hour notification, dosimetry recordings, requests for dosimetry device approval, recordkeeping requirements, and requests for facility approval.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.08411 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel.

Estimated annual number of respondents: 124.77.

Estimated annual number of responses per respondent: 1001.

Estimated annual number of responses: 124,895.

Estimated total annual burden on respondents: 10,505 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose to amend part 305 as set out in the proposed rule published on May 26, 2000 (65 FR 34113–34125), as follows:

1. The authority citation for part 305 would be revised to read as follows:

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

2. In § 305.2, paragraphs (f) and (g)(1) are revised to read as follows:

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

* * * * *

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That

agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) * * *

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables. Each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.

* * * * *

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–6267 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02–915–2 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 15, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884: telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or

equivalent to $0.20 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 9, 2002, and unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $187,384. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The Florida Lime Administrative Committee and the Avocado Administrative Committee have shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to generate more assessment funds to cover the increased expenses, and to reduce the amount of reserve funds the avocado committee would have to use to pay those expenses. Without the assessment rate increase, the avocado committee would have to use $26,582 of its operating reserve to cover the estimated expenses. With the increase, the avocado committee would only have to use $17,082 of its operating reserve to cover expenses.

The major expenditures recommended by the Committee for the 2002–03 year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expense by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 950,000 bushels which should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $96,633) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers or avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Florida Agricultural Statistics Service, the average f.o.b. price for fresh avocados during the 2000–01 season was $14.60 per 55-pound bushel container or equivalent for all domestic shipments and total shipments were 1,005,000 bushels. Using these prices, virtually all avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado handlers and producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.19 per 55-pound bushel container or equivalent to $0.20 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container. The proposed assessment rate of $0.20 is $0.01 higher than the 2001–02 rate. The quantity of assessable avocados for the 2002–03 season is estimated at 950,000. Thus, the $0.20 rate should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The Florida Lime Administrative Committee and the Avocado Administrative Committee shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs

was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue fro the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period begins on April 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past year.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6139 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2001–2002 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2001–2002 crop year. The percentages are 59 percent free and 41 percent restricted and would establish the proportion of cherries from the 2001 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite

2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2001–2002 crop year, beginning July 1, 2001, through June 30, 2002. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District eight—Washington. Districts five, six, seven, and nine (Oregon, Utah, Pennsylvania, and Wisconsin, respectively), would not be regulated for the 2001–2002 season.

The order prescribes under § 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts would not be subject to volume regulation during the 2001–2002 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because Utah's production is less than the 50 percent of the previous 5-year production average, handlers in Utah also would not be subject to volume regulation during the 2001–2002 crop year. Production from District four (New York) was not regulated last crop year, but, as mentioned above, will be regulated in 2001–2002. This would be the first year of regulation for District eight (Washington), since the order was promulgated.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into canned or frozen products, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a

preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board must announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2001, and computed, for the 2001–2002 crop year, an optimum supply of 219 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 356 million pounds; a 33 million pound carryin added to that estimate results in a total available supply of 389 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 219 million pounds from the total estimated available supply results in a surplus of 170 million pounds of tart cherries. An adjustment for changed economic conditions of 50 million pounds was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 120 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million pounds) and resulted in a restricted percentage of 36 percent for the 2001–2002 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2001–2002 year:

		Millions of pounds
Optimum Supply Formula:		
(1) Average sales of the prior three years		219
(2) Plus desirable carryout		0
(3) Optimum supply calculated by the Board at the June meeting		219
Preliminary Percentages:		
(4) USDA crop estimate		356
(5) Plus carryin held by handlers as of July 1, 2000.		33
(6) Total available supply for current crop year		389
(7) Surplus (item 6 minus item 3)		170
(8) Economic adjustment to surplus		50
(9) Adjusted surplus (item 7 minus item 8)		120
(10) USDA crop estimate for regulated districts		338
Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

On September 17, 2001, the Board conducted a telephone meeting and voted unanimously to establish interim percentages since the September 13, 2001, meeting was postponed until October due to the tragic events on September 11, 2001. The Board recommended an interim free percentage of 57 percent and an interim restrictive percentage of 43 percent. These percentages were based on the actual production for the 2001–2002 crop year of 366 million pounds, and more up-to-date sales and carryin inventory amounts.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. Because of the events of September 11, 2001, and subsequent flight delays, the Board met on October 12, 2001, and recommended final free and restricted percentages of 59 percent and 41 percent, respectively. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the interim percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 217 million pounds, instead of 219 million pounds used in June. The 3-year average sales figure computed in June included an estimate of June 2001 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each month of the 3-year period.

The actual production reported by the Board was 366 million pounds, which is a 10 million pound increase from the USDA crop estimate of 356 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, Washington). For 2001–2002, production in the regulated districts totaled 336 million pounds, 2 million pounds less than the USDA estimate of 338 million pounds.

A 39 million pound carryin (actual carryin as opposed to the 33 million pounds originally estimated in June) was added to the Board's reported production of 366 million pounds, yielding a total available supply for the current crop year of 405 million pounds. The optimum supply of 217 million pounds was subtracted from the total available supply which resulted in a 188 million pound surplus. An adjustment of 50 million pounds for changed economic conditions was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed

later in this document. After the adjustment, the resulting total surplus is 138 million pounds of tart cherries. The total surplus of 138 million pounds is divided by the 336 million-pound volume of tart cherries produced in the regulated districts. This results in a 41 percent restricted percentage and a corresponding 59 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in October for the 2001–2002 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	217
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	217
Final Percentages:	
(4) Board reported production	366
(5) Plus carryin held by handlers as of July 1, 2001	39
(6) Tonnage available for current crop year	405
(7) Surplus (item 6 minus item 3)	188
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus 8)	138
(10) Production in regulated districts	336

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	59	41

As previously mentioned, the Board recommended an economic adjustment of 50 million pounds in computing both the preliminary and final percentages for the 2001–2002 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions. The Board recommended the adjustment to reflect the impact of USDA surplus removal purchases might have on the sales component of the optimum supply formula.

Purchases by USDA and other government agencies are part of the average sales history for the industry. In recent years, USDA and other government purchases of tart cherry products have averaged about 17 million pounds and these have been factored into the optimum supply formula. In 2000–2001, USDA announced the acceptance of bids for a large surplus removal purchase. The amount of the purchases is expected to total 50 million pounds and be delivered during the 2001–2002 crop year. The Board discussed how this purchase should be accounted for in the optimum supply formula. The Board decided on a full 50-million pound economic adjustment because it results in a smaller restricted percentage than with no adjustment. With the adjustment, the restricted percentage is 41 percent. Without the adjustment, the restricted percentage would have been 56 percent.

By recommending this marketing policy modification, the Board believes that fewer cherries would have to be diverted and more cherries would be available to meet market needs. This modification is intended to further facilitate and encourage market expansion. It is also expected to benefit growers who receive higher payments for free tonnage cherries.

In May 2001, reserve release provisions were added to the administrative rules and regulations in § 930.154. The provisions provide that if USDA or any other governmental agency initiates an invitation to purchase product for surplus removal (as a non-entitlement purchase), the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve. These provisions were not effective prior to the initiation of the invitation to bid on USDA's planned 50 million pound surplus removal purchase. Therefore, reserve cherries could not be released from the inventory reserve pursuant to § 930.154 and the cherries had to be supplied from free tonnage, not reserve tonnage. Consequently, the Board recommended the economic adjustment of 50 million pounds to account for the free tonnage cherries delivered from the 2001–2002 crop to satisfy the purchase. If an invitation to bid on a surplus removal purchase is initiated by USDA or another government agency during the 2001–2002 crop year, or subsequent season, a like quantity of reserve tonnage would be released under § 930.154 and no economic adjustment would be necessary to account for those cherries. The Board believes that such releases will equitably spread the benefit of such purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA or other government agencies, will benefit from the surplus removal of tart cherry purchases.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 22 million

pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

The 2001 crop is the second largest ever harvested in the United States at 366.3 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than 15 million

pounds. Currently, only the three districts in Michigan, New York, and Washington are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, New York and Washington are the only restricted areas for this crop year and their combined total production is 336 million pounds. A 41 percent restriction means 198 million pounds is available to be shipped to primary markets from these three states. Production levels of 2 million pounds for Oregon, 4 million pounds for Pennsylvania, 12 million pounds for Utah, and 13 million pounds for Wisconsin results in an additional 31 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 22 million pounds being available for the primary market. The 198 million pounds from Michigan, New York and Washington, the 31 million pounds from the other producing states, and the 22 million pound release gives a total of 251 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.10 per pound. With volume controls, the estimated grower price would increase to approximately $0.15 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $36.6 million in 2001/02. In this scenario, production is 366 million pounds and price, without regulation, is estimated to be $0.10 per pound. With regulation, growers' revenues from processed cherries are estimated to be $46.5 million. In this scenario, 251 million pounds are available for the primary markets with an estimated price of $0.15 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are greater than $0.11 per pound, then growers' are better off with the regulation. With a price of $0.11 per pound, the estimated revenues under no regulation would be similar to the revenues with a 41 percent restricted regulation.

It is concluded that the 41 percent volume control would not unduly burden producers, particularly smaller growers. The 41 percent restriction is only applied to the growers in Michigan, New York, and Washington. The growers in the other 4 regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001/02 crop year.

Recent grower prices have been as high as $0.21 per pound. At current production levels, the cost of production is reported to be $0.25 per pound. Thus, the estimated $0.15 per pound received by growers remains below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0029 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2001–2002 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in October 2001 of the restricted percentages proposed in this rule (59 percent free and 41 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries.

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2001–2002 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110

percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2001–2002 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2001–2002 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2001, which shall be free and restricted, respectively, are designated as follows: Free percentage, 59 percent and restricted percentage, 41 percent.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6136 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–2 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound. It also would increase the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable tart cherries beginning July 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would be increased from $0.0006 to $0.000875 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2001–2002.

The Board met on January 25, 2001, and unanimously recommended 2001–2002 expenditures of $442,500. The Board also recommended an assessment rate of $0.00175 per pound of tart cherries utilized in the production of tart cherry products other than juice, juice concentrate and puree products and an assessment rate of $0.000875 per pound for juice, juice concentrate and puree products. In comparison, last year's budgeted expenditures were $455,000. The recommended assessment rates of $0.00175 and $0.000875 are higher than the current rates of $0.0012 and $0.0006, respectively. The Board recommended increased assessment rates to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rates established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2001–2002 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy,

AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2001–2002 expenditures of $442,500 and assessment rate increases from $0.0012 to $0.00175 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.0006 to $0.000875 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule would increase the assessment rate established for the Board and collected from handlers for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. The Board unanimously recommended 2001–2002 expenditures of $442,500. The quantity of assessable tart cherries expected to be produced during the 2001–2002 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

This action would increase the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate increases the burden on handlers, and may increase the burden on producers. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 25, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2001–2002 fiscal period began on July 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously

recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.00175 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.000875 per pound.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6137 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–1 PR]

Dried Prunes Produced in California; Undersized Regulation for the 2002–03 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2002–03 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the excess of dried prunes by approximately 3,800 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 15, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for inventory management. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening would be increased from 28/32 to 30/32 of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule would be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

Authority for Undersized Regulations for Inventory Management

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also

provides that the USDA upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes.'' * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the USDA on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

History of Undersized Regulations Used for Inventory Management

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by USDA at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, including the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments during the 2000–01 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation would be in effect from August 1, 2002, through July 31, 2003.

The Committee estimated that there would be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This proposed rule would continue to remove small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes would be removed from human consumption channels during the 2002–03 crop year. This would leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing this century (estimated at 317,628 natural condition tons by the year 2006); (3) a

continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. There already have been efforts to reduce burdensome supplies. Through an industry-funded tree removal program that was initiated in the fall of 2001, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. A proposed rule with request for comments was published by USDA in the December 17, 2001, **Federal Register** (66 FR 64918). The proposed changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10 years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 139,000 natural condition tons. The Committee recently estimated that another large crop of about 200,000 natural condition tons could be expected for the 2002–03 crop year, because of new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/32 of an inch in diameter French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about $20 to $40 per ton for the 24/32 of an inch in diameter French prunes, which is about $270–$290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this proposal is to remove small sizes which have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer returns currently are below the cost of production and the proposal would assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when income for agricultural producers and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action would not impact the dried prune import regulation because the action would affect inventory management, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as

those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

As recommended by the Committee, this proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation would result in more of the smaller-sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as proposed for 2002–2003 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of $763 per ton for the 2001–02 crop year. This compares to $845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The $763 average grower price is substantially below total cost of production of $1,724 per ton and the total variable cost of production of $985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels exceeding the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of the industry's desired inventory of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

This action would result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that this proposed rule would strengthen growers' prices modestly by $11 per ton. This price is still expected to be less than the cost of production for 2002–2003, estimated at $1,032 per ton.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to disproportionately impact small handlers or producers. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 3,800 tons) to non-human consumption outlets. These costs are expected to be minimal and would be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handler and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about $270–$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for 24/32 screen French prunes are expected to be about $20 to $40 per ton. This price is similar to the $20–$40 price received during the 2001–02 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton for a total cost of about $310 per ton. This equates to a loss of about $270–$290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation would help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, and producers continue to implement improved cultural and

thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of $809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry-funded program which removed about 3,500 acres, and the proposed tree removal program to be funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented ''across the board'' as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a comparatively cumbersome, expensive-to-administer alternative to changing the undersized rule as proposed. A third alternative discussed was to advance to a 25/32 screen undersized regulation for French prunes. However, handlers expressed concern that this would reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This would increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

The Committee requested a comment period through April 15, 2002, to allow interested persons to respond to this proposal. This longer comment period is needed to give the Committee more time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes that are deemed appropriate. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 993.409 is added to read as follows:

§ 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 02–6144 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment 2 to Certificate of Compliance (CoC)

Number 1025. This amendment would allow for modification of the design of the cask system to accommodate a new type of fuel. The NAC–MPC system component modifications would include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes would also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC would be revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) would also be revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS.

DATES: Comments on the proposed rule must be received on or before April 15, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013480571. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, telephone (301) 415–7608, e-mail, *RWB@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on May 29, 2002. However, if the NRC receives significant adverse comments by April 15, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

SAR Submitted by: NAC International.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC-MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 4th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–6227 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 259–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the ''Inmate Trust Fund Accounts and Commissary Record System'' (JUSTICE/BOP–006), as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security; to ensure the safety of inmates, Bureau personnel and the public; to protect third party privacy; to protect law enforcement and investigatory information; and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717 and 9701.

2. Section is amended by adding paragraphs (l) and (m) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(l) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Trust Fund Accounts and Commissary Record System, (JUSTICE/BOP–006).

(m) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance as an investigation progresses or with the passage of time, and could be relevant to future law enforcement decisions. In addition, amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject or other criminal justice agencies. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6202 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 257–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the ''Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007)'', as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure

the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by May 14, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Section 16.97 is amended by adding paragraphs (n) and (o) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access

* * * * *

(n) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Physical and Mental Health Records System, (JUSTICE/BOP–007).

(o) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from sources outside the Bureau of Prisons, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the health care of the inmates and the safety and security of the prisons and the public.

Dated February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–6204 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AB07

Nixon Presidential Materials; Reproduction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify the regulations for obtaining copies of the Nixon White House tape recordings which are in NARA custody. First, NARA is now allowing the public to obtain copies of all Nixon White House tape recordings after they are officially released to the public. Previously, NARA only permitted the public to obtain selected tape recordings. Second, the ban on self-service copying of these tapes is lifted. These changes reflect modifications in the 1996 Nixon Tapes Settlement Agreement that became effective April 1, 2001. These regulations apply to the public.

DATES: Comments are due by May 14, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270. You may also comment via email to comments@nara.gov. See the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–713–7360, ext. 240, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA is updating the regulations affecting research use of the Nixon Presidential Materials in NARA custody to reflect a change in the 1996 Nixon Tapes Settlement Agreement. NARA is amending § 1275.64, § 1275.66, and Appendix A of the regulations.

- The proposed § 1275.64 includes a provision allowing for the reproduction of tape recordings opened to the public. Effective April 20, 2001, the Nixon estate agreed to allow NARA to make available for sale and copying all tape recordings of conversations from the Nixon presidency that have been previously opened. Prior to April 20, 2001, NARA only permitted the public to obtain copies of selected tape recordings through a vendor. Self-service copying was not permitted. These changes to the negotiated Nixon Tapes Settlement Agreement are not applicable to tapes that have not yet been released.
- The proposed § 1275.66 is expanded to include tape recordings. This change allows the self-service copying of tape recordings.
- The proposed introductory paragraph to Appendix A—Settlement Agreement, waives paragraph 11 of the Agreement. The rule in paragraph 11 states that the public has to wait until January 1, 2003, to copy tapes not made publicly available before April 12, 1996. This rule is no longer applicable.

Please submit email comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 3095–AB07 and your name and return address in your Internet message. If you do not receive a confirmation that we have received your email message, contact the Regulation Comment Desk at 301–713–7360, ext. 226.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been

reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 is revised to read as follows:

Authority: 44 U.S.C. 2104, 2111 note.

2. Amend § 1275.64 by revising paragraph (d) to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(d) The reproduction for members of the public of the reference copies of the available tape recordings described in paragraph (a) of this section will be permitted as follows: Copies of tape recordings will be made available following the public release of the tape segments contemplated in § 1275.42(a). Effective as of April 20, 2001, NARA will allow members of the public to obtain copies of all tapes that have been made available to the public by that date and that subsequently become available as they are released. Such copying will be controlled by NARA or its designated contractor. The fees for the reproduction of the tape recordings under this section shall be those prescribed in the schedule set forth in part 1258 of this chapter.

* * * * *

3. Amend § 1275.66 by revising paragraph (a) to read as follows:

§ 1275.66 Reproduction and authentication of other materials.

(a) Copying of materials, including tape recordings described in § 1275.64, may be done by NARA, by a contractor designated by NARA, or by researchers using self-service copiers or copying equipment.

* * * * *

4. Amend Appendix A to Part 1275—Settlement Agreement, by revising the introductory paragraph to read as follows:

Appendix A to Part 1275—Settlement Agreement

Settlement Agreement filed April 12, 1996, in Stanley I. Kutler and Public Citizen v. John W. Carlin, Archivist of the United States, and William E. Griffin and John H. Taylor, Co-executors of Richard M. Nixon's Estate, Civil Action No. 92–0662–NHJ (D.D.C.) (Johnson, J.). By letter dated April 17, 2001, NARA and the Nixon estate agreed to waive paragraph 11 of this Settlement Agreement, such that the delay on public copying until January 1, 2003, of tapes not made publicly available before April 12, 1996, shall no longer apply. This change is reflected in 36 CFR 1275.64.

* * * * *

Dated: February 8, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–6190 Filed 3–14–02; 8:45 am]

BILLING CODE 7515–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA072–FOA, FRL–7158–1]

Proposed Finding of Failure To Attain; State of California, San Joaquin Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to find that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM–10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001. This proposed finding is based on monitored air quality data for the PM–10 NAAQS from 1999 through September 2001.

If EPA finalizes, after public notice and comment, the failure to attain finding, the San Joaquin Valley must submit by December 31, 2002, plan provisions that provide for attainment of the PM–10 air quality standards and that achieve percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

DATES: Comments on the proposed action must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to: Celia Bloomfield, Planning Office, (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; or to *bloomfield.celia@epa.gov.*

A copy of this proposed rule and related information are available in the air programs section of EPA Region 9's Web site, *http://www.epa.gov/region09/air.* The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 947–4148 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 947–4148, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; *bloomfield.celia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 EPA revised the health-based national ambient air quality standards (NAAQS) (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

The San Joaquin Valley, which is made up of 8 counties (Stockton County, Stanislaus County, Merced County, Madera County, Fresno County, Kings County, Tulare County, and Kern County), has had a PM–10 problem for more than a decade. The area violates both the 24-hour and annual PM–10 standards. Exceedances are recorded throughout the Valley but tend to peek in the fall and winter. (See Tables 1 and 2 below in Section II.B). The violations are caused by both primary particulates (dust) and secondary particulates (other pollutants that react in the atmosphere to form particulate matter).

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas, including the San Joaquin Valley planning area, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. See 56 FR 11101 (March 15, 1991). EPA

codified the boundaries of the San Joaquin Valley PM–10 nonattainment area at 40 CFR 81.305.

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishing the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the San Joaquin Valley, were initially classified as moderate.

Section 188(b)(1) of the Act provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994. On January 8, 1993 (58 FR 3334, 3337), EPA made such a determination and reclassified the San Joaquin Valley nonattainment area as serious. As a serious PM–10 nonattainment area, the San Joaquin Valley acquired a new attainment deadline of December 31, 2001 (CAA section 188(c)(2)).

II. Proposed Finding of Failure To Attain

A. Clean Air Act Requirements for Attainment Findings

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM–10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that these determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2) is consistent with this requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, appendix K.

Pursuant to appendix K, attainment of the annual PM–10 NAAQS is achieved when the expected annual arithmetic mean PM–10 concentration is less than or equal to the level of the standard (50 μg/m^3). Attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 μg/m^3) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

B. Ambient Air Monitoring Data

1. Annual PM–10 Standard

According to data currently in AIRS, three monitoring sites in the San Joaquin Valley are in violation of the annual PM–10 NAAQS. These data cover the period 1999 through September 30, 2001. While the nonattainment status of the Corcoran and Visalia monitors could still be affected by end of year data, even under the best case scenario (using values of 0.0 μg/m^3 for the sampling days in the last quarter of 2001), the Bakersfield Golden State Highway site would still register an annual arithmetic mean of 53 μg/m^3, which violates the annual NAAQS.[1]

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM_{10} NAAQS (1999–2001 *)

Site name	3 year annual mean ** μg/m^3
Bakersfield—Golden State	*** 58
Corcoran	51
Visalia	51

* 2001 data available through September 30, 2001.

** The annual mean reported here is based on data through September 30, 2001. The actual 3 year mean could change based on a complete data set for calendar year 2001.

*** 3rd quarter 2001 data do not meet EPA data completeness requirements.

2. 24-Hour PM–10 Standard

According to 40 CFR part 50, the 24-hour PM–10 NAAQS is attained when the expected number of days per calendar year with a 24-hour average above 150 μg/m^3 is equal to or less than one. In the simplest case, the number of expected exceedances at a site is determined by recording the number exceedances in each calendar year and then averaging them over the past three calendar years. This means that if a monitoring site has four or more observed or estimated exceedances in a three-year period then it is in violation of the 24-hour PM–10 NAAQS. Generally, if PM–10 sampling is scheduled less than every day, EPA requires the adjustment of observed exceedances to account for incomplete sampling. The method for adjusting the observed exceedances is described in 40 CFR part 50, appendix K, § 3.1.

In spite of the lack of data for the fourth quarter in 2001, there are ten monitoring sites in the San Joaquin Valley that are in violation of the 24-hour PM–10 NAAQS. The following table shows the number of estimated exceedances at the 10 sites after adjusting for incomplete sampling. All of the sites listed in Table 2 operate on a one in six day schedule. Table 2 lists the number of days over the standard in all three years as well as the three-year average. For each of these sites, the average number of exceedance days per year over the three-year period 1999–2001 exceeds one.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Fresno East Drummond	8	0	6	4.7
Fresno First St	0	0	6	2

[1] The expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM–10 concentration for the past three calendar years. The procedure for calculating the annual arithmetic mean is discussed in 40 CFR part 50, appendix K, § 4.0.

TABLE 2.—24-HOUR PM–10 AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1999–2001) *—Continued

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average number of expected exceedance days per year 1999–2001
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3	0	6	3
Corcoran	6	0	6	4
Hanford	0	0	6	2
Turlock	11	0	0	3.7
Modesto	0	0	6	2

* Data available through September 2001.

III. Summary of Proposed Action

A. Proposed Finding of Failure to Attain

EPA is proposing a finding that the San Joaquin Valley did not attain the annual or 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline as discussed above in Section II.

B. SIP Consequences

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, ''plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.'' Since the applicable attainment date was December 31, 2001, the deadline for the 5 percent plan will be December 31, 2002 if EPA's proposed finding of failure to attain is finalized.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed 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 proposed action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this proposed 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 proposed rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's proposed action 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). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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. Because this proposed finding of failure to attain is a factual determination based on air quality considerations, 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 proposed 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, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 28, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–6271 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–066–7223; A–1–FRL–7158–3]

Full Approval of Operating Permit Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 13, 2001, EPA proposed to approve changes that the State of Connecticut made to its operating permit program that addressed issues identified in EPA's interim approval action in 1997. Today, EPA is proposing to approve all other changes the state has made to its operating permit program regulations since EPA granted interim approval on March 24, 1997. With the combination of the August 2001 proposal and this proposal, EPA is proposing to fully approve Connecticut's entire title V program. Even though the earlier proposal was limited to the program changes necessary to address interim approval issues, EPA received several comments on Connecticut's title V program that went beyond the interim approval issues. In a future rulemaking document, EPA will address all comments we receive as a result of this document, as well as any comments that we have already received on Connecticut's program that concern the state's title V program. Connecticut's operating permit program was created to meet the federal Clean Air Act directive that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources of air pollution and to certain other sources within the state's jurisdiction.

DATES: Comments on this notice must be received on or before April 15, 2002.

ADDRESSES: Comments may be mailed to Donald Dahl, Air Permits Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the state submittal and other supporting documentation relevant to this action are available for public inspection during normal business hours, by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Why Was Connecticut Required To Develop an Operating Permit Program?

Title V of the Clean Air Act (''the Act'') as amended (42 U.S.C. 7401 *et seq.* and sections 7661–7661e), requires all states to develop an operating permit program and submit it to EPA for approval. EPA has promulgated rules that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70 (part 70). Title V directs states to develop programs for issuing operating permits to all major stationary sources and to certain other sources. The Act directs states to submit their operating permit programs to EPA by November 15, 1993, and requires that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act (42 U.S.C. 7661a) and the part 70 regulations, which together outline criteria for approval or disapproval.

Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval. EPA granted the State of Connecticut final interim approval of its program on March 24, 1997 (see 62 FR 13830) and the program became effective on April 23, 1997.

II. In 1995, What Did Connecticut Submit To Meet the Title V Requirements?

The Governor of Connecticut submitted a Title V operating permit program for the State of Connecticut on September 28, 1995. In addition to regulations (section 22a–174–33 of the Department of Environmental Protection Regulations), the program submittal included a legal opinion from the Attorney General of Connecticut stating that the laws of the state provide adequate legal authority to carry out all aspects of the program, and a description of how the state would implement the program. The submittal additionally contained evidence of proper adoption of the program regulations, application and permit forms, and a permit fee demonstration. This program, including the operating permit regulations, substantially met the requirements of part 70.

III. What Was EPA's Action on Connecticut's 1995 Submittal and How Did Connecticut Respond?

EPA granted interim approval to Connecticut's submittal on March 24, 1997. In the notice granting interim approval, EPA stated that there were several areas of Connecticut's program regulations that would need to be amended in order for EPA to grant full approval of the state's program. EPA worked closely with the state to develop all of the rule changes necessary to address EPA's interim approval issues. Connecticut proposed for public comment regulatory amendments that addressed EPA's interim approval issues on July 17, 2001. Based on the state's proposal, EPA in parallel proposed to approve those amendments because they addressed the interim approval issues. EPA's August 13, 2001 (66 FR 42496) proposal discussed those interim approval issues and the state's proposed regulations to address them, and this notice will not repeat that discussion. EPA notes, however, that Connecticut did adopt final regulations addressing the interim approval issues that were consistent with the changes EPA proposed to approve, and EPA continues to propose to approve these elements of the state's program for the reasons stated in our August 2001 proposal.

IV. In 2002, What Did Connecticut Submit To Revise Its Title V Permit Program?

On January 11, 2002, Connecticut submitted regulatory amendments to its title V operating permit program. The amendments to the state's regulations not only addressed the interim approval issues, but included changes to the balance of the state's program, largely designed to clarify the program requirements EPA had already approved in 1997. EPA has reviewed the remaining amendments, which the state made throughout portions of R.C.S.A. sections 22a–174–1 (the general definitions for DEP's air regulations), 22a–174–2a (air permitting procedural requirements), and 22a–174–33 (title V operating permit program requirements). Aside from minor alterations throughout these sections to clarify the operation of the title V program, the most important changes Connecticut has made include a major restructuring of the permit processing and modification requirements, which moves those provisions from section 33 to section 2a. In addition, to clarify its rules, in several areas the state incorporated by reference important sections of part 70. We propose that these changes meet title V permit program requirements, and that Connecticut's program should be fully approved under part 70. (This notice will generally simply cite to the section in part 70 for references to 40 CFR part 70 and will cite to the relevant section in Connecticut's air pollution control

regulations for references to R.C.S.A. 22a–174.)

V. Explanation of Certain Provisions in Connecticut's Regulatory Amendments To Its Title V Program

EPA believes that the following amendments to Connecticut's Title V program merit detailed discussion in light of Title V, part 70, and Connecticut law.

1. Section 22a–174–2a(f)(2)(D) in Connecticut's rule provides that the state can use its ''permit revision'' process not only to increase the frequency of monitoring, but also to add ''additional monitoring'' to the permit. EPA has consulted with DEP concerning the meaning of this provision, and the Department agrees that the plain reading of this language is that it allows DEP to add monitoring in addition to the monitoring already provided for in the permit using what is equivalent to EPA's administrative amendment process in § 70.7(d). Importantly, DEP confirms that this provision may not be used to change or in any way alter any existing monitoring requirements already provided for in the permit terms and conditions. Furthermore, DEP agrees that any monitoring added using this provision would be ''additional'' in the sense that it is in addition to any monitoring that is already required to be in the permit under the Act, its applicable requirements, and part 70. Therefore, this provision cannot be used to add monitoring necessary to meet the monitoring requirements of an applicable requirement, of § 70.6(a)(3)(B) regarding periodic monitoring, or of § 70.6(c)(1) regarding monitoring sufficient to assure compliance with the permit. Essentially, monitoring added under section 22a–174–2a(f)(2)(D) will be above and beyond what is required in the Act where DEP concludes that such data would be useful. An example of the kind of use DEP expects to make of this provision would be: a municipal waste combustor has a permit with sufficient periodic monitoring consistent with applicable requirements, but the state and source agree that they want to try a novel and experimental continuous emissions monitor to track hazardous VOC emissions. Section 22a–174–2a(f)(2)(D) would allow DEP to authorize installation of the CEM expeditiously to try it out without any permit shield.

This provision does not correspond exactly to the types of administrative amendments already provided for in § 70.7(d)(1). But § 70.7(d)(1)(vi) allows EPA to approve other types of permit changes that can be processed as administrative amendments, provided EPA determines that the change is similar to the changes specifically listed in § 70.7(d)(1)(i)–(iv). EPA is proposing to use this authority to approve the ability for Connecticut to add ''additional monitoring'' to a title V permit, beyond the monitoring already provided for in the permit, using the state's ''permit revision'' process in section 22a–174–2a(f)(2)(D). EPA is relying on the fact that an existing permit will already contain monitoring which the public and EPA have had an opportunity to review and which must be consistent with the applicable requirements and Part 70's monitoring requirements. See sections 22a–174–33(j)(1)(K) and (L). Additionally, DEP cannot use this provision to affect monitoring that is required under the Act. EPA believes this type of change is similar to the type of changes listed in §§ 70.7(d)(1)(i)–(v) because it will not alter the requirements or stringency of the existing permit, it will generally increase the rigor of the compliance requirements in the permit, and it cannot affect monitoring requirements mandated under the Act. This very limited authority is similar to the concept of increasing the frequency of monitoring under § 70.7(d)(1)(iii), which allows monitoring to be adjusted in a way that will tend to increase its rigor and will not undercut the monitoring required to meet the Act's requirements. Therefore, EPA proposes to approve section 22a–174–2a(f)(2)(D) pursuant to § 70.7(d)(1)(vi) because it is similar in kind to types of changes in §§ 70.7(d)(1)(i)–(v).

2. Section 22a–174–2a(d)(4)(C) of Connecticut's regulations specifically requires the equivalent of a significant permit modification procedure under § 70.7(e)(4) (a ''non-minor modification'' as denominated in section 22a–174–2a(d)) to ''relax the form or type of or any reduction in the frequency of any monitoring, reporting or recordkeeping required by the title V permit.'' This provision is not identical to the requirement in § 70.7(e)(4) that ''every significant change in existing monitoring'' must undergo the significant permit modification procedure. It could be unclear, for example, how one must process a significant change in monitoring that has an indeterminate effect on the rigor of the permit, i.e. which may or may not ''relax'' the monitoring. Nonetheless, EPA interprets section 2a to mean that all significant monitoring changes must go through the ''non-minor modification'' process, and Connecticut agrees with EPA's interpretation. Section 22a–174–2a(e)(2)(B), a provision of Connecticut's ''minor permit modification'' regulations, excludes any significant change to monitoring from the minor permit modification track, by way of incorporating the exclusions in EPA's rule, including § 70.7(e)(2)(i)(A)(2). It is equally clear that significant changes in monitoring do not qualify for the administrative amendment track, or a ''permit revision'' under section 22a–174–2a(f) of Connecticut's rule. Pursuant to section 22a–174–2a(d)(4)(D), any change that does not qualify under the other permit modification tracks must be made using significant modification procedures under the ''non-minor modification'' track of 22a–174–2a(d). Therefore, section 22a–174–2a handles significant changes in monitoring consistent with § 70.7(e)(4).

3. Connecticut's provision for administrative permit amendments, or ''permit revisions'' under section 22a–174–2a(f), includes ''a fuel conversion described in section 22a–174–3a(a)(A)(iv) or (v)'' in the list of changes that can be made administratively. Section 22a–174–2a(f)(2)(G). [1] This cross reference is to a provision in the state's revised new source review program that exempts from preconstruction permitting certain limited conversions from oil to natural gas or from residual oil to distillate oil. While it is expected that these conversions to cleaner fuels will generally result in beneficial emissions reductions, on the face of the regulation this exemption allows for actual emissions increases of up to fifteen tons per year. As a result, it is difficult to reconcile the terms of this fuel conversion provision with the sort of administrative amendment changes provided for in § 70.7(d)(1), which are designed to have no emissions impact. However, another provision of Connecticut's regulations, section 22a–174–2a(e)(2), requires these fuel conversions to undergo a minor permit modification. Specifically, section 22a–174–2a(e)(2)(A) allows only those changes covered by ''2a(f)(2)(A) through (F), inclusive'' to avoid a minor permit modification, with no reference to section 2a(f)(2)(G). Therefore, the fuel conversions provided for in section 22a–174–2a(f)(2)(G) are captured as minor permit amendments, not administrative amendments, which is consistent with §§ 70.7(d) and (e)(2).

4. Connecticut's definition of ''applicable requirements'' at section 22a–174–33(a)(2) does not include a

[1] It appears that the cross reference is probably intended to read ''section 22a–174–3a(a)(A)(iii) or (iv).''

reference to the national ambient air quality standards as they would apply to temporary sources, as provided for in § 70.2. See ''applicable requirement,'' clause (12). Connecticut's program is nevertheless consistent with part 70 and the Act because the state does not permit temporary sources under its section 33 regulation. Section 504(e) of the Act allows, but does not require, states to issue a single permit authorizing emissions from similar operations at multiple temporary locations. Connecticut has chosen not to implement this provision. Section 22a–174–33(c)(1) requires that ''every Title V source'' apply for a permit. Section 22a–174–33(a)(10) defines a Title V source to be at a ''premises.'' Section 22a–174–1(88) defines ''premises'' to be the ''grouping of all stationary sources *at any one location*'' (emphasis added). Having required a source to receive a section 33 permit for any one location, Connecticut lacks the authority to permit temporary sources at multiple locations pursuant to section 504(e) of the Act. Accordingly, Connecticut is not required to address ambient standards as an applicable requirement under section 22a–174–33 for temporary sources at multiple locations.

5. Section 22a–174–33(j)(1)(I) is the provision in Connecticut's program designed to implement § 70.6(a)(1)(iii) of EPA's regulation, providing for a title V permit to establish alternative emission limits to the extent allowed in the underlying implementation plan. The previous version of Connecticut's regulation provided for the title V permit to address ''allowable alternative emission limits,'' which was consistent on its face with the requirement that these alternative limits must be allowed in the underlying applicable requirement. The new version of this section provides for the permit to address ''alternative emission limits or means of compliance *allowed by the Commissioner*'' (emphasis added). This new formulation creates the unintended implication that Connecticut is providing the Commissioner with broad discretion to use the title V permit to fashion alternative limits, even where they are not provided for in the underlying implementation plan. Connecticut did not intend this language change to create such discretion, and the surrounding provisions in section 22a–174–33 make this clear. Section 22a–174–33(j)(1)(H) requires each permit to impose the terms of each applicable requirement to each emission unit, and section 22a–174–33(j)(1)(J) requires all alternative operating scenarios to meet all applicable requirements. Nothing in section 22a–174–33(j)(1)(I) waives these requirements that a permit must impose the applicable requirements, and Connecticut agrees that alternative emission limits addressed under 22a–174–33(j)(1)(I) must be allowed under the applicable requirements. Therefore, this section is consistent with § 70.6(a)(1)(iii).

6. In section 22a–174–2a(f)(2)(F) the state incorporates § 70.7(d)(1)(v) which allows Connecticut to add the terms of a new source review permit to the title V permit using the state's permit revision (or administrative amendment) track if the new source review permit program meets procedural requirements substantially equivalent to §§ 70.7 and 70.8 and permit content requirements substantially equivalent to § 70.6. Connecticut's new source review program does not currently meet the requirements of §§ 70.6, 70.7 and 70.8. Therefore, the state cannot incorporate new source review permits into a title V permit using its permit revision track. EPA understands that section 22a–174–2a(f)(2)(F) is essentially a place-holder that would allow the state to bring a new source review permit onto the title V permit administratively in the event Connecticut augments its new source review regulation to incorporate the relevant part 70 procedural and substantive requirements. Connecticut agrees with this understanding and with the limitation on its authority under section 22a–174–2a(f)(2)(F).

VI. Proposed Action and Opportunity to Comment

EPA is proposing to approve the balance of the changes Connecticut has made to its title V operating permit program, along with those changes already discussed in our August 2001 notice. Interested members of the public may comment on those changes, as described above. Note that most of the comments EPA received in response to our August 2001 proposal concerning the interim approval issues included comments addressing the entirety of Connecticut's title V program changes. EPA will be responding to all those comments when we take final action on the August 2001 proposal and this proposal. The public need not resubmit comments already made in response to our August 2001 proposal.

In particular, EPA solicits comments from the State of Connecticut. In this proposal, EPA has interpreted various Connecticut regulations in a manner that EPA believes to be most consistent with the Act and part 70. If Connecticut disagrees with or wishes to support EPA's interpretations, EPA encourages the state to comment during the public comment period so that EPA may respond when we take final action on this proposal and the August 2001 proposal.

VII. 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 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 permit program 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 clear authority to

disapprove a permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a permit program submission, to use VCS in place of a program 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 70

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

Dated: March 6, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–6273 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7153–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR) to exclude (or ''delist'') certain hazardous wastes from the lists of hazardous wastes under the Resource Conservation and Recovery Act (RCRA). DOE–SR generated the petitioned waste by treating wastes from various activities at the Savannah River Site (SRS). The petitioned waste meets the definitions of listed RCRA hazardous wastes F006 and F028. DOE–SR petitioned EPA to grant a one-time, generator-specific delisting for its F006 and F028 waste, because DOE–SR believes that its waste does not meet the criteria for which theses types of wastes were listed. The waste is a radioactive mixed waste (RMW) because it is both a RCRA hazardous waste and a radioactive waste. EPA reviewed all of the waste-specific information provided by DOE–SR, performed calculations, and determined that the waste, which has a low level of radioactivity, could be disposed in a landfill for low-level radioactive waste without harming human health and the environment. The petition is for a one-time delisting, because the petitioned waste has been generated, will be completely disposed of at one time, and will not be generated again. Today's proposed rule proposes to grant DOE–SR's petition to delist its F006 and F028 waste, and requests public comment on the proposed decision. If the proposed delisting becomes a final delisting, DOE–SR's petitioned waste will no longer be classified as F006 and F028, and will not be subject to regulation as a hazardous waste under Subtitle C of RCRA. The waste will still be subject to the Atomic Energy Act and local, State, and Federal regulations for low-level radioactive solid wastes that are not RCRA hazardous wastes.

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until April 29, 2002. Comments postmarked after the close of the comment period will be stamped ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Richard D. Green, Director of the Waste Management Division, EPA, Region 4, whose address appears below, by April 1, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Myra C. Reece, Director, South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Caolina 29801, and one copy to Shelly Sherritt, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Identify your comments at the top with this regulatory docket number: R4–01–02–DOESRSP. Comments may also be submitted by e-mail to *sophianopoulos.judy@epa.gov.* If files are attached, please identify the format.

Requests for a hearing should be addressed to Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

Copies of the petition are available during normal business hours at the following addresses for inspection and copying: U.S. EPA, Region 4, Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8190; South Carolina Department of Health and Environmental Control, Lower Savannah District Environmental Quality Control, 218 Beaufort Street, N.E., Aiken, South Carolina 29801, Myra C. Reece, Director, Phone: (803) 641–7670; and DOE Public Reading Room, Gregg-Graniteville Library, University of South Carolina at Aiken, 171 University Parkway, Aiken, South Carolina 29801, Phone: (803) 641–3465.

The EPA, Region 4, Library is located near the Five Points MARTA station in Atlanta. The Lower Savannah District Environmental Quality Control Office of the South Carolina Department of Health and Environmental Control is located a block north of U.S. Highway 78 on Beaufort Street (State Road 118) which is near the eastern boundary of Aiken. The University of South Carolina at Aiken is located on University Parkway (also State Road 118), on northwest boundary of Aiken, between Interstate Highway 20 and U.S. Highway

78 and about a half-mile west of State Road 19.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed rule, contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
A. What Laws and Regulations Give EPA the Authority to Delist Wastes?
B. How did EPA Evaluate this Petition?
1. What is the EPACML model that EPA used in the past for determining delisting levels?
2. What is the DRAS that uses the newer EPACMTP model to calculate not only delisting levels, but also to evaluate the effects of the waste on human health and the environment?
3. Why is the EPACMTP an improvement over the EPACML?
4. Where can technical details on the EPACMTP be found?
5. What methods is EPA proposing to use to determine delisting levels for this petitioned waste?
II. Disposition of Delisting Petition
A. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina
B. What Delisting Levels Did EPA Obtain with DRAS and EPACMTP?
C. How Did EPA Use the Multiple Extraction Procedure (MEP) to Evaluate This Delisting Petition?
D. Conclusion
III. Limited Effect of Federal Exclusion Will this Rule Apply in All States?
IV. State Authorization
A Statutory Authority
B. Effect on State Authorization
V. Effective Date
VI. Administrative Assessments
A. Executive Order 12866
B. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 *et. seq.*
C. Unfunded Mandates Reform Act
D. Federalism—Applicability of Executive Order 13132
E. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
F. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
G. National Technology Transfer Advancement Act of 1995
H. Executive Order 12898
I. Executive Order 13211 (Energy Effects)
J. Paperwork Reduction Act

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in Sec. 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, sections 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* section 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* section 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (i.e., characteristics which may be promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. *See* Section 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992 (57 FR 49278), and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. On May 16, 2001, EPA amended the mixture and derived-from rules for certain types of wastes (66 FR 27218 and 66 FR 27266). The mixture and derived-from rules are codified in 40 CFR 261.3, paragraphs (a)(2)(iv) and (c)(2)(i). EPA plans to address all waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with sections 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

B. How Did EPA Evaluate This Petition?

This petition requests a delisting for a hazardous waste listed as F006 and F028. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in Section 261.11 (a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. *See* section 260.22(a) and (d). The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

1. What Is the EPACML Model That EPA Used in the Past for Determining Delisting Levels?

In the past, EPA used the EPA Composite Model for Landfills (EPACML) fate and transport model, modified for delisting, as one approach for determining the delisting levels for petitioned waste. *See* 56 FR 32993–33012, July 18, 1991, for details on the use of the EPACML model to determine the concentrations of constituents in a waste that will not result in groundwater contamination. With the EPACML approach, as used in the past, EPA calculated a delisting level for each hazardous constituent by using the maximum estimated waste volume to determine a Dilution Attenuation Factor (DAF) from a table of waste volumes and DAFs previously calculated by the EPACML model, as modified for delisting. *See* 56 FR 32993–33012, July 18, 1991. The maximum estimated waste volume is the maximum number of cubic yards of petitioned waste to be disposed of each year. The delisting level for each constituent was equal to the DAF multiplied by the maximum contaminant level (MCL) which the Safe Drinking Water Act allows for that constituent in drinking water. The delisting level is a concentration in the waste leachate that will not cause the MCL to be exceeded in groundwater underneath a landfill where the waste is disposed. This method of calculating delisting levels resulted in conservative levels that were protective of groundwater, because the model did not assume that the landfill had the controls required of Subtitle D landfills. A Subtitle D landfill is a landfill subject to RCRA Subtitle D nonhazardous waste regulations, and to State and local nonhazardous waste regulations.

2. What Is the DRAS That Uses the Newer EPACMTP Model To Calculate Not Only Delisting Levels, But Also To Evaluate the Effects of the Waste on Human Health and the Environment?

The EPA is proposing to use the Delisting Risk Assessment Software (DRAS),[2] developed by EPA, Region 6, to evaluate this delisting petition. The DRAS uses a newer model, called the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP). The EPACMTP improves on the EPACML model in several ways. EPA is proposing to use the DRAS to calculate delisting levels and to evaluate the impact of DOE–SR's petitioned waste on human health and the environment. Delisting levels are the maximum allowable concentrations for hazardous constituents in the waste, so that disposal in a landfill will not harm human health and the environment by contaminating groundwater, surface water, or air.

Today's proposal provides background information on the mechanics of the DRAS, and the use of the DRAS in delisting decision-making. Please see the EPA, Region 6, *RCRA Delisting Technical Support Document* (RDTSD) for a complete discussion of the DRAS calculation methods. The RDTSD, and **Federal Register**, 65 FR 75637–75651, December 4, 2000, and 65 FR 58015–58031, September 27, 2000, are the sources of the DRAS information presented in today's preamble, and are included in the RCRA regulatory docket for this proposed rule.

The DRAS performs a risk assessment for petitioned wastes that are disposed of in the two waste management units of concern: surface impoundments for liquid wastes and landfills for non-liquid wastes. DOE–SR's petitioned waste is solid, not liquid, and will be disposed in a landfill; therefore, only the application of DRAS to landfills will be discussed in this preamble.

DRAS calculates releases from solid-phase wastes in a landfill, with the following assumptions: (1) The wastes are disposed in a Subtitle D landfill and covered with a 2-foot-thick native soil layer; (2) the landfill is unlined or effectively unlined due to a liner that will eventually completely fail. The two parameters used to characterize landfills are (1) area and (2) depth (the thickness of the waste layer). Data to characterize landfills were obtained from a nationwide survey of industrial Subtitle D landfills.[3] Parameters and assumptions used to estimate infiltration of leachate from a landfill are provided in the *EPACMTP Background Document and User's Guide,* Office of Solid Waste, U. S. EPA, Washington, D.C., September 1996.

DRAS uses the EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer (the rock formation in which the groundwater is located). DRAS evaluates, with the EPACMTP model, the groundwater exposure concentrations at the receptor well that result from the chemical release and transport from the landfill (*Application of EPACMTP to Region 6 Delisting Program: Development of Waste Volume-Specific Dilution Attenuation Factors,* U. S. EPA, August 1996). For the purpose of delisting determinations, receptor well concentrations for both carcinogens and non-carcinogens from finite-source degraders and non-degraders are determined with this model. Delisted waste is a finite source, because in a finite period of time, the waste's constituents will leach and move out of the landfill. If EPA makes a final decision to delist DOE–SR's F006 and F028 waste, DOE–SR must meet the delisting levels and dispose of the waste

[2] For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000 and 65 FR 58015–58031, September 27, 2000. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). URL addresses for Region 6 delisting guidance and software are the following:

1. Delisting Guidance Manual http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dlistpdf.htm

2. Delisting Risk Assessment Software (DRAS) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm

3. DRAS Technical Support Document (DTSD) http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dtsd.htm

4. DRAS Users Guide http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/uguide.pdf

Region 6 has made them available to the public, free of charge.

[3] *Nationwide Survey of Industrial Subtitle D Landfills,* Westat, 1987.

in a Subtitle D landfill, because EPA determined the delisting levels based on a landfill model. Because of its radioactivity, DOE–SR's waste when delisted must be disposed in a low-level radioactive landfill in accordance with the Atomic Energy Act.

3. Why Is the EPACMTP an Improvement Over the EPACML?

The EPACMTP includes three major categories of improvements over the EPACML. The improvements include:

1—Incorporation of additional fate and transport processes (e.g., degradation of chemical constituents; fate and transport of metals);

2—Use of enhanced flow and transport equations (e.g., for calculating transport in three dimensions); and

3—Revision of the Monte Carlo methodology (e.g., to allow use of site-specific, waste-specific data) (*EPACMTP Background Document and User's Guide,* Office of Solid Waste, U. S. EPA, Washington, D.C., September 1996).

A summary of the key enhancements which have been implemented in the EPACMTP is presented here and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR **Federal Register** proposal docket (60 FR 66344, December 21, 1995). For more information, please contact Judy Sophianopoulos, South Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact her by e-mail: *sophianopoulos.judy@epa.gov.*

The EPACML accounts for: one-dimensional steady and uniform advective flow; contaminant dispersion in the longitudinal, lateral, and vertical directions; and sorption. However, advances in groundwater fate and transport have been made in recent years and EPA proposes and requests public comment on the use of the EPACMTP, which is a more advanced groundwater fate and transport model, for this RCRA delisting.

The EPACML was limited to conditions of uniform groundwater flow. It could not handle accurately the conditions of significant groundwater mounding and non-uniform groundwater flow due to a high rate of infiltration from the waste disposal units. These conditions increase the transverse horizontal, as well as the vertical, spreading of a contaminant plume.

The EPACMTP model overcomes the deficiencies of the EPACML in the following way: The subsurface as modeled with the EPACMTP consists of an unsaturated zone beneath a landfill and a saturated zone, the underlying water table aquifer. Contaminants move vertically downward through the unsaturated zone to the water table. The EPACMTP simulates one-dimensional, vertically downward flow and transport of contaminants in the unsaturated zone, as well as two-dimensional or three-dimensional groundwater flow and contaminant transport in the underlying saturated zone. The EPACML used a saturated zone module that was based on a Gaussian distribution of the concentration of a chemical constituent in the saturated zone. The module also used an approximation to account for the initial mixing of the contaminant entering at the water table (saturated zone) underneath the waste unit. The module accounting for initial mixing in the EPACML could lead to unrealistic groundwater concentrations.

The enhanced EPACMTP model incorporates a direct linkage between the unsaturated zone and saturated zone modules which overcomes these limitations of the EPACML. The following mechanisms affecting contaminant migration are accounted for in the EPACMTP model: transport by advection and dispersion, retardation resulting from reversible linear or nonlinear equilibrium sorption on the soil and aquifer solid phase, and biochemical degradation processes. The EPACML did not account for biochemical degradation, and did not account for sorption as accurately as the EPACMTP.

The EPACMTP consists of four major components:

1—A module that performs one-dimensional analytical and numerical solutions for water flow and contaminant transport in the unsaturated zone beneath a waste management unit;

2—A numerical module for steady-state groundwater flow subject to recharge from the unsaturated zone;

3—A module of analytical and numerical solutions for contaminant transport in the saturated zone; and

4—A Monte Carlo module for assessing the effect of the uncertainty resulting from variations in model parameters on predicted receptor well concentrations.

4. Where Can Technical Details on the EPACMTP Be Found?

For more information on DRAS and EPACMTP, please see 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; and 66 FR 9781–9798, February 12, 2001. The December 4, 2000 **Federal Register** discusses the key enhancements of the EPACMTP and the details are provided in the background documents to the proposed 1995 Hazardous Waste Identification Rule (HWIR) (60 FR 66344, December 21, 1995). The background documents are available through the RCRA HWIR FR proposal docket (60 FR 66344, December 21, 1995). A summary of DRAS is presented in 66 FR 9781–9798, February 12, 2001. Footnote 2 in Preamble Section I.B.2. above lists the URL addresses for Region 6 guidance on DRAS.

5. What Methods Is EPA Proposing To Use To Determine Delisting Levels for This Petitioned Waste?

DOE–SR submitted to the EPA analytical data from its Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste consists of treated F006 and F027 waste from the M–Area of SRS, where nuclear reactor components were produced. The M–Area waste was treated by vitrification and DOE–SR petitioned EPA to delist the vitrified waste treatment residue, classified as F006 and F028, because it was derived from the treatment of F006 and F027 waste. DOE–SR's petitioned waste also included a small volume of non-vitrified waste treatment residue consisting of cementitious treatability samples (EPA Hazardous Waste No. F006). DOE–SR's delisting petition is based on analytical results for untreated waste, laboratory scale treatability studies, pilot scale testing, and testing of the vitrified waste from the full-scale vitrification unit. A summary of analytical data is presented in Table 2 of section II below, with analytical details in the Table footnotes.

After reviewing the analytical data and information on processes and vitrification feed materials that DOE–SR submitted in the delisting petition, EPA developed a list of constituents of concern and calculated delisting levels and risks using DRAS and EPACMTP DAFs as described above. EPA requests public comment on this proposed method of calculating delisting levels and risks for DOE–SR's petitioned waste.

EPA also requests comment on three additional methods of evaluating DOE–SR's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[4] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) comparing total concentrations of constituents in the waste to the results obtained by DRAS for total concentrations; and (3) comparing concentrations of constituents in the waste and waste leachate to the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for DOE–SR's constituents of concern are the following:

Arsenic: 5.0 mg/l TCLP; *Barium:* 21 mg/l TCLP; *Beryllium:* 1.22 mg/l TCLP;

Cadmium: 0.11 mg/l TCLP; *Chromium:* 0.60 mg/l TCLP; *Lead:* 0.75 mg/l TCLP;

Nickel: 11 mg/l TCLP; *Silver:* 0.14 mg/l TCLP; and *Acetonitrile:* 38 mg/kg.

The EPA provides notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Summary of Delisting Petition Submitted by the United States Department of Energy Savannah River Operations Office (DOE–SR), Aiken, South Carolina

DOE–SR is seeking a delisting for vitrified radioactive mixed waste (RMW) generated at the Savannah River Site (SRS) in Aiken, South Carolina. The petitioned waste meets the listing definitions of F006 and F028 in Section 261.31 [5] and was generated by vitrification treatment of F006 and F027 [6] waste from the SRS M-Area where nuclear reactor components were produced. The petitioned waste also includes a small volume of non-vitrified waste which consists of cementitious treatability samples (EPA Hazardous Waste No. F006).

DOE–SR petitioned EPA, Region 4, in September 1996 and submitted revised petitions in September 1998 and September 2000, to exclude this F006 and F028 waste, on a one-time, generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D.

The hazardous constituents of concern [7] for which F006 was listed are cadmium, hexavalent chromium, nickel, and cyanide (complexed). F028 was listed for tetra-, penta-, and hexachlorodibenzo-*p*-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts. DOE–SR petitioned the EPA to exclude its F028 waste (generated from thermal treatment of F027 waste) and F006 waste because DOE–SR believes that the petitioned waste does not meet the criteria for which the waste was listed. DOE–SR claims that its F006 and F028 waste will not be hazardous because the constituents of concern for which F006 and F028 are listed are either not present or present only at such low concentrations that the waste does not meet the criteria in Section 261.11(a)(3) for listing a waste as hazardous. DOE–SR also believes that this waste will not be hazardous for any other reason (i.e., there will be no additional constituents or factors that could cause the waste to be hazardous [8]). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of DOE–SR's petition.

In support of its petition, DOE–SR submitted: (1) Descriptions [9] of the waste streams that contributed to the petitioned waste, the areas where the contributing waste streams were generated, and the vitrification treatment process that generated the petitioned waste; (2) Material Safety Data Sheets (MSDSs) for all chemicals used in processes that generated the waste streams from which the petitioned waste was derived and the vitrification process that generated the petitioned waste; (3) the total volume of petitioned waste generated; (4) results of analysis of untreated waste and the petitioned waste for all constituents in Appendix VIII of 40 CFR part 261 or Appendix IX of part 264; (5) results of the analysis of leachate obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311), from the petitioned waste and historical results obtained by the Extraction Procedure Toxicity leaching method ((EPTox), SW–846 Method 1310); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity, in these wastes; and (7) results of the MEP analysis of the petitioned waste.

The SRS vitrification unit treated all of the M-Area waste streams from October 1996 through March 22, 1999, pursuant to the Land Disposal Restrictions—Federal Facility Compliance Agreement (LDR–FFCA) of March 13, 1991, between EPA and DOE. Forty-four batches, a total of 2,960 metric tons, of M-Area waste streams were treated.[10] The LDR–FFCA required that the treatment residue meet LDR treatment standards. The petitioned waste is this treatment residue and, except for a small volume of cementitious treatability samples is the glass that formed after cooling and shaping molten glass made from the M-Area waste streams and glass-making additives. The vitrification unit, called the Vendor Treatment Facility (VTF) Melter, was an electric joule-heated glass melter, with a capacity of 5 to 6 tons per day, which maintained the molten glass at 1150°C for an average of 4 to 5 days. The total amount of vitrified waste generated was 538 cubic yards, classified as F006 and F028 because it was derived from F006 and F027 M-Area waste streams. Table 1 presents a summary of the M-Area waste streams and their generation dates.

In addition to the vitrified waste, the DOE–SR requested the delisting of a small volume of cementitious treatability samples (EPA Hazardous

[4] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

[5] F006: ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.''

F028: ''Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F023, F026, and F027.''

[6] F027: ''Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-tri-chlorophenol as the sole component.)'

[7] The hazardous constituents of concern for every listed waste are in *Appendix VII to Part 261—Basis for Listing Hazardous Waste.*

[8] Note that the waste remains subject to the Atomic Energy Act because of its radioactivity.

[9] Detailed descriptions may be found in the DOE–SR's Approved Site Treatment Plan (1996), developed pursuant to the Federal Facility Compliance Act of 1992.

[10] The RCRA Docket, R4–01–02–DOESRSP, for today's proposed rule contains the letter, dated June 15, 1999, to David E. Wilson from J. V. Odum, which documents the treatment of the petitioned waste to LDR treatment standards.

Waste No. F006). These samples were generated during treatability studies on stabilization conducted by the Savannah River Technology Center (between 1988–1991), and amounted to a total of 24 gallons (approximately 0.12 cubic yards). Analytical data were presented in the delisting petition which indicated that concentrations of hazardous constituents in these cementitious treatability samples were well below levels of concern. DOE–SR reported that these treatability samples might have been size reduced and vitrified in the VTF melter, but VTF operations personnel were concerned that the size reduced samples might not dissolve in the molten glass, and might plug the discharge ports. Therefore, the 0.12 cubic yard of cementitious treatability samples was not vitrified, but was included in the delisting petition (Section 2.1.5.2) as a separate waste stream in addition to the 538 cubic yards of vitrified M-Area wastes.

TABLE 1.—M-AREA WASTE STREAMS OF SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA

Stream name	Stream designation in site treatment plan	EPA hazardous waste number (waste code) for listed waste	Dates generated
Plating Line Sludge from Supernate Treatment.	W–004	F006	June 1990–Apr. 1995.
Mark 15 Filter Cake	W–005	F006	Apr. 1983–July 1983.
Sludge Treatability Samples (glass and cementitious).	W–029	F006	1988–1994.
Uranium/Chromium Solution	W–031	Not listed, but hazardous by characteristic	1990–1992.
High Nickel Plating Line Sludge	W–037	F006	June 1985–Sept. 1988.
Plating Line Sump Material	W–038	Not listed, but hazardous by characteristic	Oct. 1988.
Nickel Plating Line	W–039	Not listed, but hazardous by characteristic	Feb. 1992.
Soils from Spill Remediation and Sampling Programs.	W–048	Not listed, but hazardous by characteristic	1983–1985.
Uranium/Lead Solution	W–054	Not listed, but hazardous by characteristic	1986–1988.
Soils from Chemicals, Metals, and Pesticides Pits Excavation.	W–082	F027	1984.
Dilute Effluent Treatment Facility (DETF) Filtercake from VTF off-gas condensate.	Not Applicable	F006	1996–1999.

Table 1B below summarizes the hazardous constituents and their concentrations in DOE–SR's petitioned waste.

TABLE 1B.—SAVANNAH RIVER SITE, AIKEN, SOUTH CAROLINA: PROFILE OF VITRIFIED M-AREA WASTE

Parameters [1]	1 2	2 10	3 15	4 21	5 26	6 33	7 39	8 44	Maximum [3]	Mean	Standard deviation	Coefficient of variation (%)
Metals												
Arsenic [2] (mg/kg)	2.37	4.84	2.01	2.42	2.54	2.09	1.81	1.52	4.84	2.45	1.02	41.8
Arsenic—TCLP	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	0.045U	NA	NA	NA
Barium (mg/kg)	79.6	116	101	127	104	83.3	85.3	101	127	99.6	16.5	16.6
Barium—TCLP	0.018J	0.010J	0.013J	0.011J	0.009J	0.010J	0.0083J	0.0082J	0.018J	0.011	0.0032	30
Beryllium (mg/kg)	0.52	0.73	0.67	0.82	0.65	0.52	0.56	1.0	1.0	0.68	0.16	24
Beryllium—TCLP	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0005U	0.0008J	0.0008J	NA	NA	NA
Cadmium (mg/kg)	1.3	2.0	1.0	1.2	2.1	1.8	2.4	1.1	2.4	1.6	0.53	33
Cadmium—TCLP	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.004U	0.0008J	NA	NA	NA
Chromi-um (mg/kg)	293	401	131	163	224	218	443	449	449	290	126	43.6
Chromi-um—TCLP	0.18J	0.007J	0.007J	0.006U	0.006J	0.010J	0.010J	0.015J	0.18J	0.030	0.061	200
Lead (mg/kg)	53.5	74.9	59.2	99.2	94.0	61.5	76.0	33.6	99.2	69.0	21.6	31.3
Lead—TCLP	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	0.016U	NA	NA	NA	NA
Nickel (mg/kg)	4,450	6,270	3,990	6,130	9,800	6,420	8,680	1,540	9,800	5,910	2,620	44.4
Nickel—TCLP	0.32	0.19	0.41	0.37	0.35	0.34	0.46	0.072	0.46	0.31	0.12	40
Silver (mg/kg)	7.4	11.5	5.3	6.0	10.2	10.2	8.3	1.5	11.5	7.55	3.26	43.2
Silver—TCLP	0.010J	0.011J	0.014J	0.012J	0.015J	0.013J	0.016J	0.017J	0.017J	0.014	0.0024	18
Organics												
Aceto-nitrile (μg/kg)	8.8J	3.70J	9.60J	5.70J	8.54J	9.85J	9.4J	6.2J	9.85J	7.7	2.2	29
Aceto-nitrile-TCLP									NA	NA	NA	NA
Non-Metal Inorganics												
Fluoride	0.20U	0.24U	0.23U	0.45J	0.19U	0.270J	0.20U	0.23J	0.45J	0.25	0.084	35

Notes to Table 1B:

[1] Parameters are the chemicals or properties analyzed.

[2] The first set of results for each chemical shows the concentrations determined by total analysis of the samples in milligrams of chemical per kilogram of waste (mg/kg) for metals and micrograms per kilogram (μg/kg) for organics. ''Total analysis'' means analysis of unextracted waste. The second set of results for each chemical shows the concentrations determined by analysis of the TCLP extracts of the samples in milligrams of chemical per liter of TCLP extract of the waste (mg/L). The TCLP results are in the row where the name of the chemical is followed by ''—TCLP.'' U = Not detected above the method detection limit, which is the value preceding the U. J = Detected at a concentration greater than the detection limit but less than the reporting limit.—= not analyzed. The metals, antimony, mercury, selenium, and thallium were not detected by total analysis of samples and are not included in the table in order to save space. Acetonitrile was the only organic compound detected and is the only organic compound included in the table. Acetonitrile was not detected above the laboratory reporting limit. Columns 2 through 9 in the table heading contain sample identification numbers. The samples were composite samples for total analysis and grab samples for TCLP from one or more of the VTF batches associated with the composite sample. The top numbers in Columns 2 through 9 are composite sample numbers and the bottom numbers are TCLP grab sample numbers that identify a VTF batch number that was grab-sampled for TCLP. Sampling and analysis details are in Sections 4 and 5 of the petition.

[3] The last four columns contain a statistical analysis of the analytical results. Max. = maximum concentration found; Mean. = mean or average concentration found = sum of concentrations divided by the number of samples; S.D.= standard deviation = the square root of [(sum of squares of the differences between each measured concentration and the mean) divided by (the number of samples minus 1)]; C.V. = coefficient of variation, expressed as a percent = 100 times the standard deviation divided by the mean concentration. Statistical analyses were performed only if the parameter was detected in more than one sample. If a chemical was not detected in any of the samples, NA (not applicable) was written in the last three columns. Detection limits reported by the laboratory were used in the statistical calculations when chemicals were not detected (U) in some of the samples. This is a conservative assumption, which is likely to result in overestimation of the mean concentration.

EPA concluded after reviewing DOE–SR's waste management and waste history information that no other hazardous constituents, other than those tested for, are likely to be present in DOE–SR's petitioned waste. In addition, on the basis of test results and other information provided by DOE–SR, pursuant to section 260.22, EPA concluded that the petitioned waste will not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See Sections 261.21, 261.22, and 261.23, respectively.

During its evaluation of DOE–SR's petition, EPA also considered the potential impact of the petitioned waste on media other than groundwater. With regard to airborne dispersal of waste, EPA evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned waste using an air dispersion model for releases from a landfill. The results of this evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from DOE–SR's petitioned waste. (A description of EPA's assessment of the potential impact of airborne dispersal of DOE–SR's petitioned waste is presented in the RCRA public docket for today's proposed rule.)

EPA evaluated the potential impact of the petitioned waste on surface water resulting from storm water runoff from a landfill containing the petitioned waste, and found that the waste would not present a threat to human health or the environment. (See the docket for today's proposed rule for a description of this analysis). In addition, EPA believes that containment structures at low-level radioactive waste landfills can effectively control runoff. DOE–SR plans to dispose the petitioned waste at the bottom of a 30 foot deep burial trench, so it does not anticipate that runoff from rainwater will directly contact the disposed waste. EPA also believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. Transported contaminants would be further diluted in the receiving water body. Compliance with Atomic Energy Act requirements would minimize significant releases to surface water from erosion of undissolved particulates in runoff.

B. What Delisting Levels Did EPA Obtain With DRAS and EPACMTP?

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 2 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. The input values required by DRAS were the chemical constituents in DOE–SR's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste (Values in Table 1B, Preamble Section II.A.); the maximum one-time volume to be land-disposed (538 cubic yards); the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The carcinogenic constituents in the waste are arsenic, beryllium, and cadmium. Beryllium and cadmium also have non-carcinogenic toxic effects. Allowable concentrations in the TCLP leachate of the waste, as calculated by DRAS, are higher than the Toxicity Characteristic (TC) levels for all TC constituents except arsenic. Therefore, the delisting levels for all TC constituents except arsenic are capped at the TC regulatory level. The maximum TCLP concentrations found by DOE–SRS for the petitioned waste are all well below the TC levels and are also below the Universal Treatment Standards (UTS) of the Land Disposal Restrictions (LDR). All total concentrations reported for the unextracted petitioned waste are also many orders of magnitude below the DRAS-calculated total levels. The maximum reported total concentrations for DOE–SR's petitioned waste were all below the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead-200; Nickel-10,000; Silver-20; Acetonitrile-1.0, and Fluoride-1.0

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Arsenic	0.0649	1,330	3.47×10^{-7}	
Barium	5,070*; 3,860 Based on MCL	1,930		566×10^{-6}.
Beryllium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation 28.8 Based on MCL.	7.21×10^{3}	2.13×10^{-11}	
Beryllium (Non-Carcinogenic Effect).	541 28.8 Based on MCL	7.21×10^{3}		2.16×10^{-6}.
Cadmium (Carcinogenic Effect)	Not Enough Information: Effect Based on Inhalation; 10.4 Based on MCL.	2,080	4.17×10^{-15}	
Cadmium (Non-Carcinogenic Effect).	39* 10.4 Based on MCL	2,080		1.15×10^{-4}.
Chromium (Hexavalent; Carcinogenic Effect).	Not Enough Information: Effect Based on Inhalation; 107 Based on MCL.	1,070	5.30×10^{-12}	
Chromium (Not Hexavalent; Non-Carcinogenic Effect).	1.50×10^{7}*, 2.67×10^{4} Based on MCL.	2.67×10^{5}		5.48×10^{-7}.

TABLE 2:—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR SRS PETITIONED WASTE—Continued

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated Hazard quotient for maximum concentration of non-carcinogen in waste
Lead	5,200*	3.46×10^{5}		Not Enough Information: There is No Reference Dose for Lead.
Nickel	1.960	2,610		5.64×10^{-4}.
Silver	266*	1420		3.71×10^{-5}.
Fluoride	Not Enough Information; 4,990 Based on MCL.	1,250		Not Enough Information.
Acetonitrile	847	1,320		6.00×10^{-7}.
total Hazard Quotient for All Waste Constituents.				1.09×10^{-3}.
Total Carcinogenic Risk for the Waste (due to Arsenic, Beryllium, Cadmium, and Hexavalent Chromium)).			3.48×10^{-7}	

*These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; 5.0 for Lead; and 5.0 for Silver. MCL = Maximum Contaminant Level of National Primary Drinking Water Standards.

C. How Did EPA Use the Multiple Extraction Procedure (MEP) To Evaluate This Delisting Petition?

EPA developed the MEP test (SW–846 Method 1320) to help predict the long-term resistance to leaching of stabilized wastes, which are wastes that have been treated to reduce the leachability of hazardous constituents. The MEP consists of a TCLP extraction of a sample followed by nine sequential extractions of the same sample, using a synthetic acid rain extraction fluid (prepared by adding a 60/40 weight mixture of sulfuric acid and nitric acid to distilled deionized water until the pH is 3.0 ± 0.2). The synthetic acid rain extraction fluid was developed to determine the effect of ''natural'' acid rain on a hazardous waste inappropriately disposed, i.e., directly exposed to rainfall. The standard TCLP extraction fluid was developed to simulate the leaching of a hazardous waste disposed in a landfill, with the simulated extractant having a pH of 4.93. During the MEP test, the original sample which is subjected to the nine sequential extractions consists of the solid phase remaining after, and separated from, the initial TCLP extract. EPA designed the MEP to simulate multiple washings of percolating rainfall in the field, and estimates that these synthetic acid rain extractions would simulate approximately 1,000 years of rainfall. (See 47 *FR* 52687, Nov. 22, 1982.) 1982.) DOE–SR modified the MEP procedure for the petitioned waste by using the TCLP extraction fluid with pH = 4.93 for all the extractions, instead of using the synthetic acid rain for the nine extractions following the initial TCLP extraction. DOE–SR believed that the TCLP would represent more accurately the long term leaching from the SRS low-level radioactive waste landfill in which the waste would not be exposed to direct rainfall leaching. Table 3 below presents the results of analysis of modified MEP extracts.

The modified MEP data in Table 3 indicate that the petitioned waste would be expected to leach metals at low and decreasing concentrations for a period of at least 100 years, and much less than 10 per cent of the total amount of metal in the waste would leach during this time period.[11] The average life of a landfill is approximately 20 years. (See 56 *FR* 32993, July 18, 1991; and 56 *FR* 67197, Dec. 30, 1991.)

TABLE 3.—MULTIPLE EXTRACTION PROCEDURE (MODIFIED SW–846 METHOD 1320) RESULTS FOR DOE–SR'S PETITIONED WASTE

Extract No.	Nickel (Ni) concentration (mg/1 TCLP)
1 (Initial TCLP)	0.46
2 (First TCLP extraction of the modified MEP)	0.33
3	0.34
4	0.29

[11] This estimate is based on the following calculation for nickel: % nickel leached out over more than 100 years=100×(total number of milligrams of nickel in all of the 2-liter sample MEP extracts)÷the number of milligrams of nickel in the 100-gram sample that was extracted by the MEP: $100 \times 2 \times (0.46 + 0.33 + 0.34 + 0.29 + 0.32 + 0.30 + 0.31 + 0.31 + 0.33 + 0.33) \div 954 = 100 \times 6.64 \div 954 = 0.70\%$.

TABLE 3.—MULTIPLE EXTRACTION PROCEDURE (MODIFIED SW–846 METHOD 1320) RESULTS FOR DOE–SR'S PETITIONED WASTE—Continued

Extract No.	Nickel (Ni) concentration (mg/1 TCLP)
5	0.32
6	0.30
7	0.31
8	0.31
9	0.33
10 (Ninth TCLP extraction of the modified MEP)	0.33

D. Conclusion

After reviewing DOE-SR's processes, the EPA concludes that (1) no hazardous constituents of concern are likely to be present in DOE-SR's waste at levels that would harm human health and the environment; and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

EPA believes that DOE-SR's petitioned waste will not harm human health and the environment when disposed in a low-level radioactive waste landfill.

EPA proposes to exclude DOE-SR's petitioned waste from being listed as F006 and F028, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that DOE-SR's petitioned waste must be disposed in accordance with the Atomic Energy Act. If the proposed rule

becomes effective, the exclusion will be valid if the petitioner disposes of the waste in a low-level radioactive waste landfill in accordance with the Atomic Energy Act, as required by the amended Table 1 of Appendix IX of 40 CFR part 261. If the proposed rule becomes final and EPA approves the disposal method, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA and a low-level radioactive waste under the Atomic Energy Act. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management and low-level radioactive waste regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to verify reported analytical data.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, SRS must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. State Authorization

A. Statutory Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the overall standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR 271.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. The State must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so. Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Effect on State Authorization

Today's proposal would be promulgated pursuant to HSWA authority, and contains provisions that are less stringent than the current Federal program. The proposed exclusion for DOE–SR's petitioned waste would be less stringent. Consequently, States would not be required to adopt the proposed exclusion, if it becomes final, as a condition of authorization of their hazardous waste programs.

V. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866. This proposed rule is not a ''significant regulatory action,'' because it applies to a single facility.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule is de-regulatory in nature, and, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility.

Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 must prepare a written analysis, 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. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

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 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 will not significantly or uniquely affect small governments. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's rule is not, therefore, subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. There are no information collection requirements for this proposed rule that require an ICR. Furthermore, only one facility is affected by this proposal. 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.

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB Control Number 2050–0053.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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 proposed 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, as specified in Executive Order 13175. This is because today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Executive Order 13045: Protection of Children From Environmental Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 *FR* 19885, April 23, 1997) applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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 proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. 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 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).

Today's proposed rule pertains to treated waste at a single facility. EPA does not believe this petitioned waste would pose a risk to any community, whether minority, low-income, middle-income, non-minority, or affluent. The petitioned waste, if excluded from regulation as a hazardous waste under RCRA, must comply with the Atomic Energy Act and all federal, state, and local solid waste regulations. Therefore, this proposed rule is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities versus non-minority or affluent communities.

We encourage all stakeholders including members of the environmental justice community and members of the regulated community to provide comments or further information related to potential environmental justice concerns or impacts, including information and data on facilities that have evaluated potential ecological and human health impacts (taking into account subsistence patterns and sensitive populations) to minority or low-income communities.

I. Executive Order 13211 (Energy Effects)

This proposal is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposal will not have any adverse energy effects. It is a de-regulatory proposal that will affect a single facility.

J. Federalism—Applicability of Executive Order 13132

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.''

Today's proposed rule is de-regulatory and imposes no enforceable duty on any State, local or tribal governments or the private sector.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 27, 2002.

Jewell Harper,

Acting Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under Secs. 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Savannah River Site (SRS)	Aiken, South Carolina	Vitrified waste (EPA Hazardous Waste Nos. F006 South and F028) that the United States Department of Energy Savannah River Operations Office (DOE–SR) generated by treating the following waste streams from the M-Area of the Savannah River Site (SRS) in Aiken, South Carolina, as designated in the SRS Site Treatment Plan: W–004, Plating Line Sludge from Supernate Treatment; W–995, Mark 15 Filter Cake; W–029, Sludge Treatability Samples (glass and cementitious); W–031, Uranium/Chromium Solution; W–037, High Nickel Plating Line Sludge; W–038, Plating Line Sump Material; W–039, Nickel Plating Line Solution; W–048, Soils from Spill Remediation and Sampling Programs; W–054, Uranium/Lead Solution; W–082, Soils from Chemicals, Metals, and Pesticides Pits Excavation; and Dilute Effluent Treatment Facility (DETF) Filtercake (no Site Treatment Plan code). This is a one-time exclusion for 538 cubic yards of waste (hereinafter referred to as ''DOE–SR Vitrified Waste'') that was generated from 1996 through 1999 and 0.12 cubic yard of cementitious treatability samples (hereinafter referred to as ''CTS'') generated from 1988 through 1991 (EPA Hazardous Waste No. F006). The one-time exclusion for these wastes is contingent on their being disposed in a low-level radioactive waste landfill, in accordance with the Atomic Energy Act, after [insert date of final rule.] DOE–SR has demonstrated that concentrations of toxic constituents in the DOE–SR Vitrified Waste and CTS do not exceed the following levels. (1) *TCLP Concentrations:* All leachable concentrations for these metals did not exceed the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS): (mg/l TCLP): Arsenic-5.0; Barium-21; Beryllium-1.22; Cadmium-0.11; Chromium-0.60; Lead-0.75; Nickel-11; and Silver-0.14. In addition, none of the metals in the DOE–SR Vitrified Waste exceeded the allowable delisting levels of the EPA, Region 6 Delisting Risk Assessment Software (DRAS): (mg/l TCLP): Arsenic-0.0649; Barium-100.0; Beryllium-0.40; Cadmium-1.0; Chromium-5.0; Lead-5.0; Nickel-10.0; and Silver-5.0. These metal concentrations were measured in the waste leachate obtained by the method specified in 40 CFR 261.24. *Total Concentrations in Unextracted Waste:* The total concentrations in the DOE–SR Vitrified Waste, not the waste leachate, did not exceed the following levels (mg/kg): Arsenic-10; Barium-200; Beryllium-10; Cadmium-10; Chromium-500; Lead- 200; Nickel-10,000; Silver-20; Acetonitrile-1.0, which is below the LDR UTS of 38 mg/kg; and Fluoride-1.0

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Data Records:* Records of analytical data for the petitioned waste must be maintained by DOE–SR for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be maintained with a signed copy of the certification statement in 40 CFR 260.22(i)(12). (3) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, DOE–SR possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent is identified at a level higher than the delisting level allowed by EPA in granting the petition, DOE–SR must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (3)(A) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If EPA determines that the reported information does require Agency action, EPA will notify the facility. The notice shall include a statement of the proposed action and a statement providing DOE–SR with an opportunity to present information as to why the proposed action is not necessary. DOE–SR shall have 10 days from the date of EPA's notice to present such information.(E) Following the receipt of information from DOE–SR, as described in paragraph (3)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (3)(A) or (3)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (4) *Notification Requirements:* DOE–SR must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.

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Notices

Federal Register
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Friday, March 15, 2002

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

Submission for OMB Review; Comment Request

March 11, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR Part 1951–L, Servicing Cases Where Unauthorized Loan or Other Assistance are Received.

OMB Control Number: 0560–0160.

Summary of Collection: The Farm Service Agency (FSA) farm loan programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT) [P.L. 87–128). Occasionally, FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in program regulations or where the borrower qualified for loan assistance but a subsidized interest was charged on the loan, resulting in receipt of unauthorized interest subsidy benefits. The assistance may also be loan servicing where a borrower received an excessive write down or write-off of their debt. The information collected under the provisions of this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan.

Need and Use of the Information: The information collected by FSA will primarily be financial data such as amount of income, farm operating expenses, crop yields, etc. The borrower will provide written records or other information to refute FSA's findings when it is determined through audit or by other means that a borrower has received financial assistance to which he or she was not entitled. If the borrower is unsuccessful in having the FSA change its determination of unauthorized assistance, the borrower may appeal the FSA decision. Otherwise, the unauthorized loan recipient may pay the loan in full, apply for a loan under a different program, convey the loan security to the government, enter into an accelerated repayment agreement, or sell the security in lieu of forced liquidation.

Description of Respondents: Farms, Individuals or household; Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Reporting; On occasion; Annually.

Total Burden Hours: 800.

Farm Service Agency

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Summary of Collection. The USDA Farm Service Agency (FSA) Aerial Photography Field Office (APFO) has the authority to coordinate aerial photography work in USDA, develop and carry out aerial photography and remote sensing programs and the Agency's aerial photography flying contract programs. Section 387 of the Agriculture Adjustment Act of February 1, 1938, states ''The Secretary may furnish reproduction of such aerial or other photographs, mosaics, and maps as have been obtained in connection with the authorized work of the Department of farmers and governmental agencies at the estimated cost of furnishing such reproduction, and to persons other than farmers at such prices (not less than estimated cost of furnishing such reproductions) as the Secretary may determine. The money received from such sales is deposited in the Treasury to the credit of the appropriation charged with the cost of making such reproductions. FSA will collect information using FSA–441 form to collect the necessary customer and photography information needed for the USDA FSA Aerial Photography Field Office to produce and ship the various products ordered from their office.

Need and Use of the Information: FSA will collect information on the name, address, contact name, telephone, fax, e-mail, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/po amount. Customers have the option of placing orders by mail, fax, telephone, walk-in or floppy disk. Furnishing this information requires the customers to research and prepare their request before submitting it to APFO.

Description of Respondents: Farms; Individuals or household; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting; Other (when ordering).

Total Burden Hours: 8,000.

Animal and Plant Health Inspection Service

Title: 9 CFR part 94 Importation of Pork from Yucatan and Sonora, Mexico.

OMB Control Number: 0579–0138.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as, to take actions to prevent and to manage exotic diseases such as classical swine fever. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Veterinary Services, a division within USDA's Animal and Plant Health Inspection Service, is responsible for administering regulations intended to prevent the introduction of animal diseases, such as classical swine fever, into the United States. APHIS will collect information from the foreign meat inspection certificate that accompanies the pork from Yucatan and Sonora to the United States.

Need and Use of the Information: APHIS will collect information to certify that; the pork is from swine slaughtered at Federally inspected slaughter plants and are approved to export to the United States; and the pork has not been in contact with pork from any State in Mexico other than Yucatan or Sonora. Also, the Secretary certificate must show the seal number that appears on the shipping container in which the pork is transported.

Description of Respondents: Farms; Business or other for-profit; Individuals or households; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 40.

Animal and Plant Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.

OMB Control Number: 0579–0013.

Summary of Collection: To fulfill its mission of preventing the importation, preparation, sale, or shipment of harmful veterinary biological products, the Veterinary Biologics Division of USDA's Animal and Plant Health Inspection Service (APHIS) issues licenses to qualified establishments that produce biological products, and issues permits to importers seeking to import such products into the United States. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms and field study summaries.

Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also, APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 51,177.

Animal and Plant Health Inspection Service

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. which permits the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as bovine spongiform encephalopathy (BSE) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products.

Need and Use of the Information: APHIS will collect information to ensure that imported items do not present a disease risk to the livestock and poultry populations of the United States. The information will provide APHIS with critical information concerning the origin and history of the items destined for importation into the United States. Without the information, the United States would be at risk of an exotic disease incursion.

Description of Respondents: Business or other for-profit; Individuals or households; Not for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 7,098.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 17,830.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Summary of Collection: Title 21, U.S.C. authorizes the Secretary and the Animal and Plant Health Inspection Service (APHIS) to prevent, control and eliminate domestic diseases, as well as to take actions to prevent and manage exotic disease such as hog cholera, foot-and-mouth disease, and other foreign disease. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS ability to compete in the world market of animals and the trade of animal products. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Public Health Officials, the information is used by Federal or State animal health personnel to determine: whether the waste collector is feeding garbage to swine; whether it is being treated; and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Farms; Business or other for profit.

Number of Respondents: 383.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 584.

Animal Plant and Health Inspection Service

Title: Foreign Animal Disease (Emerging Disease Investigation (FAD/ED) Database).

OMB Control Number: 0579–0071.

Summary of Collection: Title 21 U.S.C. authorizes section 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g, which permits the Secretary to prevent, control and eliminate domestic diseases, as well as taking actions to prevent and manage

exotic diseases such as foot-and-mouth disease, exotic Newcastle disease, and other foreign diseases. Animal and Plant Health Inspection Service (APHIS) has the responsibility to investigate and eventually control foreign animal disease occurrences. Through its Foreign Animal Disease Surveillance Program, the Emergency Program Staff of Veterinary Services compiles essential epidemiological and diagnostic data that is used to define foreign animal diseases and their risk factors. APHIS collects the information using form VS 12–27.

Need and Use of the Information: APHIS collects information such as the purpose of the diagnostician's visit to the site, the name and address of the owner/manager, the type of operation being investigated, the number of and type of animals on the premises, the number of sick or dead animals, the results of post mortem examinations, and the name of the suspected disease. This information assists APHIS personnel in detecting and eradicating foreign animal disease incursions.

Description of Respondents: Farm; Business or other for profit.

Number of Respondents: 535.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,070.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508), requires APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the kind of pesticide used, the date of application, the location and description of where samples are collected, and the environmental conditions at the collection site including wind speed and direction, temperature, humidity, amount of rainfall, and topography. The supporting information contained on the APHIS Form 2060 is vital for interpreting the laboratory test APHIS conducts on collected samples. Also, if a given sample were not accompanied by the form, APHIS would have no way of knowing from which site the sample was taken.

Description of Respondents: Federal Government; Individuals or households; Farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Animal Plant and Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests form entering the United States, as well as the spread of pests not widely distributed in the United States, and eradicating those imported when feasible. The Plant Quarantine Act and the Federal Pest Act authorizes the Department to carry out this mission. The regulations in 7 CFR part 353 allow non-government facilities (such as commercial laboratories and private inspection services) to be accredited by the Animal and Plant Health Inspection Service (APHIS) to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal or re-export phytosanitary certificates, or export certificates for processed plant products. APHIS provides export certification services to assure other countries that the plants and plant products are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name, full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If the activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: business or other for profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 300.

Food and Nutrition Service

Title: Report of Coupon Issuance & Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: The Emergency Food Stamp Assistance Program is authorized by the Disaster Relief Act of 1970; the Food Stamp Act, as amended; and Part 274 of the Food Stamp Program regulations. The Food and Nutrition Service (FNS) initiated this program in a food stamp project area when all or part of the area had been affected by a disaster. Sections 274.7 and 274.14 of the Food Stamp Program regulations contain requirements that State agencies keep records and submit reports on food stamps issued under disaster procedures ''as may from time to time be required by FNS.'' Food distribution in disaster situation is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disaster such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Form FNS–292 will be used by State welfare departments to report to FNS the number of households and persons who were certified for Emergency Food Stamp Assistance, and also to report the value of coupons issued to those households.

Need and Use of the Information: FNS will collect information through the use of form FNS–292, which is used by the FNS Administrator, the Food Distribution Division, and the three Food Stamp Program divisions to monitor program activity, assess coverage provided to needy recipients, and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of food stamp coupons and the distribution of surplus foods during disaster situations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 97.

Food and Nutrition Service

Title: Affidavit of Return or Exchange of Food Coupons.

OMB Control Number: 0584–0052.

Summary of Collection: Section 11(a), of the Food Stamp Act (the Act) requires that the state agencies assume responsibility for the certification of applicant households and for the issuance of coupons and the control and accountability thereof. Records shall be kept to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for not less than 3 years.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information on coupons returned or exchanged and provides verification of who returned and received the coupons. FNS will use form FNS–135, Affidavit of Return or Exchange of Food Coupons to collect information.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 30,000.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 7,500.

Forest Service

Title: 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1982, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 million acres of National Forest set up by proclamation from the public domain. The law gives individuals the right to search for and extract valuable mineral deposits of locatable minerals and secure title to the lands involved. Recording the claim in the local courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The Forest Service (FS) will collect information using form FS 2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent; to identify the area involved; the nature of the proposed operations; the route to the area of operations; and the method of transport. The information requirements for a Plan of Operations includes: the name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access route; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operation include: verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; and maintenance of the site, structure, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,208.

Frequency of Responses: Reporting: Other (approved for a given period).

Total Burden Hours: 13,174.

Forest Service

Title: Forest Products Free Use Permit, Forest Products Removal Permit and Cash Receipt, and Forest Products Sale Permit and Cash Receipt.

OMB Control Number: 0596–0085.

Summary of Collection: Individuals or other Federal agencies that wish to remove forest products from the National Forest must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5–223.13 sets forth conditions under which free use of forest product may be obtained by individuals and organizations. 15 U.S.C. 607 provides that a defense against trespass is that the forest product be removed under the regulations. These statutes and regulations apply to 16 U.S.C. 477, 492, and 607a. Regulations at 36 CFR 216.6 require persons to obtain permits to remove special forest products from National Forest Land. Forest Service Regional offices have been issuing Forest Product Removal Permit for over 20 years. The collection of information is required to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee complies with the regulations and terms of the permit. This information is also needed to allow Forest Service (FS) compliance personnel to identify permittees in the field.

Need and Use of the Information: FS will collect the name address and tax identification number from person applying for permits. The information will be used by FS to keep a record of persons buying forest products. The information will also be used to ensure that the permittee has not received product values in excess of the amount allowed by regulation in any one fiscal year. Without the forest product removal program, achieving multiple use management programs such as reducing fire hazard and improving forest health on the National Forest would be impaired.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 18,500.

Frequency of Responses: Recordkeeping, Reporting: On occasion.

Total Burden Hours: 1,365.

Farm Service Agency

Title: Agreement for the use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: Section 335(f) of the Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent degree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation.

Need and Use of the Information: FSA will collect information on the actual and planned disposition of chattel security through the use of form FSA 1962–I. This form allows for normal income releases as required for payment of essential family living and farm operating expenses, provides the borrower with information on how to report sales of chattels, income received and how to notify agency of any changes to the operation or the use of chattel proceeds. The information collected will come from FSA borrowers who may be individual farmers and farming entities.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 68,750.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 20,350.

Farm Service Agency

Title: Lamb Meat Adjustment Assistance Program (LMAAP).

OMB Control Number: 0560–0205.

Summary of Collection: The Lamb Meat Adjustment Assistance Program (LMAAP) is administered and implemented under the general direction and supervision of the Farm Service Agency (FSA) through its State and County Committees. Authorizing legislation for LMAAP provides for the re-establishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The objective of the LMAAP is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the 4 year period from July 21, 1999 through July 31, 2003.

Need and Use of the Information: FSA will collect information using form FSA 383 for program year 2–4 for the sheep and lamb operations. The information obtained from the form is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.

Description of Respondents: Farm; Individuals or households; Business or other-for-profit.

Number of Respondents: 60,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 339,240.

Farm Service Agency

Title: General Regulations Governing Loans for 1996 and Subsequent Crops.

OMB Control Number: 0560–0087.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996, authorizes The Farm Service Agency (FSA) to make commodity loans for certain commodities to eligible producers. Producers requesting Commodity Credit Corporation (CCC) commodity loans must meet eligibility requirements that are basic to all commodity loan programs. These requirements that are needed to insure the integrity of the loan program and that only eligible producers receive the benefits of the loan program. FSA will collect information on commodity type, quantity of commodity, storage, location, liens on the commodity, etc., through the use of a variety of forms.

Need and Use of the Information: FSA County Committees are responsible for administration of the CCC loan program. The committees use the information collected to verify eligibility of participants to receive loan benefits and to determine cases of noncompliance with the regulations governing the loan program. Furnishing this data is voluntary; however, without it, assistance under the CCC loan program cannot be provided.

Description of Respondents: Farm.

Number of Respondents: 382,455.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 700,591.

Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Application of Federally Restricted Use Pesticides (7 CFR part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), ''shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state.'' In addition, USDA and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records, develop and maintain a database so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, of which copies must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.

Need and Use of the Information: AMS will collect information using form STD–8, Pesticide for Recordkeeping Inspection. The form provides information on the brand or product name and the EPA registration number of the federally restricted use pesticide that was applied; the total amount of the federally restricted use pesticide applied; the location, the size of the area treated, the crop, commodity, stored product or site to which a restricted use pesticide was applied; the month, day and year on which the restricted use pesticide application occurred; and the name and certification number of the certified applicator who applied or who supervised the application of the restricted use of pesticide. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the stature requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farm; Federal Government; State, Local or Tribal Government.

Number of Respondents: 915,780.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,785,041.

Rural Development

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: The Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.

Need and Use of the Information: RD will use this information to monitor a recipient's compliance with the civil rights laws and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 19,565.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 555,692.

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.

OMB Control Number: 0584–New.

Summary of Collection: The Food and Nutrition Service (FNS) has establish a process for a uniform grant application usable for all of the non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant application package. The authorities for these grants vary. The term ''grant'' in this submission refers only to non-entitlement discretionary grants or cooperative agreements Discretionary grant announcements include a number of information collections, including a ''project description'' (program narrative), assurances and certifications. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102 and OMB A–110.

Need and Use of the Information: As the primary users of the information collected, FNS will review, evaluate and approve application package will include general information and instructions; requirements for the program narrative statement describing how the grant objectives will be reached as well as a description of the budget; the Standard Form (SF 424 series that requests basic information, budget information and assurances) and certifications. Currently, there is no government-wide OMB pre-approved form for the project narrative, although a program narrative is required in existing OMB circulars.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not for profit institutions.

Number of Respondents: 505.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 30,000.

Food and Nutrition Service

Title: Consumer Food Guide Pyramid Study.

OMB Control Number: 0584–New.

Summary of Collection: The U.S. Department of Agriculture's Food Guide Pyramid is designed to help all healthy Americans two years of age and older implement the Dietary Guidelines for Americans. The proposed qualitative consumer research will describe consumers' understanding and use of the Food guide Pyramid along with possible barriers to following the Pyramid's guidance. The study involves 18 focus group sessions, 6 with general consumers and 4 each with the elderly, overweight, and food stamp recipients, to explore how consumers understand concepts and messages of the consumer brochure and graphic illustration of the Food Guide Pyramid. The authority to conduct this information collection is found in 7 CFR 2.19(a)(3).

Need and Use of the Information: The Center for Nutrition Policy and promotion (CNPP) will collect information to develop practical and meaningful food and nutrition guidance for Americans to help improve their diets. Information will be collected concerning how the Food Guide Pyramid recommendations and messages are understood and used by consumers to improve their diets, and barriers to their use of the Pyramid. If the information is not collected, USDA's ability to incorporate messages and materials that are practical, meaningful, and relevant for the intended audience in any proposed update of the Food Guide Pyramid will be impaired.

Description of Respondents: Individuals or households.

Number of Respondents: 2,700.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 1,035.

Forest Service

Title: Small Business Timber Set-Aside Program: Appeal Procedures on Recomputation of Shares.

OMB Control Number: 0596–0141.

Summary of Collection: The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub L. 104–208) requires that the Forest Service establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-aside (SBA) shares or changes in policies impacting the Small Business Timber Sale Set-aside Program.

Need and Use of the Information: the information collected is submitted to a Forest Service Officer to review any appeal of decisions related to recomputations of timber sale share to be set-aside for small business timber purchasers.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 320.

Sondra A. Blakey,

Departmental Information Clearance Officer.

[FR Doc. 02–6211 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is June 3, 2002.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3-year term, respectively. As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 2002. Nominations for a 3-year appointment for all 10 of the vacant categories are sought.

In addition, the current member of Category U. Food and Fiber Processors, will not be serving out the remainder of his term. Therefore, this slot will be vacant as well and available for a 1-year term nomination. All nominees will be carefully reviewed for their broad expertise, leadership, and relevance to a category. The full 11 slots to be filled are:

Category B. Farm Cooperatives

Category D. Plant Commodity Producers
Category G. National Aquaculture Associations
Category J. National Food Science Organizations
Category L. National Nutritional Science Societies
Category M. 1862 Land-Grant Colleges and Universities
Category R. Scientific Community not closely associated with Agriculture
Category U. Food and Fiber Processors (1-year term)
Category AA. An Agency of USDA lacking Research Capabilities
Category BB. Research Agency of the Federal Government other than USDA
Category DD. National Organization directly concerned with REE

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person below or may printed out from the following Web site: *http://www:fs.fed.us,* then search AD–755). All nominees will be vetted before selection. Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture. Send nominee's name, resume, and their completed AD–755 to USDA, Office of the Advisory Board, Research, Education, and Economics, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255, postmarked no later than June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics, U.S. Department of the Agriculture.

[FR Doc. 02–6208 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board general meeting and focus session from March 28, 2002—March 29, 2002. This meeting is entitled, Food and Agriculture Biosecurity: Research and Education Implications. It will be held at the Washington Court Hotel in Washington, DC. Also, a pre-meeting reception with special guest speakers, including the President of the Council of Scientific Society Presidents, Dr. Martin Apple, will be held the evening of Wednesday March 27 from 7–8 p.m. at the same location.

On Thursday, March 28, 2002, the morning session will begin with opening remarks by the Chair of the Advisory Board, Dr. Victor Lechtenberg. Dr. Michael Osterholm, Director of the Center for Infectious Disease Research and Policy, University of Minnesota, will provide the keynote address. The Deputy Secretary of Agriculture, Jim Moseley, has been invited to provide an overview on Food and Agricultural Biosecurity at USDA. Additional remarks on USDA's key research activities will be given by Dr. Joseph Jen, Under Secretary for Research, Education, and Economics. There will also be a panel on ''Homeland Security in USDA Agencies,'' followed by a panel on ''Preparedness Plans.'' A mid-afternoon panel at 3 p.m. will address ''Biosecurity Education and Protection for the American Public.'' The floor will be open to the public, as time permits, prior to the day's adjournment. A buffet reception with be held that evening (Thursday, March 28) from 5:30 p.m.—7:30 p.m. with an invited guest speaker from the Office of Homeland Security.

On Friday, March 29, 2002, the Advisory Board will reconvene with a panel that addresses ''Biosecurity in the Food and Agriculture Industries Involved in the Food Supply Chain,'' and include topics such as grain handling and transportation, meat production, food processing, retail, food service, and fresh produce. Dr. John Marburger, Director of the Office of Science and Technology Policy, Executive Office of the President, has been invited to speak during lunch on high priority research and development issues, interagency collaborations, and public and private sector partnerships with regard to homeland security in food and agriculture. The afternoon panel session focuses on ''Research Implications for Biosecurity.'' Guest speakers at this meeting are representative of the broad food and agriculture stakeholder community across the country. Prior to the wrap up of the meeting and as time permits, the floor will be open for public comments. The Board will discuss in detail findings of this 2-day meeting on Food and Agriculture Biosecurity and begin to develop research and education recommendations that will be tendered as advice to the Secretary of Agriculture. Written comments will be accepted at the USDA Advisory Board Office for public record up to 2 weeks following the Board meeting.

This meeting is open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Should an attendee at this meeting require any special needs, please contact the USDA Research, Education, and Economics Advisory Board Office cited below.

DATES:

March 27 7 p.m. to 8 p.m.—Pre-Meeting Reception with Guest Speaker
March 28 8:30 a.m. to 4:15 p.m.—Focus Session

March 28 4:15 p.m. to 4:30 p.m.—Public Comments and Adjournment for the Day
March 28 5:30 p.m. to 7:30 p.m.—Working Reception with Guest Speaker
March 29 8 a.m. to 12 noon—Advisory Board Meeting and Focus Session
March 29 12 noon to 1:15 p.m.—Working Lunch with Guest Speaker
March 29 1:15 p.m. to 3 p.m.—Focus Session and Discussion
March 29 3 p.m. to 3:45 p.m.—Public Comments, Wrap-up and Recommendations, and Adjournment of Meeting

Place: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C.; Atrium Ballroom and Executive Room (Receptions Only).

Type of Meeting: Open to the Public.

Comments: The public may file written comments before or up to two weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344–A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP: 2255, 1400 Independence Avenue, SW.,; Washington, DC 20250–2255; Telephone: 202–720–3684; Fax: 202–720–6199; or e-mail: *SMORGAN@reeusda.gov.* Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–6207 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCIES: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC), through the Farm Service Agency (FSA), to request an extension and revision of the currently approved information collection for the regulation used in support of the CCC Conservation Reserve Program (CRP). This renewal includes revisions incorporated in the proposed rule, ''Cropland Eligibility and Private Sector Technical Assistance,'' including revisions to amend total burden hours to reflect ongoing CRP activity as authorized by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, and Title XI of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Pub. L. 106–387.

DATES: Comments on this notice must be received on or before May 14, 2002 to be assured consideration.

FOR FURTHER INFORMATION, AND TO FILE COMMENTS, CONTACT: Comments may be sent to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, telephone (202) 720–6221; facsimile (202) 720–4619; or e-mail at *crppra@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 1410) Conservation Reserve Program.

OMB Control Number: 0560–0125.

Expiration Date: October 31, 2002.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0125, as identified above allows FSA to effectively administer the regulations under the CRP. The CRP regulations at 7 CFR part 1410 and formerly at 7 CFR part 704 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term CRP contracts with financial and technical assistance and for making cost-share and annual rental payments under the program. All information collection under 7 CFR part 704 has ceased. This regulation was removed by the final CRP rule published February 19, 1997, which revised 7 CFR part 1410. CRP information collection requirements will continue under 7 CFR part 1410.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.7 minutes per respondent.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 160,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 153,861.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, 1400 Independence Avenue, SW., STOP 0513, Washington DC 20250–0513.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6206 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Marketing Quota Referenda Results: Burley and Flue-Cured Tobaccos, 2001

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of results of marketing quota referenda for burley and flue-cured tobaccos for 2001.

SUMMARY: The Farm Service Agency (FSA) herein announces results of marketing quota referenda held in 2001 for burley and flue-cured tobacco. These referenda were conducted to determine if a sufficient number of voting producers who own or grow these tobaccos wanted national marketing quotas to continue for the three marketing years 2001, 2002 and 2003. A majority of the eligible producers voting in the referenda approved continuation of the national marketing quotas.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202)720–2715 or at e-mail address *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Notice

In January 2001, the Secretary of Agriculture (the Secretary) announced that national marketing quotas would be in effect for flue-cured tobacco for the three marketing years beginning with 2001, subject to approval by flue-cured producers in a referendum held in accordance with Sec. 312(c) of the Agricultural Adjustment Act of 1938, as amended. The flue-cured tobacco referendum was conducted January 8 through January 12, 2001, and indicated that 97 percent of voting producers favored the quotas.

The Secretary announced in February 2001, that national marketing quotas would be in effect for burley tobacco for the three marketing years beginning with 2001, subject to approval by burley producers in a referendum. The burley marketing quota referendum, held from February 12 through February 16, 2001, indicated that 97.4 percent of the producers who voted favored the quotas.

This notice is to announce the referenda results, as required by 7 CFR part 717.24. The results of each referenda are set forth below.

Notice

Results of the National Marketing Quota Referenda for the 2001 Through 2003 Marketing Years for Flue-Cured and Burley Tobaccos

The following is a summary, by State, of the results of each referendum.

FLUE-CURED

State	Yes	No	Total
Alabama	1	0	1
Florida	133	3	136
Georgia	363	84	447
North Carolina	6,589	160	6,749
South Carolina	761	13	774
Virginia	1,420	37	1,457
Total	9,267	297	9,564

BURLEY

State	Yes	No	Total
Alabama	1	0	1
Arkansas	1	0	1
Georgia	13	2	15
Indiana	3899	183	4,082
Kansas	19	2	21
Kentucky	85,682	1,272	86,954
Missouri	770	33	803
North Carolina	4,644	164	4,808
Ohio	4,851	201	5,052
Oklahoma	0	0	0
Tennessee	26,720	1,442	28,162
Virginia	7,146	219	7,365
West Virginia	1,276	47	1,323
Total	135,022	3,565	135,587

Signed at Washington, DC, on February 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6209 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC); Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings/work sessions on March 15 & 20, in Quincy, California, and another in Portola, CA on April 12. The purpose of the March 15 meeting is to design concept paper review and project evaluation/selection processes. The purpose of the March 20 work session is to answer questions from members of the community interested in submitting projects for funding consideration under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the April 12 meeting is to review proposed project concept papers and generate comments for project proponents' use.

DATES AND ADDRESSES: The March 15 meeting will take place from 9–3 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California. The March 20 work session will take place from 7–9 p.m., at the Catholic Church Annex, 176 Lawrence Street, Quincy, CA. The April 12 meeting will take place from 9–3 p.m., at the Williams House, 424 East Sierra Ave (Highway 70), Portola, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E–MAIL *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the March 15 meeting include: (1) Review applicable sections of the Secure Rural Schools and Community Self-Determination Act of 2000, regarding project solicitation and approval; and (2) Continue project solicitation/design and selection process; and, (3) Future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee at any time, after being recognized by the Chair. The March 20 work session is open to the public. Agenda items for the April 12 meeting include: (1) Review concepts papers and generate comments for project proponents' use; (2) Public Comment; and, (3) Future meetings schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee in the time provided on the agenda.

Dated: March 8, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–6220 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received on or Before: April 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product and service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Holder, Key and Credit Card/ 7510–01–445–9348.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.
Product/NSN: Holder, Key and Credit Card/ 7510–01–NIB–0613.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.

Services

Service Type/Location: Janitorial/Custodial/ Alton Federal Building, Alton, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Ed Jones Federal Building & U.S. Courthouse, Jackson, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, Tennessee.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Federal Building & U.S. Post Office, Dyersburg, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, TN.
Contract Activity: GSA, Public Buildings Service.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for deletion from the Procurement List.

The following products and services are proposed for deletion from the Procurement List:

Products

Product/NSN: Hood, Sleeping Bag/8465–00–518–2769.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, California.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.
Product/NSN: Stamp, Rubber/7520–00–NSH–0001.
Product/NSN: Stamp, Rubber/7520–00–NSH–0002.
Product/NSN: Stamp, Rubber/7520–00–NSH–0003.
Product/NSN: Stamp, Rubber/7520–00–NSH–0004.
Product/NSN: Stamp, Rubber/7520–00–NSH–0005.
Product/NSN: Stamp, Rubber/7520–00–NSH–0006.
Product/NSN: Stamp, Rubber/7520–00–NSH–0007.
Product/NSN: Stamp, Rubber/7520–00–NSH–0008.

Product/NSN: Stamp, Rubber/7520–00–NSH–0009.
Product/NSN: Stamp, Rubber/7520–00–NSH–0010.
Product/NSN: Stamp, Rubber/7520–00–NSH–0011.
Product/NSN: Stamp, Rubber/7520–00–NSH–0012.
Product/NSN: Stamp, Rubber/7520–00–NSH–0013.
Product/NSN: Stamp, Rubber/7520–00–NSH–0014.
Product/NSN: Stamp, Rubber/7520–00–NSH–0015.
Product/NSN: Stamp, Rubber/7520–00–NSH–0016.
Product/NSN: Stamp, Rubber/7520–00–NSH–0017.
Product/NSN: Stamp, Rubber/7520–00–NSH–0018.
Product/NSN: Stamp, Rubber/7520–00–NSH–0019.
Product/NSN: Stamp, Rubber/7520–00–NSH–0020.
Product/NSN: Stamp, Rubber/7520–00–NSH–0021.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0023.
Product/NSN: Stamp, Rubber/7520–00–NSH–0024.
Product/NSN: Stamp, Rubber/7520–00–NSH–0025.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0037.
Product/NSN: Stamp, Rubber/7520–00–NSH–0038.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: McClellan Air Force Base, California.
Product/NSN: Stamp, Rubber/7520–00–NSH–0045.
Product/NSN: Stamp, Rubber/7520–00–NSH–0046.
Product/NSN: Stamp, Rubber/7520–00–NSH–0047.
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Product/NSN: Stamp, Rubber/7520–00–NSH–0081.
Product/NSN: Stamp, Rubber/7520–00–NSH–0082.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: Travis Air Force Base, California.

Services

Service Type/Location: Janitorial/Custodial/West LA VA Community Base Clinic, Los Angeles, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of Veterans Affairs.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–6286 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the commodities and services.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection

with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Laundry Service/ Naval Air Station, Patuxent River, Maryland.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Contract Activity: Department of the Navy.
Service Type/Location: Transcription Services/Equal Employment Office (Federal Bureau of Prisons), Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Contract Activity: Federal Bureau of Prisons Department of Justice.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6287 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Addition; Correction

In the correction document appearing on page 10664, FR Doc. 02–5612, in the issue of March 8, 2002, in the second column the Committee published a notice of proposed addition to the Procurement List of, among other things, Janitorial/Custodial, Ronald Reagan Building, International Trade Center, At the Federal Tenant Spaces Only, Washington, DC. This notice is amended by deleting the reference ''International Trade Center''. The proposed addition now reads ''Janitorial/Custodial, Ronald Reagan Building, at the Federal tenant spaces only, Washington, DC''.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6285 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 030802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement.

Form Number(s): None.

OMB Approval Number: 0648–0435.

Type of Request: Emergency submission.

Burden Hours: 316.

Number of Respondents: 787.

Average Hours Per Response: 20 minutes for a citizen survey; 45 minutes for a survey of Washington Department of Fish and Wildlife personnel; and 60 minutes for interviews of public officials, key stakeholders, and Washington Department of Fish and Wildlife managers.

Needs and Uses: Community-oriented policing (COP) promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community problems at their source. Recognizing the significant role non-traditional enforcement efforts will play in Endangered Species Act enforcement in the Northwest, a measurement tool has been developed to ensure that the performance outcomes of these non-traditional enforcement (COP) efforts are effectively measured. Through this instrument, COP efforts can be evaluated for success and elements essential for achieving successful outcomes in future programs can be identified and quantified. Anadromous species enforcement will be the focus of the survey, and the surveys/interviews will take place in the Walla Walla and Cherry Creek river basins.

Affected Public: Individuals or households, and State, Local, or Tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 6608, 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 by April 19, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6184 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2035–03]

RIN 0607–XX63

Urban Area Criteria for Census 2000

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This Notice announces the Bureau of the Census' (Census Bureau's) criteria for defining urban and rural territory based on the results of Census 2000. These criteria replace and supersede the 1990 census criteria for defining urban and rural territory. In establishing these criteria, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff. The new criteria appear later in this Notice.

EFFECTIVE DATE: This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road-Stop 7400; Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail at: *ua@geo.census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau identifies and tabulates data for the urban and rural populations and their associated areas solely for the presentation and comparison of census statistical data. It does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some Federal and state agencies are required by law to use Census Bureau-defined urban and rural classifications for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urban and rural criteria for Census 2000 might affect the implementation of their programs.

If a Federal, state, local, or tribal agency voluntarily uses these urban and rural criteria in a nonstatistical program, it is that agency's responsibility to ensure that the results are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the results of implementing the urban and rural criteria specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly identifies the different criteria being applied so as to avoid confusion with the Census Bureau's official urban and rural classifications.

This section of the Notice, among other things, provides a brief synopsis of the public comments the Census Bureau received in response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) **Federal Register** Notices, and the decisions the Census Bureau made in response to the public comments received.

In addition, the Census Bureau plans to announce the determinations of Census 2000 urban and rural territory in the near future. Federal agencies should begin to use the new urban/rural definitions to tabulate and publish statistics when the determinations are announced.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Even though we gave the public prior notice and an opportunity for public comment, we were not required to do so by Title 5, United States Code (U.S.C.), Section 553, or any other law. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603[a]).

Paperwork Reduction Act

This program Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Summary of Comments Received in Response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) Federal Register Notices

The March 28, 2001 **Federal Register** document provided the proposed criteria and the July 27, 2001 **Federal Register** document provided further clarification. Both Notices requested comment on the Census Bureau's proposed Urban Area Criteria for Census 2000. In response to the two Notices, the Census Bureau received 142 comment letters. Of that number, 81 comments were received from regional planning and nongovernmental organizations, 24 from municipal and county officials, 22 from Members of Congress, 8 from state government officials, 4 from officials of other federal agencies, and 3 from individuals. Many comment letters addressed more than one topic.

Of the 142 letters, 67 offered comments to the proposed criteria for recognizing uninhabitable areas adjacent to bodies of water (floodplains, marshes, and other wetlands); 37 of these dealt specifically with areas not accommodated in the criteria that respondents believed to be uninhabitable. Of these 37 letters, 22 expressed concern about the area that separates Brunswick City and St. Simons Island, Georgia, and 15 dealt with the area in the vicinity of the St. Francis Levee between West Memphis, Arkansas, and Memphis, Tennessee. The majority of the comments concerned the inability of the proposed criteria to define additional types of areas as ''uninhabitable'' territory. In particular, respondents commented on the inadequacy of the criteria to define intermittently flooded, uninhabited land adjacent to water bodies as uninhabitable, and thus exempted from the distance measurement when attempting to connect qualifying territory. It was recommended that if these additional types of uninhabitable land areas were included in the criteria, important outlying urban territory would qualify for inclusion in urban areas. Not having this territory included in the urban areas would result in a loss of valuable funding. The remaining comments addressed the criteria that allow a 5 mile jump over uninhabitable area, stating that they would benefit large states and urban areas, but not small states and urban areas.

Ten comments expressed concern that there were no provisions in the criteria to include nonresidential urban land uses, such as airports, industrial parks, and large commercial areas, within urban areas. Comments were received from the Lewiston, Idaho-Clarkston, Washington, area (3); the Dallas-Fort Worth, Texas, area (2); the Reno-Sparks, Nevada, area (2); and one comment each was received from the Indianapolis, Indiana; Paducah, Kentucky-Metropolis, Illinois; and Grand Forks, North Dakota-East Grand Forks, Minnesota, areas. The commentors believed the population density criterion of 500 people per square mile (ppsm) was too high and, therefore, would unfairly exclude the surrounding adjacent nonresidential urban land use areas and what they considered the complete extent of their urbanized area. All comments expressed concern about a possible loss of funding or an inability to expend the funding where the community believed it was needed if there were no way to identify and include nonresidential land use as part of the Urban Area Criteria for Census 2000.

Twenty-seven of the comments questioned elimination of the grandfathering criteria; that is, not automatically retaining in the Census 2000 urban definition territory that had been classified as urban based on the 1990 census. Of those commenting, 16 of the 27 comments were concerned with the Bristol, Tennessee-Bristol, Virginia, area and 5 were concerned with the Ventura County and Orange County areas in California. The remaining 6 letters did not cite a specific area; however, all were similar in that they asserted grandfathering should be retained as part of the Urban Area Criteria for Census 2000. It was believed the elimination of this criterion would cause not only a loss in funding, but, more importantly, a loss of urbanized area status.

There were 26 comments expressing concern about eliminating the provision for including whole functioning governments, particularly incorporated cities, towns, villages, and boroughs. Ten of those commenting were especially concerned about the Bristol, Tennessee-Bristol, Virginia, area and one comment was received regarding the Lewiston, Idaho-Clarkston, Washington, area. Although 15 of the 26 responses did not refer to a specific area, all letters dealing with the elimination of the whole-functioning government criterion were in favor of retaining it as part of the Urban Area Criteria for Census 2000. It was believed that by using corporate limits to include whole governmental units in urban definitions, additional nonresidential urban land use would be included in the urban area definitions, thereby alleviating concerns of loss of funding and loss of urbanized area status.

Coupled with elimination of the grandfathering and the whole-functioning government criteria, 18 additional comments specifically expressed concern regarding the loss of urbanized area status; 11 of these additional comments addressed the governments in the Bristol, Tennessee-Bristol, Virginia area. All 18 favored retention of the grandfathering and the whole-functioning government criteria,

as all believed their elimination would result in a loss of urbanized area status.

The Census Bureau received 31 comments regarding the splitting and merging of urban areas; 23 of these expressed concern about splitting urban areas in the vicinity of Los Angeles, California, in particular in Ventura County (the Oxnard-Ventura, Simi Valley, and Thousand Oaks areas) and in Orange County. The comments questioned whether smaller urban areas would retain their individual status or be included in the larger Los Angeles urbanized area. The majority of these comments dealt equally with the loss of funding, loss of data, and loss of urbanized area status. There were no comments in favor of merging existing urbanized areas. It was widely held that the splitting of urbanized areas should occur at metropolitan area boundaries.

Twenty-four comments addressed the overall population density criterion, with the majority agreeing that the population density requirement of 500 ppsm was too high and did not allow for the inclusion of nonresidential urban land use areas adjacent to the urbanized area core. Five comments remarked on the density requirements for military installations; all concerned Vandenberg Air Force Base near Lompoc, California, and stated the population density requirement of 500 ppsm was too high and, therefore, would exclude some blocks that are part of the military installation.

There were 11 commenters who remarked about the 2 square mile size limit criterion for census block groups with qualifying density. The majority of commenters believed that the area size limitation should be larger than 2 square miles or that an area threshold should not be used to determine urban area qualification. The consensus among the commenters was that this criterion was arbitrary and, thus, should be removed.

The enclave and indentation criteria generated 11 comments. Those commenters who wanted the criteria to include nonresidential urban land uses in urban areas believed that the 5 square mile size limit for adding enclaves to urban areas was too small. Other commenters remarked that the 3:1 ratio criterion for including indentations favors large urban areas over small urban areas.

There were 19 comments received regarding the jump and hop criteria. The jump and hop criteria are used to include noncontiguous but qualifying territory within an urban area. The criteria are based on the distance of the connection and overall density or population in the qualifying territory. All 19 agreed that the distance for hops and jumps should be increased to better include nonresidential urban land uses in urban areas.

The Census Bureau received one comment requesting the recognition of ferries and other nonroad transport networks as links to discontiguous qualifying areas. It favored the use of ferries and other nonroad connections for hops and jumps, especially in the West, as some transit systems have ferry service across water bodies or lines tunneling through mountains where the alternate road connections may not meet the hop or jump distance criteria.

The Census Bureau's Decisions Regarding Recommendations Received From Comments Concerning Changes to the Urban Area Criteria for Census 2000

This section of the Notice provides information about the Census Bureau's decisions related to the recommendations and comments received. These decisions benefited greatly from the public participation, which served as a reminder that, although identified for purposes of collecting, tabulating, and publishing federal statistics, the urban areas defined through these standards represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of pride. In arriving at its decisions, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff.

I. The Census Bureau presents below its decisions on changes that were incorporated into the Urban Area Criteria for Census 2000 in response to the many comments received.

A. The Census Bureau accepted the recommendations to include criteria that define ''uninhabitable'' territory along major bodies of water. The Census Bureau is changing the proposed criteria to include selected unpopulated blocks adjacent to a road connection where that road connection crosses a substantial water area. In addition, the Census Bureau is replacing the term uninhabitable with the term ''exempted'' to more clearly define the territories that are in this category: water bodies, uninhabited census blocks adjacent to bridged water bodies, military installations, national parks, and national monuments.

The original uninhabitable criteria, which were more restrictive than in the past, were limited to bodies of water, military installations, national parks, and national monuments. The intent was to make the delineation process as objective and uniform as possible, and because only these four categories of topography and land use were uniform and complete for the Nation in the Census Bureau's TIGER database, they were the only items that the Census Bureau believed it could use as a basis for evaluation.

The Census Bureau decided to rename ''uninhabitable'' as ''exempted,'' and to include as exempted those land portions of a hop or jump (defined in Sections II.B. and II.C. of the Urban Area Criteria for Census 2000) where the tabulation blocks on both sides of the road connection have zero population and the road connection crosses at least 1,000 feet of water.

Incorporating this new criterion, which is meant to provide a measurable and objective surrogate to define floodplains and marshlands, will allow the Census Bureau to achieve its goal of being able to apply the criteria uniformly throughout the Nation.

B. The Census Bureau accepted the recommendations to include major airports adjoining or surrounded by qualifying urbanized areas or urban clusters, but the Census Bureau decided not to include commercial or industrial areas.

The Census Bureau decided to include major airports adjoining qualifying urbanized areas (UAs) or urban clusters (UCs) when it was able to obtain a comprehensive database of major airports. The decision was made to include only those airports that, according to 2000 Federal Aviation Administration statistics, had an annual enplanement of at least 10,000 people and, thus, qualified as a primary airport. The research conducted regarding the methodology for determining what boundaries to use for the airports determined that airport inclusion should be by whole census block where at least half the land area of the census block was within the airport.

The Census Bureau believes it is advantageous to include major airports within urban areas because doing so will give a better overall picture of an ''urbanized area.'' Heavily used airports are considered part of the urban fabric of an area and, most importantly, the Census Bureau was able to obtain a single, reliable database source that its staff could use to apply the criteria objectively.

The Census Bureau determined that it could not include industrial or commercial areas on the fringes of UAs or UCs because it could not find a consistent national database that

identifies such areas, as it found for major airports. Thus, the Census Bureau does not have the capability to specifically identify commercial and industrial areas on a uniform and comprehensive basis. The Census Bureau is continuing research to determine some objective and consistent way to address issues involving nonresidential urban land uses for urban area determinations in future censuses.

C. The Census Bureau adopted criteria that would permit the splitting of a UA within the same metropolitan statistical area (MSA) and primary metropolitan statistical area (PMSA), and in counties that are not within an MSA or PMSA, when two areas that each would qualify as a UA have only a point connection or are connected by a hop or a jump.

The Census Bureau determined that it is just as important to recognize the autonomy of areas within a metropolitan area (MA) as it is between two or more MAs. The Census Bureau also determined it would not be realistic to apply the same distance criterion of 3 miles used to split a UA that has qualifying territory in separate MAs as the basis for splitting a UA that is within the same MA or outside any MA. The Census Bureau believes the criteria for splitting a UA within the same MA or outside any MA should be more restrictive to ensure that the splitting is limited to areas that are more likely to be independent and to avoid the splitting of a single large UA into many smaller UAs that are not autonomous.

D. The Census Bureau reevaluated the block population density criterion within a military installation. The Census Bureau revised the final Urban Area Criteria for Census 2000 to treat blocks on a military installation that have a population of 1,000–2,499 the same as blocks that have a population density of 500–999 ppsm. The Census Bureau also decided to treat blocks that have a population of 2,500 or more the same as blocks that have a population density of 1,000 ppsm or greater.

The change in the block density criterion for census blocks within a military installation formally recognizes the special situation that was created in agreement with the Department of Defense regarding the collection and presentation of data about military installations. The block numbering algorithm used by the Census Bureau specified that military installations be identified by using as few block numbers as possible. Blocks that have a large area and significant population were created, but seldom did they meet the minimum criteria for qualification as urban based on population density. Even though the density requirement is consistent, the delineation of military blocks is inconsistent; therefore, the 500 ppsm requirement is being waived for blocks on military installations. To apply these new criteria to other blocks would not be appropriate because the Census Bureau used consistent criteria to define the blocks in areas where external agreements for processing were not a factor.

E. The Census Bureau modified the methodology for the indentation criteria from the 3:1 linear ratio measurement to a 4:1 area ratio measurement; it also clarified the criteria.

The decision to change from the linear ratio of measurement to an area ratio, or ''circle method,'' of measurement was based on the results of research by Census Bureau staff. The results of the research showed that the ''circle method'' gives a constant comparative ratio, whereas the linear measurement method does not. It also is more difficult to use the length-to-area measurement in a computer environment, where one must first determine the values of an indentation and then calculate the ratio. The inability to ensure consistent automated results made the proposed indentation criteria less objective.

II. Recommendations and comments were received from the public regarding other issues, and subsequent research by Census Bureau staff determined that changes to the current criteria for some issues would be detrimental to the goals of the program. The Census Bureau has decided that no changes will be made to accommodate the following issues in the Urban Area Criteria for Census 2000.

A. Grandfathering

The goal for Census 2000 is to bring the urban area criteria back to a single set of rules that allow for application of automated processes that yield consistent results rather than to have the areas defined through a process of accretion over time. The Census Bureau is striving to eliminate any subjectivity in these delineations. This can be done only by reexamining areas that qualified as UAs in earlier censuses due to the implementation of different criteria following each of those censuses, the possibility of misinterpretations of the criteria, and the inevitable mistakes made during clerical delineations of the past. The areas that no longer qualify as UAs likely will qualify as UCs for Census 2000.

B. Developing a Set of Criteria To Include Whole Functioning Governments in Urban Area Definitions

The Census Bureau wants to define a continuum of urban territory created objectively and equitably for the entire Nation. To apply these criteria consistently, the use of governmental unit boundaries and criteria designed to include whole functioning governments must be eliminated. The Census Bureau evaluated the geographic characteristics of municipal corporations and found widespread variation as a result of each state's unique set of annexation and incorporation laws. The Census Bureau believes the lack of consistency among state laws for establishing governmental unit boundaries would result in inconsistency in urban area definitions.

C. Recognition of Ferries and Other Transportation Modes To Link Discontiguous Qualifying Areas

There is no consistent database of ferry connections and other transportation networks; therefore, the Census Bureau cannot apply the limited data available consistently.

D. Size Criteria for Block Groups

The Census Bureau included a maximum block group size criterion to avoid adding large sparsely settled territories to urban areas. Census Bureau staff found a significant reduction in the percentage of individual blocks that have a population density greater than 500 ppsm, and a significant increase in the land area of blocks that have a population density less than 500 ppsm, when the size of a block group exceeded two square miles. Based on this research, and with the allowance in the criteria for inclusion of individual blocks that have qualifying density, the Census Bureau determined that it was not necessary to change the block group size criterion.

E. Changing the Distance Allowable for a Hop

The Census Bureau determined, after further research, to retain the proposed length for a hop at a distance of less than or equal to 0.5 mile. Based on empirical review, allowing a longer distance for a hop resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected.

F. Changing the Distance Allowable for a Jump

The Census Bureau determined, after further research, to retain the proposed increase in length for a jump at greater than 0.5 mile but no more than 2.5 miles (it was 1.5 miles in 1990). Based on

empirical review, allowing a longer distance for a jump resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected. In the case of longer jumps, many of the connections would be eliminated subsequently because a UA would be split to avoid joining autonomous qualifying UAs.

G. Changing the Population Density Criteria for Block Groups and Blocks

The proposed population density requirement of 500 ppsm will remain unchanged. This change in the population density requirement will allow the Census Bureau to take into account government policies requiring green space between developments, lessen the effect of large census block groups and blocks that contain both a developed and undeveloped portion, and because consistent nonresidential land use information is not available, will help to qualify areas that have mixed land use within the same block group or block.

Urban Area Criteria for Census 2000

The following criteria apply to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States.

I. Census 2000 Urbanized Area (UA) and Urban Cluster (UC) Definitions

For Census 2000, a UA consists of contiguous,[1] densely settled census block groups (BGs)[2] and census blocks[3] that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people.

For Census 2000, a UC consists of contiguous, densely settled census BGs and census blocks that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 2,500 people, but fewer than 50,000 people.

All criteria based on land area, population, and population density reflect the information contained in the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) database (the Census 2000 TIGER/Line file at the time of initial delineation) and the official Census 2000 redistricting data file (the Public Law 94–171 file at the time of initial delineation).

II. UA and UC Delineation Process Criteria

The following criteria are provided in the sequence in which they are used by the Census Bureau in an automated software program, with limited interactive modifications, to delineate the UAs and UCs. The purpose of providing the criteria in sequence and in technical terms is to ensure that others can develop similar software to replicate the Census Bureau's urban area delineations.

A.The Census Bureau initiates its delineation of a potential urban area by delineating a densely settled ''Initial Core.'' The Initial Core is defined by sequentially including the following qualifying territory:

1. One or more contiguous census BGs that have a total land area less than 2 square miles and a population density of at least 1,000 people per square mile (ppsm)[4]. NOTE: All calculations of population density include only land; the areas of water contained within census BGs and census blocks are not used to calculate population density.

2. If no qualifying census BG exists, one or more contiguous census blocks that have a population density of at least 1,000 ppsm.

3. One or more census BGs that have a land area less than 2 square miles, a population density of at least 500 ppsm, and are contiguous with the BGs identified by criterion II.A.1.

4. One or more contiguous census blocks, each of which has a population density of at least 500 ppsm, and at least one of which is contiguous with the qualifying census BGs or census blocks identified by criterion II.A.1., II.A.2., or II.A.3.

5. Any enclave of contiguous territory that does not meet the criteria above but that is surrounded by census BGs and census blocks that qualify for inclusion in the initial core by criteria II.A.1. through II.A.4., provided the area of the enclave is not greater than 5 square miles.

B. The Census Bureau continues its delineation of a potential urban area by adding, to all initial cores that have a population of 1,000 or more[5], other territory with qualifying density that can be reached using a ''hop'' connection. That is, from the edge of the initial core, the Census Bureau will define a road connection of no greater than 0.5 mile across land that is not classified as ''exempted'' territory[6] and that consists of one or more nonqualifying census blocks that connect the initial core to a contiguous area of census BG(s) and/or census blocks(s) that otherwise qualify based on population density and land area.

1. The territory being added to the initial core using a hop connection, which includes the connecting census block(s), census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or area with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have 1,000 or more total population in the qualifying area being added.

2. When adding qualifying territory to the initial core using a hop connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 0.5 mile across land that is not classified as ''exempted'' territory, and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire area (hop blocks plus

[1] Contiguity requires at least one point of intersection.

[2] A census block group is a group of census blocks within a census tract whose numbers begin with the same digit; for example, BG 3 within a census tract includes all census blocks numbered from 3000 to 3999.

[3] A census block is an area normally bounded by visible features, such as streets, streams, and railroads, and by nonvisible features, such as the boundary of an incorporated place, minor civil division (MCD), county, or other Census 2000 tabulation entity.

[4] The Census Bureau, in agreement with the Department of Defense, imposed restrictions on the selection of features that could be used as block boundaries within military reservations. This resulted in census blocks within military reservations that contain populations of 1,000 or greater, but with unusually low population densities caused by these restrictions. In recognition of this situation, for purposes of urban area delineation, the Census Bureau treats blocks on military reservations that have a population of 2,500 or more as having a population density of 1,000 ppsm, even if the actual density is less than 1,000 ppsm, and those that have a population of 1,000 to 2,499 as having a population density of 500 ppsm.

[5] All cores of less than 1,000 population are not selected as the starting point for the delineation of a separate urban area; however, these core areas still are eligible for inclusion in a UA or UC, using subsequent criteria and procedures.

[6] The Census Bureau defines ''exempted'' territory as areas in which normal residential development is significantly constrained or not possible due to either topographic or land use reasons. Exempted territory is limited to bodies of water, national parks and monuments, military installations, and those segments of a road connection where the populations of the census blocks on both sides of the road are zero and, additionally, the road connection crosses at least 1,000 feet of water. Because the Census Bureau does not have access to or maintain a comprehensive land use database for the entire United States, Puerto Rico, and the Island Areas, only the aforementioned land use types, which are included in or can be derived from the Census Bureau's TIGER database, will be used when identifying exempted territory.

qualifying blocks) being added to the initial core.

3. Territory that is added to the initial core by means of a hop connection becomes part of the adjusted initial core. The Census Bureau then determines if there is additional qualifying territory that can be added to the adjusted initial core. All measurements of distance and contiguity to the core are made from the adjusted initial core, not from the original initial core. The Census Bureau continues to add qualifying territory by means of a hop connection, modifies the adjusted initial core to include the added territory, and continues to add more qualifying territory via a hop connection, until no additional territory qualifies to be added via a hop connection.

C. After completing the process that adds all territory to an initial core that can be added via hop connections, those cores that have a population of 1,500 or more, now termed ''interim cores,'' continue the delineation process by adding qualifying territory via a ''jump'' connection [7].

The determination of jumps starts with the interim core that has the greatest population and continues in descending order of population size of each interim core. Starting from the edge of the interim core, the Census Bureau identifies a road connection of greater than 0.5 mile and no more than 2.5 miles across land that is not classified as ''exempted'' territory, and that consists of one or more nonqualifying census blocks that connect the interim core to contiguous qualifying territory based on population density, land area, and connections made using the hop criteria.

1. The territory being added to the interim core using a jump connection, including the connecting census block(s), qualifying census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or territory with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have a population of 1,000 or more in the qualifying territory being added.

2. When adding qualifying territory to the interim core using a jump connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 2.5 miles across land that is not classified as ''exempted,'' and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire territory (jump blocks plus qualifying blocks) being added to the interim core.

3. No additional jumps may originate from a qualifying area after the first jump in that direction unless the territory being included as a result of the jump was an interim core with a population of 50,000 or more.

D. After territory has been added to the interim core via jump connections, the Census Bureau again includes additional noncontiguous territory to the adjusted interim core using a hop connection, provided the territory qualifies as defined in the criteria associated with II.B.

E. During all phases in which qualifying territory that is discontiguous to the initial or interim cores is being added to the cores, the Census Bureau adds to the cores any qualifying territory where the hop or jump road connections pass through ''exempted'' territory.

1. Discontiguous territory is added to the cores using hop or jump connections that cross ''exempted'' territory, provided that:

a. The road connection is no greater than 5 miles between the core and the qualifying area, and

b. The road connection does not cross more than a total of 2.5 miles of territory not classified as ''exempted'' (those segments of the road connection where ''exempted'' territory is not on both sides of the road), and

c. The territory being added meets either the population density criteria or total population criteria specified in Sections II.B.1 and II.C.1.

2. The Census Bureau selects the road connection using the criteria specified in Sections II.B.2 and II.C.2.

3. The Census Bureau considers linkages over exempted territory as a hop connection when the total distance of the road segments, excluding the distance across ''exempted'' territory, does not exceed 0.5 mile, and as a jump connection when the total distance of the road segments is from 0.5 to 2.5 miles, excluding the distance across ''exempted'' territory.

F. After all territory has been added to the interim core via jump and hop connections, the Census Bureau adds whole tabulation blocks that approximate the territory of major airports, provided at least one of the blocks that represent the airport is included within or contiguous with the interim core.

G. The Census Bureau then adds to the interim cores territory that constitutes enclaves, provided that:

1. The territory is contiguous, surrounded only by land, and consists of census BGs and census blocks that qualify for inclusion in the interim core, and

a. The area of the enclave is not greater than 5 square miles, or

b. All area of the enclave is more than a straight-line distance of 2.5 miles from a land block that is not part of the interim core, or

2. The territory is contiguous, surrounded by both land consisting of census BGs and census blocks that qualify for inclusion in the interim core, and water, and the linear contiguity of the enclave to the land that is within the interim core is greater than the linear contiguity of the enclave to the water.

H. The Census Bureau then inspects the interim cores and, where necessary, splits the interim cores into separate interim cores for purposes of identifying individual urban areas, following the criteria specified in Section III.

I. Upon completing the separation of interim cores, the Census Bureau completes the delineation of urban areas by identifying and adding territory that qualifies as ''indentations.''

1. The Census Bureau examines and qualifies only those potential indentation areas that are within the same interim core, not between separate interim cores.

2. Starting from the outermost part of the potential indentation, the Census Bureau will define a ''closure qualification line,'' defined as a straight line no more than 1 mile in length, that extends from one point along the edge of the interim core across area that is not within the interim core to another point along the edge of the interim core, with both points on land.

3. The Census Bureau then determines if there are any tabulation blocks that have at least 75 percent of their area within the territory formed between the closure qualification line and the interim core.

4. If there are no blocks that have 75 percent or more of their area within that territory, the potential indentation does not qualify to be added to the interim core.

5. If there are any blocks that have 75 percent or more of their area within the territory formed between the closure qualification line and the interim core, the total area of those blocks that meet or exceed the 75-percent criterion is compared to the area of a circle, the diameter of which is the length of the closure qualification line.

[7] All adjusted initial cores of less than 1,500 population are not selected to continue the delineation of a separate urban area; however, these core areas still are eligible for inclusion in an urban area using subsequent criteria and procedures.

6. Those territories under review that have at least four times the area of the circle qualify as an indentation, and the Census Bureau will add the entire area of all those blocks to the interim core.

7. If the collective area of the indentation blocks is less than four times the area of the circle, the Census Bureau defines a different closure qualification line, if possible, and continues the testing and qualification of the potential indentation until it determines if the potential indentation qualifies or fails.

J. As a result of the urban area delineation process, an incorporated place [8] or census designated place (CDP) [9] may be partially within and partially outside an urban area. Any place that is split by an urban area boundary is referred to as an extended place.

III. Splitting UAs

The Census Bureau uses the definition of metropolitan areas (MAs), which include metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs), in effect for Census 2000 (those MAs established by the Office of Management and Budget on June 30, 1999) to determine when to define separate contiguous UAs. (Note: UCs are never split to recognize MA boundaries.) After delineating the boundary of each UA, the Census Bureau will examine the relationship between that UA and any MSA, CMSA, or PMSA, using the following criteria to determine if the UA should be split and, if so, where the boundary should be located between the resulting separate UAs.

A. UA Split Criteria When There Are Separate MAs

The Census Bureau splits an initial UA that contains at least 50,000 people in two or more separate MAs when the following conditions exist:

1. The UA has at least 50,000 people in each of at least two different MSAs or PMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at a location near the MSA or PMSA boundary along which their area of contiguity is less than 3 miles.

2. The UA has at least 50,000 people in each of at least two different CMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at the CMSA boundary.

B. UA Split Criteria Within the Same MA or County

The Census Bureau splits an initial UA within the same MA, or within a county that is not in an MA, when the following conditions exist:

1. The only connection linking or causing contiguity between areas, each of which has an initial core population of at least 50,000, includes either a hop or jump connection, or

2. The connection between areas, each of which has an initial core population of at least 50,000, is not greater than a point-to-point connection.

In both cases, the split will occur at the point-to-point connection, or at both ends of the hop or jump connection that initially linked the areas into a single UA.

IV. Urban Area Title Criteria

A. For those urban areas that contain an incorporated place that has at least 2,500 people in the urban area:

1. The urban area title includes the name of the incorporated place with the most population within the urban area.

2. As many as two additional incorporated place names may be part of the urban area title, provided that:

a. The incorporated place's urban area population exceeds 250,000 people, or

b. The incorporated place has both an urban area population of at least 2,500, and its urban area population includes at least 2/3 of the population in the most populous incorporated place in the urban area.

B. If the urban area does not contain an incorporated place that has at least 2,500 people in the urban area, the urban area title includes the single entity name [10] that occurs first from the following list:

1. The nonmilitary CDP having the largest population in the urban area, provided its population in the urban area is at least 2,500.

2. The incorporated place having the largest population in the urban area.

3. The nonmilitary CDP having the largest population in the urban area.

4. The military CDP having the largest population in the urban area.

5. The governmental MCD [11] having the largest population in the urban area.

6. A local name recognized for the area by the United States Geological Survey's Geographic Names Information System, with preference given to post office names recognized by the United States Postal Service (USPS).

C. The criterion for the sequence of place names in the urban area title consists of the qualifying names in descending order of their official population in the urban area. (If two or more entities that qualify to have their names included in the urban area title have exactly the same population, the total population of each is used to determine the sequence of names; or, if no population data are available, as in Section IV.B.6., the entity names will be listed alphabetically.)

D. The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity into which the urban area extends.

1. The order of the state names is the same as the order of the related place names in the urban area title.

2. For urban areas that extend into a state(s) in which no incorporated place, CDP, or MCD name is part of the urban area title, the name(s) of this state(s) is included in the urban area title after the name of the state(s) that includes a place or MCD having its name in the urban area title, in descending order of the state's Census 2000 population within the urban area.

E. If a single place or MCD qualifies as the title of more than one urban area, the largest urban area will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and a compass directional (North, South, East, or West) as the smaller urban area relates in direction to the larger urban area. For example, if Allenville is used to title the largest urban area, a smaller urban area also using Allenville in the title that lies south of the larger urban area is titled Allenville South.

F. If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an incorporated place, CDP, or MCD that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the

[8] An incorporated place is a governmental unit designated as a city, town (except in New England and Wisconsin), village, city and borough, municipality, or borough (except in New York and Alaska); the term also includes all consolidated cities.

[9] A CDP is a statistical equivalent of an incorporated place and represents a locally defined named area. CDPs are called communidades and zonas urbanas in Puerto Rico.

[10] If two or three of the entities being considered for an urban area title have exactly the same population in the urban area, the title will include both (or all three) entity names in the title. If four or more entities being considered for an urban area title have exactly the same population, the total population of each entity (as oppose to its urban population) will determine the three names to be included in the title.

[11] An MCD is a legal subdivision of a county or statistically equivalent entity. Governmental MCDs exist in Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin.

duplicate place or MCD name for each urban area. If there is no incorporated place, CDP, or MCD name in the urban area title, the name of the county having the greatest population residing in the urban area will be appended to the title. For example, Springfield (Ames County), OH, and Springfield (Jefferson County), OH.

V. Urban Area Code Criteria

The Census Bureau assigns a 5-digit numeric code to each urban area. The code is based on a national alphabetic sequence of all urban area names, and is sequenced by state code or state and county code when urban area names are duplicated.

VI. Urban Area Central Place Criteria

The Census Bureau identifies one or more central places for each urban area (if an incorporated place or CDP exists within the urban area) using the following criteria:

A. Any incorporated place or CDP that has its name in the title of the urban area, and

B. Any other incorporated place or CDP that has a population of 50,000 or more within the urban area.

VII. Urban and Rural Classification

The Census Bureau classifies as urban all population and territory within the boundaries of urban areas.[12] Conversely, the Census Bureau classifies as rural all population and territory that are not within any urban area.

The Census Bureau does not attempt to classify all bodies of water as being either urban or rural. Those bodies of water that appear in the Census Bureau's TIGER database as area features are included in urban areas only if the water body is included in a land BG or census block classified as urban, or if the water body serves as a connection when performing a hop or a jump. The urban and rural classification is not definitive for other bodies of water because the Census Bureau's definition is not intended to limit other classifications of urban and rural when applied to water area.

Dated: February 27, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

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BILLING CODE 3510–07–P

[12] The Census Bureau's TIGER database is a centerline file; that is, the line representing each feature (such as a road or a stream that has a very small area) follows the center line of the feature. This criterion is not intended to preclude other application from including the entire area of a feature that the Census Bureau has used as the boundary between urban and rural territory as being either entirely urban or entirely rural.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, Brandon Farlander, and Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1102, (202) 482–0182, and (202) 482–3434, respectively.

The 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's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Amendment of Final Determination

On February 4, 2002, the Department of Commerce (''the Department'') issued its final determination and found that ARG windshields from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735(a) of the Tariff Act. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) (Final Determination).

On February 14, 2002, respondents Fuyao Glass Industry Group Company, Ltd. (''FYG'') and Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''), and Petitioners timely filed ministerial error allegations, pursuant to 19 CFR 351.224(c)(2). On February 19, 2002, respondent FYG and Petitioners timely filed rebuttal comments on the alleged ministerial errors.

The Department is amending the Final Determination in the antidumping investigation of ARG windshields from the PRC for FYG, Xinyi, Shenzhen Benxun Auto–Glass Co., Ltd. (''Benxun''), Changchun Pilkington Safety Glass Co., Ltd. (''Changchun''), Guilin Pilkington Safety Glass Co., Ltd. (''Guilin''), Wuhan Yaohua Pilkington Safety Glass Co., Ltd. (''Wuhan''), and TCG International (''TCGI'').

Scope of the Investigation

As addressed in the final determination, interested parties requested that the Department clarify whether automotive replacement glass windshields (''ARG'') windshields for buses, farm and heavy machinery are included in the scope of this investigation. Based on the information received, we clarified that ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. For further discussion, please see the Issues and Decision Memorandum for the Scope Clarification for the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Edward C. Yang, Director, Office 9 to Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, dated January 24, 2002.

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Ministerial Error

A ministerial error is defined in section 351.224(f) of our regulations as

''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Section 351.224(e) of our regulations provides that we ''will analyze any comments received and, if appropriate . . . correct any ministerial error by amending the final determination. . . .'' After reviewing interested parties' allegations we have determined, in accordance with 19 CFR 351.224, that the Final Determination includes ministerial errors discussed below.

FYG's Allegation of Ministerial Errors

Updated Market Economy Prices

Comment 1: FYG alleges that the Department made a ministerial error by using outdated market price values for ink, silver and mirror buttons and using a surrogate value for solder even though FYG reported market economy purchases of solder. FYG maintains that the Department failed to apply the updated market economy values for these inputs, as reported in FYG's November 16, 2001 submission.

Petitioners did not provide rebuttal comments.

Department's Position: We agree with FYG. Following the Preliminary Determination, FYG provided updated market economy values to the Department which the Department inadvertently failed to use for the Final Determination. It is the Department's practice to use the most updated factor value information available. For the amended final determination, we used updated market economy prices for the inputs ink, silver, mirror buttons and solder. See Analysis Memo for the Amended Final Determination of Automotive Replacement Glass (''ARG'') Windshields from the People's Republic of China: Xinyi Automobile Glass (Shenzhen) Co., Ltd. (''Xinyi'') and Fuyao Glass Industry Group Co., Ltd. (''FYG'') (Amended Final Analysis Memo) from Brandon Farlander and Stephen Bailey to Robert Bolling dated March 6, 2002.

Xinyi's Allegations of Ministerial Errors

Incorrect Margin Calculation Results

Comment 2: Xinyi argues that it calculated a margin using all relevant documents provided by the Department issued for the Final Determination and that the margin Xinyi calculated is fifty–five one–hundredths of a percent lower than the margin calculation generated by the Department. Xinyi argues that the final margin should be 3.15 percent as compared to 3.70 percent as calculated by the Department in its Final Determination.

Petitioners argue that Xinyi's ministerial error submission does not fulfill the conditions necessary for correction of ministerial errors contained in section 351.224 of the regulations. Petitioners argue that Xinyi did not identify any error of omission or commission in its request, which is required according to section 351.224(4)(d). Petitioners argue that it is Xinyi's responsibility, and not the Department's, to identify any errors in the Final Determination.

Department's Position: We disagree with Xinyi. Xinyi has not alleged an error, specific or otherwise, by the Department in the Department's calculation of Xinyi's margin that would fall within the meaning of 19 CFR 351.224(f). Xinyi argues that, because it obtained different margin results then those calculated by the Department, the Department's margin calculations must contain clerical errors. Xinyi has provided no official record evidence that the Department has made a clerical error in Xinyi's margin calculation program or has Xinyi provided an appropriate correction pursuant to the requirements of 19 CFR 351.224(d).

Aberrational Indian Import Statistics Data

Comment 3: Xinyi argues that the Department incorrectly included aberrational Indian Import Statistics data for colored float glass imports from the United Arab Emirates in September 2000, aberrational values for colored float glass imports from Belgium in September and December 2000, and aberrational values for colored float glass imports from Taiwan in August and December 2000. Xinyi argues that the import data from these countries and the values for the specific months listed above are aberrationally high when compared to the average colored float glass surrogate value calculated by the Department.

Petitioners argue that Xinyi's claims that certain Indian Import Statistics data are aberrationally high is a new substantive methodological argument. Petitioners contend that this new argument is subject to comment and rebuttal by interested parties to the investigation and to a final determination by the Department. Additionally, Petitioners argue that Xinyi had ample opportunities to argue that there were aberrations in the Indian Import Statistics data, but did not do so.

Department Position: We disagree with Xinyi that this is a ministerial error. The Department included Indian imports from Belgium, Taiwan, and the United Arab Emirates as set forth in Attachment 4 of the Factor Valuation Memorandum for the Preliminary Determination. This remained unchanged for the Final Determination. Therefore, the allegation is not a ministerial error pursuant to 19 CFR 351.224(f).

Petitioner's Allegations of Ministerial Errors for FYG

Colored Float Glass Surrogate Value from the Indian Import Statistics

Comment 4: Petitioners allege that the Department made a ministerial error by failing to apply the Indian surrogate value used for colored float glass, exclusive of Thailand and Korea. Citing to the Department's Factors of Production Valuation Memorandum for the Final Determination (Factor Value Memo), Petitioners argue that the Department determined in the Final Determination to exclude Thai and Korean prices for all inputs in its surrogate value calculations and also in determining market economy purchases. Petitioners maintain that the Department's failure to apply the revised Indian surrogate value for the colored float glass resulted in an understatement of the value of a certain type of windshield. Because the type of windshield is business proprietary information, see the Amended Final Analysis Memo for a further discussion of this issue.

FYG points out that the windshield in question is comprised of two types of float glass. FYG argues, therefore, that Petitioners' methodology of using a weighted–average of only one value for the windshield is distortive.

Department's Position: We agree with Petitioners. In the Final Determination, the value of colored float glass, the second pane of glass used for the windshield in question, was derived by the Department using FYG's market economy purchases. However, the Department inadvertently failed to exclude market economy purchases from Thailand and Korea from FYG's market economy purchases of colored float glass. As the Department stated in Comment 1 of the final Issues and Decision Memorandum, it would disregard prices that the Department has reason to believe or suspect are distorted by subsidies, including FYG's market economy purchases from Thailand and Korea. See Final Determination, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. When market economy purchases of colored float glass from Thailand and

Korea are excluded, the Department must then use Indian Import Statistics to value colored float glass because FYG did not purchase colored float glass from other market economy countries. Therefore, for the amended final determination, we will use the Indian surrogate value for colored glass less purchases of Thai and Korean float glass. See Amended Final Analysis Memo.

International Freight Container Rate

Comment 5: Petitioners argue that the Department erred in the Final Determination in its calculation of ocean freight by using a freight rate for a 20–foot container instead of a freight rate for a 40–foot container, which is the container size used by FYG in transporting subject merchandise. Citing to the Factor Value Memo, Petitioners maintain that the Department rejected, in part, FYG's methodology for freight and used a freight rate provided by the Federal Maritime Commission. Petitioners contend that the Department used a basic freight rate for a 20–foot shipping container, to which was added a fuel surcharge and destination delivery charge. Petitioners assert that their October 29, 2001 Surrogate Values Submission provided evidence on the record to value a 40–foot shipping container. Petitioners further contend that the Department should either: (1) match the particular ocean rate to the closest port of entry for each shipment; or (2) apply an average of the ocean rates for all ports through which the non–market economy (''NME'') shipments entered for which surrogate ocean freight is being assigned.

FYG agrees with Petitioners that the Department incorrectly used a 20–foot container rate when the Department should have used a 40–foot container rate to value ocean shipping. However, FYG argues that Petitioners' suggested ocean freight value was rejected by the Department for the final determination. FYG suggests that the Department use the actual freight rates paid for the ocean segment of the overall transportation charge, which are reported in Exhibit 19–A of FYG's verification report. See Memorandum from Stephen Bailey, Sarah Ellerman, case analysts and Emily Lawson, Office of Chief Counsel through James C. Doyle, Program Manager to the File: Verification of Sales and Factors of FYG in the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China (FYG Verification Report) dated December 19, 2001, Exhibit19–A. FYG also suggests the Department convert the 20–foot container charge to a 40–foot container charge by using a conversion rate presented in their October 29, 2001 submission.

Department's Position: The Department agrees that this is a ministerial error. In our analysis memorandum for FYG, the Department stated that it would value shipping containers based on a length of 40 feet but instead valued it on a 20–foot container rate. See Analysis for the Final Determination of Automotive Replacement Glass Windshields (''ARG'') from the People's Republic of China: Fuyao Glass Industry Group Co., Ltd., (''FYG'') (February 1, 2002) (FYG's Final Analysis Memo). In order for the Department to correct this error (i.e., obtain a 40–foot shipping container base rate), we must adjust the 20–foot base container rate to reflect a 40–foot base container rate. In this instance, we are using information provided by FYG to convert a 20–foot base container rate to a 40–foot base container rate to determine a surrogate value for ocean freight. By reviewing a contract between FYG and a market economy shipper, reviewed at verification, and using information provided by FYG in its October 29, 2001 submission, the Department determined that the rate charged for a 40–foot container is 33 percent higher than the rate charged for a 20–foot container. See FYG Verification Report, Exhibit 19–A. The Department has multiplied this conversion rate, 1.33, by the charge for a 20 foot container to arrive at a charge for a 40 foot container. See Amended Final Analysis Memo. FYG's methodology allows the Department to continue to use information from the Federal Maritime Commission, as used in the Final Determination. The Department did not use Petitioners' proposed correction or FYG's other proposed correction because both change the ocean freight methodology used by the Department in the Final Determination.

Wholesale Price Index Base for Domestic Inland Insurance

Comment 6: Petitioners allege that the Department made a ministerial error by using a 1992 Wholesale Price Index (''WPI'') base for data collected from the period November 1991 through April 1992 in calculating an average value in Indian rupees per metric ton value for domestic inland insurance, as opposed to using a WPI that corresponds to the period for the Indian surrogate value, which is November 1991 through April 1992. Citing the Department's Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From the People's Republic of China, 66 FR 53776 (October 24, 2001) (Amended Preliminary Determination), Petitioners argue that the Department stated that it considered this a methodological error at the preliminary determination and would consider this error for the final determination. Additionally, Petitioners contend that the Department did not address this issue in the Final Determination. Furthermore, Petitioners assert that they provided International Financial Statistics (''IFS'') for the period November 1991 through April 1992 in their September 24, 2001 submission which contain all relevant IFS data necessary for the Department to calculate an accurate WPI for the period in question. Petitioners also argue that the WPI for the period November 1991 through April 1992 should be adjusted to account for the re–basing of the Indian WPI, which occurred in June 1994 and June 1999.

FYG argues that Petitioners' allegation is not a ministerial error but a methodological argument. Also, FYG also asserts that Petitioners' methodology for determining the correct inflation rate is flawed because it incorrectly adjusts the WPI to account for re–basing. FYG also argues that the correct inflation rate adjustment that it calculated results in basically the same rate used by the Department in the Final Determination.

Department's Position: We agree with Petitioners. The Department intended to correct this error in the Final Determination. See Amended Preliminary Determination at 53778. However, we inadvertently failed to make this correction in the Final Determination. Therefore, the Department is using the Indian WPI for the period November 1991 through April 1992 from IFS data. Additionally, the Department has adjusted the WPI to account for the re–basing which occurred in June 1994, by multiplying the WPI for the period November 1991 through April 1992 by 0.70, which is the percentage change in the WPI between May 1994 and August 1994. The Department has also adjusted the WPI to account for the re–basing which occurred in June 1999, by multiplying the WPI by 0.61, which is the percentage change in the WPI between May 1999 and August 1999. See Amended Final Analysis Memo.

Weight Conversion for Other Scrap Glass

Comment 7: Petitioners argue that the Department made a ministerial error by inadvertently converting a value to a kilogram basis that was already being

consumed on a kilogram basis. Citing to FYG's Verification Report at 14, Petitioners allege that FYG reported that ''Other Scrap Glass'' was reported on a kilogram basis, not in square meters as the Department assumed.

FYG argues that the Department was correct in converting a kilogram value into a meters squared value because FYG's reported consumption rate for the ''Other Scrap Glass'' offset was in meters squared.

Department's Position: We disagree with Petitioners. The Department verified that FYG reported that ''the big pieces of scrap generated from the cutting process . . . is sold on a square meter basis.'' See FYG Verification Report at 14. Therefore, for the final determination, the Department calculated a surrogate value for ''Other Scrap Glass'' by multiplying the Indian surrogate value, which is reported in kilograms, by a kilograms–to–square–meter conversion rate which is based on the amount of kilograms in a square meter of glass. See FYG's Final Analysis Memo, dated February 1, 2002.

Petitioner's Allegations of Ministerial Errors for Xinyi

Plastic Adhesives Surrogate Value from the Indian Import Statistics

Comment 8: Petitioners allege that the Department made a ministerial error by deducting the value and quantity of Switzerland's exports of plastic adhesives (rather than Thailand's value and quantity of exports) to India from the Indian Import Statistics.

Xinyi did not provide rebuttal comments.

Department's Position: We agree with Petitioners. The Department intended to deduct, from Indian Import Statistics, imports of plastic adhesives from Thailand, but instead deducted imports of plastic adhesives from Switzerland. As the Department stated in Comment 1 of the Issues and Decision Memo, we will disregard prices that we have reason to believe or suspect are distorted by subsidies, including the values from Thailand and Korea. Therefore, for the amended final determination, we will deduct Thailand's exports of plastic adhesives (rather than Switzerland's exports) to India from the Indian Import Statistics in our surrogate value calculation for plastic adhesives. See Amended Final Analysis Memo.

Petitioner's Allegations of Ministerial Errors for FYG and Xinyi

Adhesive Sheets (Tape) Calculation Error

Comment 9: Petitioners allege that the Department made a ministerial error by including two minus signs when deducting Korean imports of adhesive sheets (tape) from the quantity and value of Indian Import Statistics. Petitioners argue that this error resulted in an understatement of the value of adhesive sheets (tape).

FYG agrees with Petitioners that the Department incorrectly included a double minus sign in its calculation sheet which resulted in counting the Indian imports of Korean adhesive sheets (tape) twice in the surrogate value calculation. However, FYG argues that the per unit surrogate value provided by the Petitioners is not correct.

Department's Position: We agree with Petitioners and FYG that this is a ministerial error. The Department intended to deduct, from Indian Import Statistics, imports of adhesive sheets from Korea. However, the Department double counted imports of adhesive sheets from Korea by inadvertently including two minus signs in the calculation sheet, which resulted in Korean imports being added twice instead of being deducted. As stated in Comment 8, the Department intended to disregard prices from Korea. The Department agrees with FYG that Petitioners' per unit surrogate value, while properly deducting Korean imports of adhesive sheets from Indian Import Statistics, is incorrect due to addition errors. Therefore, for the amended final determination, we will remove one minus sign in the calculation sheet for Korean exports of adhesive sheets (tape) to correct for this error. See Amended Final Analysis Memo.

Amended Final Determination

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of ARG from the PRC to reflect the correction of the above–cited ministerial errors. The revised final weighted–average dumping margins are as follows:

Exporter/Manufacturer	Original Weighted Average Margin Percent for Final	Revised Weighted Average Margin Percent
FYG	9.67	11.80
Xinyi	3.70	3.71
Benxun	8.22	9.84
Changchun	8.22	9.84
Guilin	8.22	9.84
Wuhan	8.22	9.84
TCGI	8.22	9.84
China–Wide	124.50	124.50

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the United States Customs Service (''Customs'') to continue suspending liquidation on all imports of the subject merchandise from the PRC. Customs shall require a cash deposit or the posting of a bond equal to the weighted–average amount by which normal value exceeds the export price as indicated in the chart above. These suspension–of–liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

March 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6290 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–122–840, A–428–832, A–560–815, A–201–830, A–841–805, A–274–804, A–823–812]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle (Brazil, Canada, Mexico, and Trinidad and Tobago), Robert James (Germany), Donna Kinsella (Indonesia), Dana Mermelstein (Moldova), and James Doyle (Ukraine) at (202) 482–0650, (202) 482–0649, (202) 482–0194, (202) 482–1391, and (202) 482–0159, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing further the preliminary determinations in the antidumping duty investigations of Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

The deadline for issuing the preliminary determinations in these investigations is now April 2, 2002.

On January 22, 2002, the Department postponed the deadline for issuing the preliminary determinations in these investigations by 30 days (i.e., until March 13, 2002). See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 3877 (January, 28, 2002). On March 4, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, petitioners), requested an additional 20–day postponement of the preliminary determinations in these investigations, in accordance with section 351.205(b)(2) of the Department's regulations. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing these determinations (i.e., until April 2, 2002).

March 7, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6291 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–806)

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482- 5831 or Thomas Futtner at (202) 482–3814, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

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 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 time limit for the preliminary determination to a maximum of 365 days and 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 August 30, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on Silicon Metal from Brazil, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 1, 2002.

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 July 31, 2002. See Decision Memorandum from Holly A. Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce 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.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–6289 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–401–806)

Stainless Steel Wire Rod From Sweden: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On October 26, 2001, in response to a September 28, 2001, request made by Fagersta Stainless AB, a producer/exporter of stainless steel wire rod from Sweden, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2000 to August 31, 2001. Because Fagersta Stainless AB has withdrawn its request for review, the Department of Commerce is

rescinding this review in accordance with 19 CFR 351.213(d)(1).

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department ofCommerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–1280.

SUPPLEMENTARY INFORMATION: 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 of Commerce's (''the Department's'') regulations refer to 19 CFR part 351 (2001).

Background

On September 15, 1998, the Department published an antidumping duty order onstainless steel wire rod from Sweden (63 FR 49329). On September 28, 2001, Fagersta Stainless AB (''Fagersta''), a producer/exporter of the subject merchandise, requested an administrative review of the antidumping duty order on stainless steel wire rod from Sweden covering the period of September 1, 2000, through August 31, 2000. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on October 26, 2001 (66 FR 54195). On February 13, 2002, Fagersta, the sole requester of this review, withdrew its request for review.

Rescission of Review

Pursuant to our regulations, the Department will rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' See 19 CFR 351.213(d)(1). This section further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. See 19 CFR 351.213(d)(1). Although the interested party's withdrawal of its request for review was not within the 90–day time limit, there were no objections to the withdrawal from the petitioner, and the Department has no compelling reason to deny the request. (See February 25, 2002, Memorandum to the File.) As a result, we are rescinding this administrative review. The Department will issue appropriate assessment instructions to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

March 7, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6292 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–816]

Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping and Countervailing Duty Laws: Notice of Hearing

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of hearing.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Becky Erkul or Jim Nunno, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1277 or (202) 482–0783.

SUMMARY: The Department of Commerce is holding a public hearing to solicit views on the issue of the status of the Russian Federation as a non-market economy country under the antidumping and countervailing duty laws. The hearing will be held at 9 a.m. on March 27, 2002, in Room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Hearing presentations should be limited to no more than ten minutes to allow for possible questions from the Chair and the panel. Additional time for oral presentations may be granted as time and the number of participants permit. Parties wishing to testify orally at the hearing must provide written notification of their intention, and indicate the amount of time they will need to make their presentation, no later than 5 p.m., March 22, 2002, to Faryar Shirzad, Assistant Secretary for Import Administration; Subject: Public Hearings on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the Antidumping and Countervailing Duty Laws; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) if applicable, any request for an extension of the time limitation on the oral presentation. In addition, please send a copy of this notification via facsimile to Becky Erkul at (202) 482–2308.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6317 Filed 3–12–02; 3:56 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010813205–2043–02]

RIN 0648–XA74

NOAA Ocean Exploration Initiative; Correction

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical Amendment to the Notice from NOAA's Ocean Exploration Program for FY 2002; Announcement to Solicit Proposals.

SUMMARY: NOAA amends the notice regarding the NOAA Office of Ocean Exploration (OE) proposal solicitation published in the **Federal Register** on September 4, 2001. The amendment will modify the language regarding the number of reviews required for OE's independent peer mail review process. This action is being taken due to the receipt of an insufficient number of responses from pre-selected peer reviewers.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, NOAA Office of Ocean Exploration, Bldg.SSMC3, 1315 East-West Highway, Silver Spring, MD 20901, (301) 713–9444 ext. 155, *margot.bohan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NOAA Office of Ocean Exploration

published a notice on September 4, 2001, describing the Ocean Exploration Program and soliciting proposals in support of its mission (66 FR 46260). The program description, funding guidance, submission procedures, evaluation criteria, selection process, and background are in that notice and are not repeated here. The original notice's independent peer mail review procedure defined a requirement for receipt of 3 mail-in reviews before panel review. This requirement is beyond the agency's control and ability to attain within the time available to commence the 2002 field season. The Office hereby revises the mail-in review requirements (page 46262, column 3, section XII, first sentence) to read as follows: ''Proposals will be evaluated by an independent peer mail review, i.e., each proposal will be reviewed, by *at least two* qualified scientific and/or technical peers * * *''.

Applications under this solicitation will be subjected to both a mail review and a panel review.

Program authority: 33 U.S.C. 883d; (CFDA No. 11.460)—Special Oceanic and Atmospheric Projects.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–6250 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031102A]

North Pacific Fishery Management Council Public Meeting

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

ACTION: Notification of public meeting.

SUMMARY: NMFS and the NPFMC will hold a workshop March 25—26, 2002, to discuss effects of fishing on habitat, mitigation tools and fishery descriptions. The NPFMC will hold an essential fish habitat (EFH) committee meeting on March 27, 2002.

DATES: The workshop will be on Monday, March 25, 2002, from 1 p.m. to 5 p.m. and from 8 a.m. to 5 p.m. on Tuesday, March 26, 2002. The EFH committee will meet from 8 a.m. to 5 p.m. on Wednesday, March 27, 2002.

ADDRESSES: The workshop and committee meeting will be in Seattle, WA, in Building 9, at the National Oceanic and Atmospheric Administration, Western Regional Center, 7600 Sand Point Way, N.E.

Questions should be addressed to NMFS, Habitat Conservation Division, ATTN: Cindy Hartmann, 709 West 9th, Suite 801, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov; or Cathy Coon, NPFMC, (907) 271–2809, e-mail: Cathy.Coon@noaa.gov. To facilitate security clearance at the NOAA facility the public is requested to contact Cindy by March 22, 2002.

SUPPLEMENTARY INFORMATION:

Background

The focus of the workshop will be a discussion of the effects of fishing on EFH including the following: (1) A discussion of the criteria on what is a minimal and what is a temporary impact on EFH; (2) Review of the scientific studies on gear impacts pertinent to Alaska fisheries; (3) Discussion of a set of tools for mitigating adverse impacts and to what situations they apply; (4) Description of Alaska fisheries. The discussion of criteria for a minimal and temporary impact, review of scientific studies on gear impacts pertinent to Alaska fisheries and an initial discussion of mitigation tools and to what situations they apply is planned for Monday afternoon. On Tuesday, participants will break into four workgroups to revise fishery descriptions, discuss potential adverse effects of their specific fisheries and discuss mitigation tools and their application to their fisheries.

For further information about the EFH supplemental environmental impact statement (SEIS), see the notice of intent to prepare an SEIS published in the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001). For further information on the preliminary alternative approaches for the designation of EFH and habitat areas of particular concern (HAPC) see 67 FR 1325, January 10, 2002.

On March 27, 2002, the EFH Committee meets to: review fishery descriptions; discuss potential mitigation tools from each subgroup and any other group products; develop committee recommendations for the April NPFMC meeting; and plan for future EFH Committee tasks and meetings.

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare an SEIS for the EFH fishery management plan amendments. The function of the committee is to serve as a steering committee in facilitating input to NMFS on the SEIS for EFH submitted by the industry, conservation community, Council, and general public and the involvement of the NPFMC in the SEIS. The Committee will work to provide input as appropriate, and submit periodic updates to the Council on the environmental impact statement for EFH. Further information on the EFH Committee can be found on the NPFMC web site at: http://www.fakr.noaa.gov/npfmc/Committees/EFH/efh.htm.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

Dated: March 11, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6182 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030802A]

Endangered Species; Permits

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

ACTION: Receipt of an application for a research and enhancement permit (1368).

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a research/enhancement permit from Dr. John Hunter, of the NMFS Southwest Fisheries Science Center of the (SFSC).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 15, 2002.

ADDRESSES: Written comments on the new application should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Mollusks

Endangered White Abalone (*Haliotis sorenseni*)

Application 1368

The applicant proposes to breed and reintroduce white abalone in southern California. The applicant wants to collect up to 50 white abalone per year for five years in order to breed, grow out and reintroduce the progeny to the wild. Wild abalone will be collected using ROVs and divers. The animals will be transported to the laboratory and induced to spawn using H2O2 or the thermal shock method. The progeny will be grown to 15–100mm before introduction. Precautions will be taken to avoid disease and inbreeding.

Dated: March 11, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6311 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012302D]

Marine Mammals; File No. 751–1614–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Ocean Alliance/Whale Conservation Institute, 191 Weston Road, Lincoln, Massachusetts 01773 [Dr. Celine Godard, Principal Investigator] has been issued a permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research.

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On June 8, 2001, notice was published in the **Federal Register** (66 FR 30885) that a request for a scientific research permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: March 11, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6310 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030102D]

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2002 Bank-specific Harvest Guidelines

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

ACTION: Notification of no harvest guideline for crustaceans.

SUMMARY: NMFS announces that annual harvest guidelines for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) will not be issued for the year 2002.

ADDRESSES: Copies of background material pertaining to this action, which is identical to the action taken in 2001, may be obtained from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region, 50 CFR 660.50(b)(2), NMFS is required to publish the harvest guidelines for lobster Permit Area 1 around the NWHI. Although the lobster stock is not overfished, the NWHI lobster fishery has been closed since 2000: (a) as a precautionary measure to prevent overfishing of the lobster resources; (b) in compliance with an order of the U.S. District Court for the District of Hawaii to keep the crustacean fisheries closed until an environmental impact statement and a biological opinion have been prepared for the crustacean fisheries in the western Pacific region; and (c) consistent with Executive Orders 13178 and 13196, issued in December 2000 and January 2001, respectively, that appear to close indefinitely the NWHI crustacean fishery.

NMFS announces that it will not be publishing any harvest guideline for this fishery for the year 2002 and no harvest of NWHI lobster resources will be allowed. NMFS intends to conduct biological research on the status of NWHI lobster resources and to examine the resulting data for indications as to the appropriate direction for future fishery management actions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6183 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability Missile Defense Agency Ground-Based Midcourse Defense Validation Of Operational Concept Environmental Assessment

AGENCY: Missile Defense Agency

ACTION: Notice of availability

SUMMARY: The Missile Defense Agency (MDA) (formerly the Ballistic Missile Defense Organization) announces the availability of the Ground-Based Midcourse Defense (GMD) Validation of Operational Concept (VOC) Environmental Assessment (EA). The EA assesses the potential impacts of construction and test activities at GMD VOC test sites. The proposed action includes construction and operational testing of six ground-based interceptor (GBI) silos and support facilities, In-Flight Interceptor Communication System Data Terminals (IDTs), and Defense Satellite Communication System (DSCS) earth terminals in central Alaska; an IDT and DSCS earth terminal at Eareckson Air Station (AS), Alaska; construction of a missile transfer facility at Eielson Air Force Base (AFB), Alaska; use of the existing COBRA DANE Radar, with upgraded hardware and software and interior modifications, at Eareckson AS; interior modifications and hardware and software upgrades to the Early Warning Radar at Beale AFB, California; and Battle Management, Command and Control [BMC2] nodes at one or more of Peterson AFB, Cheyenne Mountain Complex and Shriever AFB in Colorado, Eareckson AS, Alaska, Beale AFB California, and contractor facilities in Alabama and California.

Fort Greely, Alaska was considered as the preferred alternative for the six GBI silos and support facilities and associated BMC3 including one IDT, one DSCS earth terminal, a BMC2 execution node and installation of terrestrial fiber optic cable. Clear Air Force Station, Alaska is being considered as an alternative location to Fort Greely, Alaska as the GBI silo and support facilities location.

The no-action alternative was also considered. Under the no-action alternative, MDA would not proceed with construction and testing to support validation of the GMD operational concept through ground-based testing. Selection of the no-action alternative would not allow the operationally realistic testing needed to further develop the GMD element of the Midcourse Defense Segment.

Comments: Public comments on the EA must be received by April 13, 2002. Written comments or a request for a copy of the EA should be directed to: U.S. Army Space and Missile Defense Command, ATTN: Mr. David Hasley, SMDC–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801.

As the proposed action includes multiple locations, some of which are under the administrative control of the United States Army and some of which are under the administrative control of the United States Air Force, the MDA has used both Army Regulation 200–2 and Air Force Instruction 32–7061 in preparing the EA and Finding of No Significant Impact (FNSI). An unsigned FNSI will be distributed with the final EA. The FNSI will be signed after a 30-day public review period, and the proposed action could be implemented unless the MDA determines that information presented during the 30-day public review period reveals an unassessed potential for significant impacts on the environment. Interested parties can also review the unsigned FNSI, EA, and referenced NMD Deployment EIS on the internet at: *www.acq.osd.mil/bmdo/bmdolink/html/newrel.html#envir.ANC* or at the following locations:

University of Alaska, Anchorage
Consortium Library
3211 Providence Drive
Anchorage, AK 99508

Alaska Resources Library & Information Services
3150 C Street, Suite 100
Anchorage, AK 99503

Delta Junction Library
2288 Deborah Street
Delta Junction, AK 99737

Anderson School Library
1st Avenue
Anderson, AK 99744

Alaska State Library 344 W. 3rd. Avenue, Suite 125
Anchorage, AK 99501

Fairbanks North Star Borough
Public Library
Noel Wien Library
1215 Cowles Street
Fairbanks, AK 99701–4313

University of Alaska, Fairbanks
Elmer E. Rasmuson Library
PO Box 756800
Fairbanks, AK 99775–6800

Barbo Branch Library
10321 Live Oak Blvd.
Live Oak, CA 95953

Beale Air Force Base
Military Library
Marysville, CA 95903

Sutter County Library
750 Forbes Avenue
Yuba City, CA 95991

Yuba City Library
303 2nd Street
Marysville, CA 95901

Yuba College Library
Yuba College
Marysville, CA 95901

Falmouth Public Library Reference Section
123 Katherine Lee Bates Rd
Falmouth, MA 02540

Mashpee Public Library
Steeple Street,
Mashpee Common
Mashpee, MA 02649

Sandwich Public Library
142 Main Street
Sandwich, MA 02563

U.S. Coast Guard Library
Building 502
Otis ANGB, MA 02542

Cape Cod Community College Library
2240 Iyanough Rd.
West Barnstable, MA 02668–1599

Defense Technical Information Center
8725 John J. Kingman Road, Suite 0944
Ft. Belvoir, VA 22060–6218

Dated: March 12, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6429 Filed 3–13–02; 1:41 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Sources and Collection Management Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at McDill AFB. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5, 2002.

ADDRESSES: McDill Air Force Base, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6276 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Prediction and Confirmation Tools Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at Barksdale Air Force Base, Eglin Air Force Base, and Hurlburt Field. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5–7, 2002.

ADDRESSES: Barksdale AFB, LA, Eglin AFB, FL, and Hurlburt Field, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6277 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Operational Architecture Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet Langley Air Force Base. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 7–8, 2002.

ADDRESSES: Langley Air Force Base, VA.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6278 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System; Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System. The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: 28 March 2002.

ADDRESSES: NSS, Skyline 3, Suite 500, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–1924.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6221 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendments to the Administrative Manual—Rules of Practice and Procedure Concerning Fees Associated With Responses to the Freedom of Information Act Requests

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the agency's *Administrative Manual—Rules of Practice and Procedure* updating the fee schedule associated with Commission responses to Freedom of Information Act (FOIA) requests. The current schedule of fees was promulgated in 1975 and has not been updated since. Over the past quarter of a century, computer technologies have introduced new methods of recording and reproducing information that were not contemplated by the 1975 regulations, and administrative costs have increased. The proposed fee structure reflects current technology and costs. The current fees, at Section 2.8.10 of the *Administrative Manual—Rules of Practice and Procedure,* 18 CFR 401.110, and proposed amendments may be viewed on the Commission's Web site at *http://www.drbc.net.*

DATES: The public hearing will be held on Friday, May 31, 2002, during the Commission's regular business meeting, which will begin at 1:00 p.m. The meeting on May 31 must end by 3:00 p.m., but if necessary, the hearing will continue at the Commission's next scheduled business meeting until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609–883–9500 ext. 203. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated.

ADDRESSES: The public hearing will be held at Grey Towers National Historic Landmark, 151 Grey Towers Drive, Milford, PA. Directions will be posted on the Commission's Web site at *http://www.drbc.net* by April 1, 2002. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela Bush at 609–883–9500 ext. 203 with questions about the proposed amendments or the rulemaking process. Notice also is posted on the Commission's Web site, at *http://www.drbc.net.*

Dated: March 7, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–5958 Filed 3–14–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.234Q]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Projects With Industry (PWI) program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placements and career advancement services.

Eligible Applicants: Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes, tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

In order to ensure an equitable distribution of funds among the States as required by statute, grant awards will be made only to organizations that provide job and career opportunities for individuals with disabilities within the State in which the organization is located. Only organizations that have the ability to directly receive the grant and directly carry out the project are eligible to apply.

Only applicants that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program may apply.

SUPPLEMENTARY INFORMATION: Funds under this competition will be used to support projects in FY 2002. The Assistant Secretary may consider funding approved applications submitted in FY 2002 to support projects in future years.

The Business Leadership Network (BLN), staffed by the U.S. Department of Labor, works to promote best practices in rehabilitation and to enhance opportunities for workers who are disabled. The BLN currently has programs in 30 States, the District of Columbia, and Puerto Rico. These programs operate independently of each other and focus on meeting the specific needs of the business community and State Government. Through BLNs, participating employers, in partnership with State Governor's Committee representatives and other community services professionals, identify specific hiring requirements of employers so that referral and placement services can be customized to meet those employers' needs. Applicants applying under the PWI program are encouraged to collaborate with their local BLN, if one has been established in the State, in order to expand services and employment opportunities to project participants. We believe that strong working relationships with local BLNs will expand the employer network available to projects and, as a result, increase employment opportunities for individuals with disabilities.

Applications Available: March 15, 2002.

Deadline for Transmittal of Applications: May 31, 2002.

Deadline for Intergovernmental Review: July 30, 2002.

Estimated Available Funds: $17,478,135.

Estimated Range of Awards: $175,000-$250,000.

Estimated Average Size of Awards: $221,200.

Estimated Number of Awards: 79.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99; and (b) The regulations for this program in 34 CFR part 379.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Projects should demonstrate effective collaboration with the ''One-Stop''

service delivery system established under title I of the Workforce Investment Act of 1998, as amended (WIA), to assist individuals with disabilities to secure job skills training and employment opportunities in the competitive labor market. Proposed PWI service delivery models should promote the delivery of services to individuals with disabilities through local ''One-Stop'' centers. Proposed PWI service delivery models should investigate replicable innovative approaches to effective collaboration with the ''One-Stop'' service delivery system in placing individuals with disabilities into competitive employment. Applicants who wish to address this invitational priority may get further information about the ''One-Stop'' service delivery system by calling the Department of Labor (DOL) at (202) 693–2700 or visiting the DOL web site at: *www.dol.gov/dol/allcfr/Title_20/Part_662/toc.htm*

Invitational Priority 2

Projects should demonstrate the use of alternative work settings, such as flexiplace or telecommuting, to assist individuals with disabilities, especially individuals with significant disabilities, to secure job skills training and employment opportunities in the competitive labor market. Projects should investigate replicable innovative approaches in the use of alternative work settings. Projects also should demonstrate how these alternatives may increase the number of individuals with disabilities placed into competitive employment.

Invitational Priority 3

Projects should facilitate the school-to-work transition of students with disabilities. Projects should focus on placing youth with disabilities in employment with clearly defined career-path or career-advancement opportunities, or both. Projects also should investigate replicable innovative approaches that can be used to assist students in transition from school-to-work in obtaining competitive employment.

Invitational Priority 4

Projects should demonstrate how literacy services can assist PWI consumers with low literacy levels to obtain higher earnings in competitive employment. Proposed PWI service delivery models should investigate replicable innovative approaches that can be used to assist individuals to obtain higher quality jobs (e.g., jobs with higher wages and health insurance benefits). Projects should focus on enhancing collaboration between local Adult Education and Family Literacy (AEFL) programs, the primary resource for providing adult basic education (ABE) services, and Vocational Rehabilitation programs. This collaboration should include the provision of training, experience, or appropriate reasonable accommodations to AEFL or ABE programs to assist them in serving individuals with disabilities, particularly individuals with significant disabilities, and working cooperatively to share in the cost of training and placement.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Competitive Preference Priority

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this program. The maximum score under the selection criteria for this program is 100 points; however, we will also use the following competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.234Q.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Kerrie Brown, Mary Jane Kane, Sonja Turner, or Lois Vaughan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3329, Switzer Building, Washington, DC 20202. Telephone: (202) 401–9707 for Kerrie Brown; (202) 205–8484 for Mary Jane Kane; (202) 205–9396 for Sonja Turner; and (202) 205–8749 for Lois Vaughan. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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Program Authority: 29 U.S.C. 795 *et seq.*

Dated: March 11, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–6214 Filed 3–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Change in notice of meeting time.

SUMMARY: Due to a change in meeting time the President's Board of Advisors on Historically Black Colleges and Universities will now meet on Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Beverly Ward at 202–502–7900 by no later than Monday, March 11, 2002.

DATE AND TIME: Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 15 & M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Ward, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 7C103, Washington, DC 20202. Telephone: (202) 401–1311.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 13256 of February 12, 2002. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on the status and future of federal agency support for Historically Black Colleges and Universities. Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC 20006, from the hours of 8:30 a.m. to 5 p.m.

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Authority: 5 U.S.C. 5701–5707.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6222 Filed 3–14–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–96–000]

Columbia Gas Transmission Corporation; Notice of Application

March 8, 2002.

Take notice that on February, 27, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–96–000 pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Hydrocarbon Generation, Incorporated (Hydrocarbon) natural gas facilities, known as the Sheldon System, located in Wyoming County, New York, as well as the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to 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).

Columbia states that on February 20, 2002, Columbia and Hydrocarbon signed a Purchase and Sale Agreement, which provides for the sale of the Sheldon System consisting of 15 miles of pipelines ranging in diameter from 4-inch to 10-inch and appurtenances. The Sheldon System was part of Columbia's former Project Penny facilities, which were developed in the mid 1970's and 1980's for the purpose of accessing production volumes to satisfy the supply needs of Columbia's customers. In Docket No. CP98–569–000, Columbia was given authorization to abandon by sale all but two parts of the Project Penny facilities, one being the Sheldon System and another which has not yet been sold. Columbia states that the Sheldon System is not connected to any part of Columbia's system. Columbia receives the volumes of local production from producers such as Hydrocarbon and the gas that is received is largely consumed by local markets. Any volumes that are not consumed are delivered to National Fuel for delivery to Columbia by displacement.

According to Columbia, the facilities will be sold for a negotiated amount of $50,000. Columbia states that it does not propose the abandonment of service to customers other than those currently served directly from the facilities. Once the facilities are acquired, Hydrocarbon intends to operate the facilities as a natural gas gatherer providing gathering and related services. According to Columbia, Hydrocarbon has agreed to assume any obligation Columbia may have to provide service to customers receiving service through the facilities, on terms and conditions acceptable to both Hydrocarbon and the customers. Therefore, Columbia states that it does not anticipate any material change to, or interruption in, the services currently being provided to customers through the facilities. Columbia states that there are no firm contracts or mainline tap consumers served from the facilities.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

should, on or before March 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6245 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–97–000]

West Texas Gas Inc.; Notice of Application

March 11, 2002.

Take notice that on March 4, 2002, West Texas Gas, Inc. (WTG) filed in Docket No. CP02–97–000 an application, pursuant to Section 3 of the Natural Gas Act (NGA), Section 153, *et seq.,* of the Commission's Regulations, for a Section 3 authorization and the Presidential Permit in order to site, construct, operate, and maintain certain natural gas facilities, all as more fully described below. This filing may 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).

Specifically, WGT requests authorization to construct, operate, and maintain approximately 400 feet of 8-inch diameter pipeline (border crossing) at the International Boundary near Del Rio, Val Verde County, Texas for the delivery of up to 25,000 MMBtu per day of natural gas to Mexico. The border crossing, situated at the center of the Rio Grande River, will connect on the Mexico side with the pipeline facilities of Gas Natural Industrial, S.A de C. V. (GNI) and, on the U.S. side, with approximately nine miles of 8-inch diameter pipeline and related measurement and regulation equipment to be constructed, which will extend from WGT's existing Del Rio Lateral on its intrastate natural gas transmission system.

Any questions regarding the application should be directed to Richard D. Hatchett, Vice President, West Gas Texas, Inc., 211 North Colorado, Midland, Texas, or at (915) 682–4349.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 1, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Interventions, comments, and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6242 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Fact-Finding Investigation of Potential ManipulationDocket No. PA02–2–000 of Electric and Natural Gas Prices; Notice of Clarification of March 5, 2002 Information Request

March 11, 2002.

On March 5, 2002 (67 FR 11111, March 12, 2002), the Associate Director, Office of Markets, Tariffs and Rates, issued an information request in this proceeding directed to all jurisdictional sellers and all non-jurisdictional sellers in the West. In response to telephone inquiries received by Staff, the Associate Director clarifies that the March 5, 2002, information request does not apply to sales by qualifying facilities. The Associate Director reserves the right to issue information requests to qualifying facilities in the future in this proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6244 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–100–000, et al.]

Choctaw Gas Generation, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Choctaw Gas Generation, LLC

[Docket No. EG02–100–000]

Take notice that on March 5, 2002, Choctaw Gas Generation, LLC (Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, 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.

Applicant states that it will own and operate a 700 MW generating facility near the city of Choctaw, Mississippi, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a total nominal output of 700 MW. *Comment Date*: March 29, 2002.

2. Mirant Oregon, LLC

[Docket No. EG02–101–000]

Take notice that on March 6, 2002, Mirant Oregon, LLC (Mirant Oregon) 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.

Mirant Oregon proposes to own an indirect, 50 percent undivided interest in a 280 MW generating facility located in Morrow County, Oregon (Facility). All output from Mirant Oregon's interest in the Facility will be sold by Mirant Oregon exclusively at wholesale. All requisite state consent has been obtained and is reflected in Oregon Public Utility Commission Order Nos. 00–115 and 00–214 attached to the application. *Comment Date*: March 29, 2002.

3. System Energy Resources, Inc.

[Docket No. ER95–1042–006]

Take notice that on March 1, 2002, Entergy Services, Inc. (Entergy Services) as agent for System Energy Resources, Inc. (SERI), submitted for filing its response to the January 30, 2002 letter in the above-referenced docket number ER95–1042–005. *Comment Date*: March 21, 2002.

4. American Transmission Company LLC

[Docket Nos. ER01–1107–001]

Take notice that on March 1, 2002, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 letter Order an executed Revised Network Operating Agreement and an executed Second Revised Network Integration Service Agreement between ATCLLC and Dairyland Power Cooperative.

ATCLLC requests an effective date of February 13, 2002. *Comment Date*: March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–438–001]

Take notice that on February 28, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing, pursuant to the Order of the Federal Energy Regulatory Commission (Commission) in Midwest Independent Transmission System Operator Inc., 98 FERC ¶ 61,051 (2002), Section 205 of the Federal Power Act (FPA), 16 USC 824d (2000) and Section 385.205 of the Commission's regulations, 18 CFR 385.205 (2001), revisions to Attachment M (Losses) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1.

The Midwest ISO has requested an effective date of March 1, 2002.

Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request. *Comment Date*: March 21, 2002.

6. Conectiv Bethlehem, Inc.

[Docket No. ER02–453–002]

Take notice that Conectiv Bethlehem, Inc., on March 4, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised page of CBI's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, to comply with a letter order issued by the Commission on January 31, 2002 in the above-captioned proceeding. *Comment Date*: March 25, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–489–001]

Take notice that on March 4, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revised pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, pursuant to the Commission's Order in Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,087 (2002).

Pursuant to the requirements set forth in 18 CFR 385.2010 (2001), the Midwest ISO has served a copy of its compliance filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the

Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. Finally, the Midwest ISO has electronically posted its filing on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 25, 2002.

8. Michigan Electric Transmission Company

[Docket No. ER02–562–001]

Take notice that on March 4, 2002, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the February 1, 2002 order issued in this proceeding: Sub Second Revised Sheet No 140 and Substitute Original Sheet Nos. 140A and 140B.

The sheets are to be effective as of December 13, 2001. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: March 25, 2002.

9. Southern Company Services, Inc.

[Docket No. ER02–1210–000]

Take notice that on March 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a department of SCS, as agent for Mississippi Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the East Mississippi Electric Power Association's DENA Enterprise Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Mississippi Power Company, to the East Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment Date: March 22, 2002.

10. Exelon Generation Company, LLC

[Docket No. ER02–1211–000]

Take notice that on March 1, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Duke Energy Trading & Marketing, LLC under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: March 22, 2002.

11. Carolina Power & Light Company

[Docket No. ER02–1212–000]

Take notice that on March 1, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between CP&L and Cogentrix Eastern Carolina, LLC (Cogentrix). The Interconnection Agreement provides for the interconnection of Cogentrix's generating facility with CP&L's transmission system.

CP&L respectfully requests that the Interconnection Agreement become effective on February 4, 2002. Copies of the filing were served upon the North Carolina Utilities Commission and the attached List of Recipients.

Comment Date: March 22, 2002.

12. Mirant Energy Trading, L.L.C.

[Docket No. ER02–1213–000]

Take notice that on March 1, 2002, Mirant Energy Trading, L.L.C. (MET) tendered for filing an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. MET requested expedited Commission consideration. MET requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or March 31, 2002. MET also filed its FERC Electric Tariff No. 1.

Comment Date: March 22, 2002.

13. Invenergy Energy Marketing LLC

[Docket No. ER02–1214–000]

Take notice that on March 1, 2002, Invenergy Energy Marketing LLC (Invenergy Marketing) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule FERC No. 1, Original Volume No. 1. Invenergy Marketing proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective upon issuance of a Commission order accepting the rate schedule for filing.

Invenergy Marketing intends to sell energy, capacity, replacement reserves, and certain ancillary services in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party. Invenergy Marketing also seeks authority to reassign transmission capacity and to resell Firm Transmission Rights.

Comment Date: March 22, 2002.

14. American Electric Power Service Corporation

[Docket No. ER02–1215–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), an Interim Qualified Scheduling Entity Service Agreement (Agreement).

AEP requests that the Agreement be made effective on March 3, 2002. Copies of the filing have been served on the party to the Agreement as well as on the Public Utility Commission of Texas.

Comment Date: March 22, 2002.

15. American Electric Power Service Corporation

[Docket No. ER02–1216–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), seven Interim Qualified Scheduling Entity Service Agreements (Agreements).

AEP requests that the Agreements be made effective on March 3, 2002. Copies of the filing have been served on the parties to the Agreements as well as on the Public Utility Commission of Texas.

Comment Date: March 22, 2002.

16. Valero Refining Company—California

[Docket No. ER02–1217–000]

Take notice that on March 1, 2002, Valero Refining Company—California (Valero) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Valero rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Valero will construct and operate a natural gas fired, combined-cycle electric generation facility. The electric output of the facility will be used for onsite purposes, with periodic excess electric energy to be sold at wholesale. Valero is an indirect, wholly owned subsidiary of Valero Energy Corporation, a Delaware corporation.

Comment Date: March 22, 2002.

17. Duke Energy Corporation

[Docket No. ER02–1218–000]

Take notice that on March 1, 2002, Duke Energy Corporation filed a Third Revised Service Agreement No. 53 to Duke's FERC Electric Tariff Second Revised Volumn No. 4

Comment Date: March 22, 2002.

18. Bangor Hydro-Electric Company

[Docket No. ER02–1219–000]

Take notice that on March 1, 2002, Bangor Hydro-Electric Company (BHE) tendered for filing an Operation and Maintenance Agreement between BHE, Great Northern Paper, Inc. (GNP), and Great Lakes Power, Inc. (GLPI).

Copies of this filing were sent to GNP, GLPI, Maclaren Energy, Inc., the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: March 22, 2002.

19. Central Maine Power Company

[Docket No. ER02–1220–000]

Take notice that on March 4, 2002 Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Wight Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 143.

Comment Date: March 25, 2002.

20. Central Maine Power Company

[Docket No. ER02–1221–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Gardner Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 144.

Comment Date: March 25, 2002.

21. Central Maine Power Company

[Docket No. ER02–1222–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Stony Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 142.

Comment Date: March 25, 2002.

22. Central Maine Power Company

[Docket No. ER02–1223–000]

Take notice that on March 4, 2002 , Central Maine Power Company (CMP) tendered for filing unexecuted Local Network Operating Agreements (LNOAs) and unexecuted service agreements for Local Network Transmission Service (LNSA) entered into with four retail customers: Miller Hydro Group; Topsham Hydro Partners; United American Hydro, L.P.; and CHI Operations, Inc.—Mechanic Falls Hydro. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

Miller Hydro Group LNSA—Service Agreement No. 145
Miller Hydro Group LNOA—Service Agreement No. 146
United American Hydro LNSA—Service Agreement No. 147
United American Hydro LNOA—Service Agreement No. 148
CHI Operations, Inc. LNSA—Service Agreement No. 149
CHI Operations Inc. LNOA—Service Agreement No. 150
Topsham Hydro LNSA—Service Agreement No. 151
Topsham Hydro LNOA—Service Agreement No. 152.

Comment Date: March 25, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–1224–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

24. California Independent System Operator Corporation

[Docket No. ER02–1225–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Scheduling Coordinator Agreement between the ISO and TransAlta Energy Marketing (U.S.) Inc., for acceptance by the Commission.

The ISO states that this filing has been served on TransAlta Energy Marketing (U.S.) Inc. and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

25. California Independent System Operator Corporation

[Docket No. ER02–1226–000]

Take notice that on March 4, 2002,the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective February 8, 2002.

Comment Date: March 25, 2002.

26. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1227–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy Marketing Company.

A copy of this filing was sent to Ameren Energy Marketing Company.

Comment Date: March 25, 2002.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1228–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by CMS MS&T Michigan L.L.C.

A copy of this filing was sent to CMS MS&T Michigan L.L.C.

Comment Date: March 25, 2002.

28. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1229–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission)

Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Kansas City Power & Light Company.

A copy of this filing was sent to Kansas City Power & Light Company.

Comment Date: March 25, 2002.

29. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1230–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by NRG Power Marketing Inc.

A copy of this filing was sent to NRG Power Marketing Inc.

Comment Date: March 25, 2002.

30. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1231–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Public Service Company of Colorado-Marketing.

A copy of this filing was sent to Public Service Company of Colorado-Marketing.

Comment Date: March 25, 2002.

31. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1232–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Southwestern Public Service Company-Marketing.

A copy of this filing was sent to Southwestern Public Service Company-Marketing.

Comment Date: March 25, 2002.

32. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1233–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Wolverine Power Supply Cooperative, Inc.

A copy of this filing was sent to Wolverine Power Supply Cooperative, Inc.

Comment Date: March 25, 2002.

33. Pinnacle West Capital Corporation

[Docket No.ER02–1234–000]

Take notice that on March 4, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 9 under PWCC's Rate Schedule FERC No. 1 for service to Central Arizona Water Conservation District (CAW).

A copy of this filing has been served on CAW.

Comment Date: March 25, 2002.

34. Central Illinois Light Company

[Docket No. ER02–1235–000]

Take notice that on March 4, 2002,Central Illinois Light Company (CILCO), tendered for filing with the Commission a Service Agreement with Corn Belt Energy Corporation under its Market Rate Power Sales Tariff.

CILCO requested an effective date of April 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: March 25, 2002.

35. Illinois Power Company

[Docket No. ER02–1236–000]

Take notice that on March 4, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Termination, effective at 11:59 p.m., January 15, 2002, of the Firm Short-Term Point to Point Transmission Service Agreement and the Non-Firm Point to Point Transmission Service Agreement, entered into by Illinois Power and The Legacy Energy Group, LLC, each dated May 16, 2001 and effective on June 1, 2001, as Original Service Agreement Nos. 304 and 310, respectively, under FERC Electric Tariff Third Revised Volume 8 of Illinois Power.

Illinois Power states that the termination has been requested by the customer and agreed to by Illinois Power. Illinois Power further states that a copy of the Notice of Termination has been mailed to the customer.

Comment Date: March 25, 2002.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6241 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 11, 2002.

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.:* 12146–000.

c. *Date filed:* January 30, 2002, supplemented March 6, 2002.

d. *Applicant:* Paul C. Rizzo Associates, Inc.

e. *Name of Project:* St. Michael Pump Storage Project.

f. *Location:* In Adams Township, Cambria County, Pennsylvania. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

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: Magalie R. Salas, 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–12146–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed rockfill dike impounding a proposed 100-acre upper reservoir, (2) a proposed upper concrete intake structure, (3) a proposed 125-foot-high, 1,000-foot-long earthen dam impounding a proposed 77-acre lower reservoir, (4) a proposed lower concrete intake structure, (5) three proposed eight-foot-diameter steel penstocks approximately 5,000 feet long, (6) a proposed powerhouse containing three pump turbines having a total installed capacity of 60 MW, (7) a proposed 1.5-mile-long, 66 kV transmission line, and (8) appurtenant facilities. The project would have an annual generation of 178.8 Gwh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. 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.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6243 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. A mailing error

has occurred; therefore, this notice is being reissued and the deadline for filing is extended.

a. *Application Type:* Amendment of License.

b. *Project No.:* 4204–024.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* City of Batesville (City).

e. *Name of Project:* White River Lock and Dam No. 1 Hydroelectric Project.

f. *Location:* The project is located on the White River, in the Town of Batesville, Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street NW, Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or e-mail address: *dhclarke@GKRSE-law.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or e-mail address: *janet.hutzel@ferc.fed.us*.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

k. This notice was issued January 29, 2002, with a comment date of February 28, 2002, and is being reissued with an extended deadline for filing.

All documents (original and eight copies) should be filed with: Magalie R.Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4204–024) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor 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.

Comments, motions to intervene, and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the ''e-Filing'' link.

l. *Description of Amendment:* The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). The City of Batesville now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. The City thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed 25 kV transmission line would extend along the north side of the White River westward 9.6 miles from Lock and Dam No. 1 to the proposed substation. Underground transmission line is proposed for the first 3000 ft from Lock and Dam No. 1, while the remaining line would use single pole structures.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4204–024) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the City of Batesville specified in item h, above.

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 representative listed in item h, above.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6246 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000,RT01–10–000, RT01–15–000, ER02–323–000,RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice of Technical Conference on Results of RTO Cost Benefit Report

March 8, 2002.

The Federal Energy Regulatory Commission (Commission) is planning to hold a technical conference at its Washington, DC, headquarters on March 25, 2002 to allow the public and all interested participants an opportunity to ask questions about the results of its RTO Cost Benefit Report. This technical conference is in additional to the regional teleconferences announced in our March 1, 2002 notice. The technical conference will be held from 10:00 am-2:00 pm EST in the Commission's Meeting Room. All previously scheduled regional teleconferences for industry and the public will still be held on March 18 and 19, 2002 .

Like the regional technical teleconferences, the March 25th technical conference is designed to assist participants in understanding the results of the RTO Cost Benefit Report and not to discuss the merits of the Commission's RTO policy. The Commission believes that this conference and the regional teleconferences will assist the participants in preparing comments on the report which are due April 9, 2002. Reply comments are still due April 23, 2002.

No telephone communication bridge will provided at this meeting. The technical conference will be transcribed

and the transcript will be placed in appropriate and related dockets. Copies of the transcripts will be available from Ace-Federal Reporters (800–336–6646 or 202–347–3700) at cost and will be available on the Commission's web site 10 days after receipt from Ace-Federal Reporters.

For further information, please contact either: William Meroney at 202–208–1069 or William.meroney@ferc.gov, Charles Whitmore at 202–208–1256 or Charles.whitmore@ferc.gov, Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6248 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P A

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (Cost Benefit Analysis Report); Instructions for Participating in the RTO Cost Benefit Report Teleconferences for Industry and the Public

March 8, 2002.

As described in its March 1, 2002 Notice of Regional Teleconferences and Due Dates for Comments and Reply Comments, the Commission's staff and ICF Consulting will conduct regional teleconferences with members of Industry and the Public on March 18 and 19, 2002. The purpose of the teleconferences is to discuss the results of the RTO Cost Benefit Report and assist interested persons in preparing comment on the report which are due on April 9, 2002. Reply comments are due April 23, 2002.

To participate in the teleconferences, all interested persons must call 1–888–593–9820, within 15 minutes of the scheduled time of the each teleconference. Please provide the operator with your name, the code word for the specific teleconference, and the contact name as listed below. In order to facilitate discussion, it will be more efficient if persons from one organization or group call in on one telephone line. The teleconferences will be transcribed and transcripts will be placed in the appropriate dockets.

Industry and Public Teleconferences

1. Monday, March 18—10 a.m. to 12 p.m. EST. Code Word: MIDWEST. Contact: Ed Meyers.
2. Monday, March 18—2 p.m. to 4 p.m. EST. Code Word: SOUTHEAST. Contact: Ed Meyers.
3. Tuesday, March 19—10 a.m. to 12 p.m. EST. Code Word: NORTHEAST. Contact: Ed Meyers.
4. Tuesday, March 19—2 p.m. to 4 p.m. EST. Code Word: WESTERN. Contact: Ed Meyers.

If you have questions about the teleconferences, please contact one of the persons below.

William Meroney at 202–208–1069 *William.meroney@ferc.gov.*

Charles Whitmore at 202–208–1256 *Charles.whitmore@ferc.gov.*

Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6249 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 8, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

Docket No.	Date filed	Presenter or requester
1. CP01–176–000	03–05–02	Richard Gilda.
2. CP01–176–000	03–05–02	Barbara E. Brenner.
3. CP01–176–000	03–05–02	Michael Kaufman.
4. Project No. 2342	03–06–02	James H. Hulbert.
5. CP01–361–000	03–08–02	Yvonne Dettlaff, *et al.*
6. CP01–439–000	03–08–02	Annette Paynter.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6247 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–FRL–6627–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001, (66 FR 27647).

Draft EISs

ERP No. D–BLM–L65391–OR Rating EC2, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR.

Summary: EPA expressed environmental concerns about lack of information on the management of noxious weeds, impacts to water and air quality and roads, and protection of tribal interests. EPA requested that these issues be fully addressed in the final EIS.

Final EISs

ERP No. F–AFS–G65076–OK, Quachita National Forest, An Amendment to the Land and Resource Management Plan, Implementation, Glover River, McCurtain County, OK.

Summary: EPA has no objection to the selection of the preferred alternative, Alternative C.

ERP No. F–AFS–J65349–UT, Griffin Springs Resource Management Project, Implementation, Commercial Timber Harvesting, Aspen Regeneration, Management Ignited Prescribed Fire and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA continues to express environmental concerns that there was no scientific evidence presented for the use of thinning to prevent a spruce beetle epidemic and regarding the attempt to segregate travel management analysis and decisions from site-specific project decisions.

ERP No. F–NRC–J00031–UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT.

Summary: EPA continues to have environmental concerns with the emergency response procedures and the characterization of Clean Water Act Requirements. EPA requested that these concerns be addressed in the Record of Decision.

ERP No. F–USN–K11033–CA, El Toro Marine Corps Air Station Disposal and Reuse, Recommendation and Approval of an Airport Layout Plan for Civilian Airport, Funding, NPDES Permit, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11105–CA, Point Molate Property Naval Fuel Depot (NFD) for the Disposal and Reuse, Implementation, Fleet and Industrial Supply Center, City of Richmond, Contra Costa County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FC–NRC–A00164–00, Generic—License Renewal of Nuclear Power Plants, Supplement 5, Turkey Point Units 3 and 4 (NUREG–1437), Operating License Renewal, Biscayne Bay, Miami-Dade County, FL.

Summary: EPA continues to have environmental concerns about the project, Specifically noise impacts to nearby Biscayne National Park merit further discussion as the project progresses.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6293 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 4, 2002 Through March 8, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020087, Draft EIS, FHW, CT, Groton-New London Airport, Construction of Runway 5–23 Safety Area, Permits and Approvals, Town of Groton, New London County, CT, *Comment Period Ends:* May 10, 2002, *Contact:* John Silva (781) 238–7502.

EIS No. 020088, Draft EIS, AFS, PA, Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA, *Comment Period Ends:* April 29, 2002, *Contact:* Andrea Hille, Ext. 129 (814) 362–4613.

EIS No. 020089, Draft EIS, FHW, WV, KY, Appalachian Corridor I–66 Highway Construction, U.S. 23/119 south of Pikeville, KY eastward to the King Coal Highway southeast of Matewan, Funding and U.S. Army COE Section 404 Permits Issuance, Pike County, KY and Mingo County, WV, *Comment Period Ends:* April 29, 2002, *Contact:* Jose Sepuveda (502) 223–6764.

EIS No. 020090, Draft EIS, AFS, Mt, Bitterroot National Forest Noxious Weed Treatment Project, Ground and Aerial Herbicides Application, Mechanical, Biological and Cultural Weed Treatment and Public Awareness Measures, Implementation, Stevensville Ranger District, Bitterroot National Forest, Ravalli County, MT, *Comment Period Ends:* April 30, 2002, *Contact:* Ken Hotchkiss (406) 777–5461.

EIS No. 020091, Final EIS, COE, CA, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Restoration and Protection of the Ecosystem for Fish and Wildlife Resources, King River Basin, Fresno County, CA, *Wait Period Ends:* April 15, 2002, *Contact:* John Bellinger (202) 761–4831.

EIS No. 020092, Draft Supplement, FAA, FL, Fort Lauderdale-Hollywood International Airport, New Information and Changes to the Aviation Activity Forecasts Presented, Proposed Expansion of Runway 9R–2FL and other Associated Improvements, Funding, Broward County, FL, *Comment Period Ends:* April 29, 2002, *Contact:* Virginia Lee (407) 812–6331 ext 29.

EIS No. 020093, Draft EIS, FHW, NV, Boulder City/U.S. 93 Corridor Study, Study Limits are between a western boundary on U.S. 95 in the City of Henderson, where the Present Freeway ends, and an Eastern boundary on U.S. 93 approximately 4.7 miles east of downtown Boulder City, NPDES, Right-of-Way and COE Section 404 Permits, Clark County, NV, *Comment Period Ends:* May 10, 2002, *Contact:* Daryle James (775) 888–7013.

EIS No. 020094, Final EIS, FHW, IL, U.S. 34/FAP 313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and U.S. Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL, *Wait Period Ends:* May 13, 2002, *Contact:* Norman R. Stoner (217) 492–4600.

EIS No. 020095, Final EIS, AFS, NH, Loon Mountain Ski Resort Development and Expansion Project, Implementation,

Special Use Permit and NPDES Permit Issuance, White Mountain National Forest, Pemgewasset Ranger District, Grafton County, NH, *Wait Period Ends:* April 15, 2002, *Contact:* Jay Strand, Ext. 522 (802) 767–4261.

EIS No. 020096, Final EIS, AFS, ID, Curfew National Grassland Land and Resource Management Plan, Implemetation, Caribou-Targhee National Forest, Oneida County, ID, *Wait Period Ends:* April 15, 2002, *Contact:* Jerry B. Reese (208) 557–5761.

EIS No. 020097, Final EIS, FHW, MI, MI–59 Proposed Right-of-Way Preservation Project, Funding for Right-of-Way Perservation Project, Funding for Right-of-Way Acquisition, I–96 to U.S. 23, Livingston County, MI, *Wait Period Ends:* April 29, 2002, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 020098, Draft Supplement, COE, IL, WI, Upper Des Plaines River, Flood Damage Reduction at Site 37, Construction of a Concrete Floodwall along Des Plaines River, Milwaukee Avenue, Willow Road, and Palatine Road in Mt. Prospect, Cook County, IL, *Comment Period Ends:* April 29, 2002, *Contact:* Keith Ryder (312) 353–6400 ext. 2020.

EIS No. 020099, Final EIS, AFS, MT, WA, ID, Programmatic EIS—Kootena, Idaho Panhandle, and Lolo National Forests, Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones, ID, WA and MT, *Wait Period Ends:* April 15, 2002, *Contact:* Rob Carlin (406) 882–4451.

Amended Notices

EIS No. 020074, Final EIS, FHW, AR, TX, US 71 Highway Improvement Project, between Texarkana, (US71) Arkansas and DeQueen, Funding, Right-of-Way Approval and COE Section 404 Permit, Little River, Miller and Sevier Counties, AR and Bowie County, TX, *Wait Period Ends:* April 15, 2002, *Contact:* Randal J. Looney (501) 324–6430.

Revision of FR Notice Published on 03/01/2002: CEQ Comment Period Ending 04/01/2002 has been extended to 04/15/2002. Also Correction to Contact Name and Telephone.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6294 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–4]

Office of Emergency and Remedial Response Availability of Superfund Annual Report to Congress; Progress Toward Implementing Superfund Fiscal Year 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the Agency's Progress Toward Implementing Superfund: Fiscal Year 1998, which is required by section 301(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. The Report to Congress contains information on overall progress, and includes the following categories of information specifically required by section 301(h) of CERCLA: Feasibility studies, remedial and enforcement actions; an evaluation of newly developed and feasible permanent treatment technologies; progress in reducing the number of facilities subject to review under section 121(c) of CERCLA; and an estimate of resources needed by the Federal Government to complete CERCLA's implementation. The Report also includes information required by section 105(f) of CERCLA about the participation of minority firms in Superfund contracting; and the EPA Inspector General audit report required by section 301(h)(3) of CERCLA.

ADDRESSES: Published copies of the Report may be purchased by the public from the National Technical Information Service (NTIS) at 5285 Port Royal Road, Springfield, VA, 22161 (call 703–487–4650). Electronic copies of the Report may be downloaded from EPA's Web site, *http://www.epa.gov/superfnd/oerr/accomp/index.htm#reptocong.*

FOR FURTHER INFORMATION CONTACT: David Reynolds, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or 703–603–9026 or *reynolds.david@epa.gov.*

Dated: March 7, 2002.

Michael H. Shapiro,

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

[FR Doc. 02–6274 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 4, 2002.

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 current 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 March 14, 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0068.

Title: Application for Consent to Assign an Experimental Authorization.

Form Number: FCC 702.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 10.

Estimated Time per Response: 0.6 hr. (36 mins.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 6 hrs.

Total Annual Costs: $500.

Needs and Uses: In November 2001, the FCC revised and reinstated FCC Form 702. The Communications Act of 1934, as amended, and 47 CFR 5.59 of FCC Rules require applications for Experimental Radio Services to submit FCC Form 702 when the legal right to

control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Form 702's revisions were the following: (1) The expiration date was deleted; (2) Section 1 (Fee Portion) was deleted; (3) questions 2, 4, 7b, 7c, 9, 10, 13–19, and 12c–26 were removed; (4) the **FOR FCC USE ONLY** fields were removed; (5) assignor's and assignee's e-mail address fields were added; (6) a field for ''FCC Registration Number (FRN)'' was added; (7) the instructions pertaining Section I (Fee Portion) were removed; (8) the ''No. of Stations'' and ''Service'' columns were deleted (9) the item numbers were changed; (10) instructions referring to FCC Forms 159 and 160 were added; (11) an Internet URL for the FCC Registration Number (FRN) was added; (12) the Experimental Radio Service address was added; (13) the courier address changed.

OMB Control Number: 3060–0072.

Title: Airborne Mobile Radio Telephone License Application.

Form Number: FCC 409.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 260.

Estimated Time per Response: 5 mins. (0.083 hrs.).

Total Annual Burden: 22 hours.

Total Annual Cost: $13,000.

Needs and Uses: Individuals who intend to become subscribers to a common carrier service use FCC Form 409 to apply for, to modify, and/or to renew their license(s) giving them authority to operate an airborne mobile radio telephone. In recent years, the number of respondents has declined dramatically.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC 854 and FCC 854R.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Non-Profit Institutions; and state, local, or tribal government.

Number of Respondents: 9,000.

Estimated Time per Response: 30 Minutes.

Total Annual Burden: 6,750 hours.

Total Annual Costs: $182,000.

Needs and Uses: Owners of wire or radio communications towers with antenna structures use FCC Form 854 to register their structures within the United States, to notify the Commission when a structure has been built, to make changes to an existing registered structure, or to notify the Commission when a structure is dismantled. 47 CFR part 17 and sections 303(q) and 503(b)(5) of the Communications Act, as amended, authorize the FCC to require the painting and/or illumination of radio towers where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. The FCC uses FCC Form 854R to notify an owner that the Commission has registered the tower structure, its modification, or the change of ownership.

OMB Control Number: 3060–0707.

Title: Over-the-Air Reception Devices.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Individuals or households.

Number of Respondents: 320.

Estimated Time per Response: 2 to 6 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,240 hours.

Total Annual Costs: $144,280.

Needs and Uses: The FCC uses petitions for waivers of Section 207 rules to determine whether the state, local, or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions of the use of over-the-air reception devices.

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,200 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR 76.946 of FCC Rules, cable operators that advertise for basic service and cable programming service tiers are required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas, having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures, may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. This requirement is to make consumers aware of all fees associated with basic service and cable programming service tier rates.

OMB Control Number: 3060–0795.

Title: Associate WTB Call Signs and Antenna Registration Numbers with Licensee's FRN.

Form Number: FCC 606.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 429,000.

Estimated Time per Response: 1 hour.

Total Annual Burden: 429,000 hours.

Total Annual Costs: None.

Needs and Uses: Licensees use FCC Form 606 to associate their FCC Registration Number (FRN) with their Wireless Telecommunications Bureau call signs and antenna structure registration numbers. In addition, those antenna structure tenant licensees subject to the Anti-Drug Abuse Act of 1998 must use Form 606 to register their antenna structures. The form must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for an initial Wireless Telecommunications license or antenna structure registration. The Commission is revising FCC Form 606 and its instructions to remove information about the TIN registration requirements (including the title of the form) due to the implementation of the Commission Registration System (CORES) and to facilitate compliance with the Debt Collection Improvement Act of 1996 (DCIA).

OMB Control Number: 3060–0862.

Title: Handling Confidential Information, GC Docket No. 96–55.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 600.

Estimated Time per Response: 1 to 3 hours.

Total Annual Burden: 800 hours.

Total Annual Costs: $23,000.

Needs and Uses: On August 4, 1998, the FCC released *a Report and Order, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission (R&O)* in GC Docket No. 96–55. The R&O included a Model Protective Order (MPO) that is used, when appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection. The party granted access to the confidential information materials must keep a written record of all copies made and provide this record to the submitter of the confidential materials on request. The approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to materials. In addition, the FCC amended 47 CFR 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. This listing of the types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6313 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 7, 2002.

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: Persons wishing to comment on this information collection should submit comments May 14, 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 Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0243.

Title: Section 74.551, Equipment Changes.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1 hour.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor changes that can be made without prior Commission authorization upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with FCC rules and regulations.

OMB Control No.: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 12.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 21 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.537 requires licensees of an aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data is used by FCC staff to insure that the temporary operation of a STL or intercity relay station will not cause interference to existing stations.

OMB Control No.: 3060–0290.

Title: Section 90.517, Report of Operation.

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: 100.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 90.517 provides developmental authorizations that are usually employed licensees who wish to test and develop new use of radiocommunications facilities. Each such developmental licensee must report upon termination of development, or application for license renewal, specific information evaluating the usefulness of previous or desired continued operation of such a system. Commission personnel use the data to evaluate the need for renewal of the applicant's authorization. This information is also used by policy-making personnel to decide the desirability of instituting rulemaking proceedings involving new technologies or new uses of the radio spectrum.

OMB Control No.: 3060–0434.

Title: Section 90.207(e)(6), Stolen Vehicle Recovery System Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 80 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Applications for base stations operating on a particular frequency shall require coordination

with the Federal Government. Applicants shall perform an analysis for each base station located with 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set out in rule section 90.20(e)(6).

OMB Control No.: 3060–0537.

Title: Section 13.217, Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 15.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 15 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Recordkeeping requirement.

Needs and Uses: Each COLEM recovering fees from examinees must maintain records of expenses and revenues, frequency of examinations administered, and examination pass rates. Records must cover the period from January 1 to December 31 of the preceding year and must be submitted as directed by the Commission. Each COLEM must retain records for 1 year and the records must be made available to the FCC upon request.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6314 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission is seeking comments from the shipping public on current laws, rules, and policies of the Government of the People's Republic of China that appear to have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988. The Commission is seeking information on the impact of new Chinese legislation on U.S. oceanborne trade, as well as the effects of that legislation on a number of existing Chinese practices and restrictions. Interested parties, including shippers, transportation intermediaries, vessel operators and others in the shipping industry, are invited to comment.

DATES: Comments due on or before June 13, 2002.

ADDRESSES: Send comments (original and 20 copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5725.

FOR FURTHER INFORMATION, CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

This proceeding was initiated on August 12, 1998, to gather information regarding certain apparently restrictive laws, rules and regulations of the People's Republic of China (''PRC'' or ''China'') in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988 was warranted.[1] In its effort to continue to monitor the issues identified in this proceeding, the Commission, by this Notice of Inquiry is inviting affected parties to comment on the effects of recent changes in Chinese law.

The Commission has learned that the PRC recently issued a new law, ''Regulations of the PRC on the International Maritime Transportation,'' which became effective January 1, 2002,[2] and is expected very soon to promulgate implementing regulations addressing requirements for operators in international shipping generally. It appears that this new law and regulations may significantly affect the Commission's review of the potentially restrictive practices that existed prior to January 1, 2002. Therefore, through this Notice of Inquiry, and Information Demand Orders to be formulated as appropriate, the Commission seeks to ensure that it has the most accurate information with regard to these issues, so that it may in turn determine whether any current Chinese laws, rules, regulations or practices merit the initiation of a proceeding under section 19 of the Merchant Marine Act, 1920 (''Section 19''), or the Foreign Shipping Practices Act of 1988 (''FSPA'').

The Commission has received expressions of concern regarding the new Chinese legislation from several sources. These include the U.S. Government Executive Branch agencies with responsibilities affecting transportation policy and the conduct of negotiations with foreign governments as well as organizations representing shippers and ocean transportation intermediaries (''OTIs'') operating or seeking to provide shipping and shipping-related services in the U.S. trade with China.

A. Comments From Intermediaries

Concerns about the new Chinese shipping legislation were raised in a March 4, 2002 letter to Bruce J. Carlton, Acting Deputy Maritime Administrator, (with copies to the Commission) from the National Customs Brokers and Forwarders Association of America (''NCBFAA''), a trade association of ocean freight forwarders and non-vessel-operating common carriers (''NVOCCs''). NCBFAA states that ''U.S. intermediary and shipper interests will be directly and discriminatorily affected in an adverse manner.''

NCBFAA expresses specific concerns regarding the effects of Chinese law on the ability of its members to do business in China, including possibly conflicting and confusing requirements for direct ownership and control of NVOCC businesses and separate Chinese incorporation of foreign NVOCCs; the required maintenance of substantial funds in Chinese banks (rather than bonding or insurance); provisions governing the filing of rates, waiting periods for rate changes and the confidentiality of service contract rates (which may subject NVOCCs to requirements inconsistent with recently

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes and directs the Commission, inter alia, to ''make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country. * * *.''

The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

[2] The law is in the form of a Decree promulgated by the State Council of the PRC on December 5, 2001, signed by Prime Minister Zhu Rong Ji, which was published on December 21, 2001 and became effective on January 1, 2002.

amended U.S. laws); and the required use of vouchers prepared by Chinese tax authorities to invoice customers in China. NCBFAA identifies other matters as to which the new Chinese law is ambiguous, including whether the PRC intends to regulate rate levels and which entities will be subject to such rate regulation, and the mandatory or other status of rate-fixing conferences, discussion agreements, and capacity fixing agreements.

B. The Executive Agencies

On March 1, 2002, Maritime Administrator William G. Schubert wrote Chairman Harold J. Creel, Jr., expressing concern that the new law may restrict the operations not only of shipping companies, but also of shippers and OTIs. The Administrator further indicates that he has made these concerns known to the Chinese government, and that he has sought clarification on the law and the suspension of the effectiveness of any implementing regulations pending an opportunity to discuss the impact they may have with the Government of the PRC. The Maritime Administration has now announced that a U.S. government delegation will meet with PRC authorities in Beijing March 19–22, 2002 to obtain clarification about the meaning and impact of the Decree and any related implementing regulations.

Discussion and Request for Comments

It appears that U.S. OTIs, carriers and other providers of transportation services may face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs continue to be completely barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other types of services may be permitted, but only if a foreign firm enters a joint venture with a Chinese entity.

The Commission is seeking to establish a clear record of what types of services U.S. NVOCCs or ocean freight forwarders, as those terms are defined by the Shipping Act of 1984, are now permitted to perform in China, what activities are prohibited, what requirements or prerequisites are imposed and what, if any, detrimental effects these requirements and prohibitions have on U.S. companies seeking to do business in China. It would be most useful for the Commission to receive comments describing, in detail, what types of ocean transportation intermediary activities are permitted under Chinese law in effect since January 1, 2002; what are prohibited; and in what situations joint ventures or similar arrangements are required.

The Commission, in order to determine how the new Chinese laws, rules, regulations, policies and/or practices will affect its consideration of whether further Commission action under section 19 or the Foreign Shipping Practices Act may be merited, is now collecting information on the following specific areas.

1. General

Individual companies' accounts of their efforts, successful or otherwise, to establish operations in China, and their dealings with Chinese authorities, would be especially useful. Any supporting documentation would be welcomed. The Commission also seeks to determine the effects on shippers of any such restrictions; that is, will the Chinese law in effect since January 1, 2002 as it is applicable to non-Chinese ocean transportation intermediaries and vessel operators, have any effects on shippers' ability to secure efficient and economical intermodal transportation services in U.S. oceanborne commerce? The Commission would welcome comments from any carrier, shipper, or other party on the details or effects of these issues.

2. Licensing Requirements

The Commission has concerns about apparent new Chinese requirements for the licensing of vessel operators, non-vessel operators, international ocean freight forwarders, shipping agency operators and ship management operators. It is not clear whether there continue to be nationality-or investment-based limitations on a company's ability to obtain certain types of transportation business licenses in China or what the criteria are by which licenses can be withheld or denied, and what, if any, appeal rights applicants enjoy. The Commission would welcome comments from any carrier, shipper, or other party that could shed light on these practices and their effects on U.S.-China oceanborne trade.

3. Branch Offices and Multimodal Transport Operations

It appears that after January 1, 2002, non-Chinese vessel operators continue to face a number of restrictions on operating and increasing the number of the branch offices they may operate in China. For the branch offices that do exist, it appears that there may continue to be serious restrictions on their operations, both in terms of the geographic area they may serve and the scope of services they may offer. A number of these may be the same as, or similar to, the restrictions faced by NVOCCs and freight forwarders in China. Apparently, there are certain narrowly prescribed business areas in which non-Chinese vessel operators are now allowed to operate; however, it remains unclear just what those are as a result of the new Chinese law that went into effect on January 1, 2002.

We are particularly concerned that there may continue to be restrictions that seriously limit vessel operators' and ocean transportation intermediaries' ability to offer multimodal transportation services in China. The Commission requires more information on such restrictions on vessel operators' and ocean transportation intermediaries' branch office or multimodal operations.

4. Rate Filing Requirements

It appears that the new Chinese legislation may require vessel operators and NVOCCs to file the rates they charge customers for carriage to and from China. Please describe the Chinese ministry or regulatory body with whom you must file these matters, how they are filed, and what types of review or analysis of the rates are made by the relevant authority. Describe whether there are any mechanisms to protect the confidentiality of service contract rates. Please also describe what action may be taken by the relevant authority upon a finding that the rate in question does not meet regulatory criteria.

5. Ocean Transportation Intermediaries

What conditions, requirements or restrictions are placed on OTI activities? [3] What types of licenses are required, and what restrictions are placed on their issuance? Who issues the necessary licenses and permissions, and what are the legal standards and procedures for granting them? What are the capital investment or deposit requirements to obtain such a license? Also, what commercial partners are available in China for joint ventures, and under what commercial conditions? If your company had already been doing OTI operations in China prior to January 1, 2002, please describe how your ability to do business in China has been affected, if at all, by the new Chinese law effective that day. Are there nationality or investment-based differences? If your company has sought a license to do these types of activities since January 1, 2002, please describe that process, including the criteria,

[3] *E.g.,* arranging inland or ocean transportation, preparing documentation and issuing bills of lading, consolidation, warehousing, cargo agency, and logistics services.

requirements and procedure for obtaining a license, whether there are any limitations on the type of license your company may obtain, and the Chinese government authority(ies) to whom applications must be submitted or from which approvals must be sought.

Now Therefore, It is ordered, that this Notice of Inquiry be published in the **Federal Register**.

By the Commission.*

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6305 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–04]

Anchor Shipping Co. v. Alianca Navegacao e Logistica LTDA.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Anchor Shipping Co. (''Complainant'') against Alianca Navegacao E Logistica Ltda. (''Alianca'').

Complainant contends that Alianca engaged in a number of activities in connection with a service contract which violated sections 10(a)(2), 10(a)(3), 10(b)(3) and 10(c)(1) of the Shipping Act of 1984 (''Shipping Act'') and injured the Complainant.

Complainant asks that Alianca be compelled to answer its charges and that the Commission issue an order commanding Alianca to cease and desist from these violations; to establish and put in force such practices the Commission determines to be lawful and reasonable; to pay Complainant $1,000,000 in reparations, with interest and attorney's fees, or such other sum as the Commission may determine to be proper as an award of reparation; and such other further order as the Commission determines proper. Complainant requests that hearing be held in Miami, FL.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 13, 2003, and the final decision of the Commission shall be issued by July 11, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6218 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

*Commissioner John A. Moran is not participating.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board –approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: Intermittent Survey of Businesses
Agency form number: FR 1374
OMB control number: 7100–0302
Frequency: Biweekly and semiannually
Reporters: Purchasing managers, economists, or other knowledgeable individuals at business firms
Annual reporting hours: 125 hours
Estimated average hours per response: 15 minutes
Number of respondents: biweekly, 10; semiannually, 120
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 263, and 15 U.S.C. §1691b) and is given confidential treatment (5 U.S.C. 552(b)(6)).
Abstract: The proposed survey would be used by the Federal Reserve to gather information that would be specifically tailored to the Federal Reserve's policy and operational responsibilities. It is necessary to conduct the survey biweekly to keep up with the rapidly changing developments in the economy and to provide timely information to staff and Board members. Usually, the surveys would be conducted by staff economists telephoning purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The content of the questions and the businesses contacted would vary depending on changing developments in the economy.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB control number: 7100–0069
Frequency: on occasion
Reporters: member banks, bank holding companies, Edge and agreement corporations
Annual reporting hours: 38 hours
Estimated average hours per response: 15 minutes
Number of respondents: 150
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an foreign branch. The notice requires information

on the location and extent of service provided by the branch and is filed within thirty days of the change in status. The Federal Reserve System needs the information to fulfill supervisory responsibilities specified in Regulation K, including the supervision of foreign branches of U.S. banking organizations. The information is needed in order to evaluate the organization's international exposure and to update the Federal Reserve's structure files on U.S. banking organizations.

Regulation K, ''International Banking Operations,'' sets forth the conditions under which a foreign branch may be established. According to the final rule on Regulation K, published in the **Federal Register** on October 26, 2001 (66 FR 54345), organizations must give thirty days prior notice to the Board before the establishment of branches in the first two foreign countries. For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System twelve days prior written notice. The FR K–1, ''International Application and Prior Notifications Under Subparts A and C of Regulation K'' (OMB No. 7100–0107) will be used for these notices. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

Current Actions: The revisions include adding the location of the reporting institution and the subsidiary and a few minor technical clarifications.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K

Agency form number: FR K–1

OMB control number: 7100–0107

Frequency: on occasion

Reporters: state member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations

Annual reporting hours: 695 hours

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours

Number of respondents: 39

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K–1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: The changes incorporate revisions to Regulation K, published in the **Federal Register** on October 26, 2001, which became effective November 26, 2001 (66 FR 54345). Technical changes to each of the existing attachments conform with the new regulatory language. One new attachment was included for applications by U.S. banking organizations to invest in excess of 10 percent of capital and surplus in Edge corporations. This change is necessary as a result of The Economic Growth and Regulatory Paperwork Reduction Act of 1996. In addition, the Federal Reserve added certain new items, which are often requested after the application has been filed. Finally, several items that are no longer relevant have been deleted from the attachments.

3. Report title: Consolidated Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C

OMB control number: 7100–0128

Effective Date: March 31, 2002

Frequency: Quarterly

Reporters: Bank holding companies

Annual reporting hours: 252,675 hours

Estimated average hours per response: 33.98 hours

Number of respondents: 1,859

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier bank holding companies that have total assets of $150 million or more and by lower–tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

Current Actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes effective with the March 31, 2002, reporting date with the following changes:

- modify certain aspects of the proposal relating to the reporting of federal funds transactions and securities resale/repurchase agreements; and
- modify Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with amended regulatory capital standards. These changes parallel the modified revisions to the March 31, 2002, Call Reports, recently adopted by the FFIEC and are discussed in further detail below.

Federal Funds Transactions and Securities Resale/Repurchase Agreements

As indicated above, the Federal Reserve originally proposed to separate the existing balance sheet (Schedule HC) items for ''Federal funds sold and securities purchased under agreements to resell'' and for ''Federal funds purchased and securities sold under agreements to repurchase'' into two asset and two liability items. This proposed change was parallel to a proposed change for the commercial bank Call Report for March 31, 2002. As proposed, the reporting of amounts as ''Federal funds sold'' (the asset item) and ''Federal funds purchased'' (the liability item) would have been based on the longstanding definition of ''federal funds transactions,'' i.e., the lending and borrowing of immediately available funds for one business day or under a continuing contract, regardless of the nature of the contract or of the collateral, if any. Under this definition, securities resale/repurchase agreements involving the receipt of immediately available funds that mature in one business day or roll over under a continuing contract are considered federal funds transactions.

As a result of comments received on the proposal for the commercial bank Call Report revisions, the FFIEC and the agencies decided to modify the original

proposal. The agencies decided to revise the definition of ''federal funds transactions.'' As revised, federal funds sold and purchased would be limited to transactions in domestic offices only and would not include:

- any securities resale/repurchase agreements,
- overnight Federal Home Loan Bank advances, or
- lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract.

Lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract that are not securities resale/repurchase agreements will begin to be reported in ''Loans and leases, net of unearned income'' and ''Other borrowed money,'' respectively. The Federal Reserve decided to adopt the same modifications for the FR Y–9C.

Regulatory Capital

On November 29, 2001, the agencies published a final rule revising the regulatory capital treatment of recourse arrangements and direct credit substitutes, including residual interests and credit–enhancing interest–only strips, as well as asset–backed and mortgage–backed securities (66 FR 59613). This final rule took effect on January 1, 2002. Any transactions settled on or after that date are subject to the rule. However, for transactions settled before January 1, 2002, that result in increased capital requirements under the final rule, banks may delay the application of the final rule to those transactions until December 31, 2002. In response to this final rule and comparable changes on the commercial bank Call Reports, the Federal Reserve is revising the instructions for reporting these types of exposures in Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with the amended regulatory capital standards.

4. Report title: Parent Company Only Financial Statements for Large Bank Holding Companies
Agency form number: FR Y–9LP
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 40,495 hours
Estimated average hours per response: 4.55 hours
Number of respondents: 2,225
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract: The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9LP, as originally described, effective with the March 31, 2002, reporting date.

5. Report title: Parent Company Only Financial Statements for Small Bank Holding Companies
Agency form number: FR Y–9SP
OMB Control number: 7100–0128
Effective Date: June 30, 2002
Frequency: Semiannual
Reporters: Bank holding companies
Annual reporting hours: 28,273 hours
Estimated average hours per response: 3.89 hours
Number of respondents: 3,634
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract: The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9SP, as originally described, effective with the June 30, 2002, reporting date.

6. Report title: Supplement to the Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y–9CS
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: on occasion
Reporters: Bank holding companies
Annual reporting hours: 1,200 hours
Estimated average hours per response: 0.50 hour
Number of respondents: 600
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). The Federal Reserve considers the information on the current version of the report form confidential pursuant to the Freedom of Information Act (5 U.S.C. 554(b)(4)), except for item 4.
Abstract: The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y-9C and FR Y–9SP reports. Due to the enactment of the GLB Act in 1999, the current version of this supplement was implemented in 2000 to collect basic information about the new activities of FHCs.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9CS, as originally described, effective with the March 31, 2002, reporting date.

Board of Governors of the Federal Reserve System, March 12, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–6306 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. R.H. Krumme Testamentary Trust, Tulsa, Oklahoma; Diane Krumme Cox, Sands Springs, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust; and Jill Krumme Burns, Tulsa, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust, to retain voting shares of Falcon Bancorp, Inc., Anadarko, Oklahoma, and thereby retain voting shares of Anadarko Bank & Trust Company, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, March 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6307 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—02/19/2002			
20020388	deCODE genetics, Inc	MediChem Life Sciences, Inc	MediChem Life Sciences, Inc
20020417	Carl C. Icahn	Imclone Systems Incorporated	Imclone Systems Incorporated
20020420	McLaren Health Care Corporation	Bay Medical Center	Bay Medical Center
20020428	ESL Partners, L.P	AutoNation, Inc	AutoNation, Inc
20020429	The Nichido Fire and Marine Insurance Company, Limited.	The Tokio Marine and Fire Insurance Company, Ltd.	The Tokio Marine and Fire Insurance Company, Ltd
20020430	Liberty Mutual Holding Company, Inc	Liberty Mutual Fire Insurance Company.	Liberty Mutual Fire Insurance Company
20020431	Liberty Mutual Holding Company, Inc	Employers Insurance of Wausau Mutual Holding Company.	Employers Insurance of Wausau Mutual Holding Company
20020436	The 1818 Fund III, L.P	Xspedius Holding Corp	Xspedius Holding Corp
20020440	Ziff Asset Management, L.P	AutoNation, Inc	AutoNation, Inc
20020447	Nexfor, Inc	International Paper Company	International Paper Company
20020451	Cinergy Corp	Oak Mountain Acquisition Company, LLC.	Oak Mountain Products, LLC
Transactions Granted Early Termination—02/20/2002			
20020410	The Toronto-Dominion Bank	John S. Stafford, Jr	JSS Investments, L.L.C
20020438	Corvis Corporation	Dorsal Networks, Inc	Dorsal Networks, Inc
Transactions Granted Early Termination—02/26/2002			
20020404	Grupo Industrial Bimbo, S.A. de C.V. (a Mexican corp.).	W. Galen Weston	Entenmann's Inc
			Entenmann's Products, Inc
			Entenmann's Sales Company, Inc
			George Weston Bakeries, Inc
20020435	The Lubrizol Corporation	William Frost	Chemron Corporation
20020448	U.S. Unwired, Inc	Georgia PCS Management, L.L.C	Georgia PCS Management, L.L.C
20020449	EMCOR Group, Inc	Comfort Systems USA, Inc	CSUSA Holdings L.L.C
20020450	Forbo Holding AG	Dainippon Ink and Chemicals, Incorporated.	Reichhold, Inc
20020452	SmartForce Public Limited Company	Centra Software, Inc	Centra Software, Inc
20020453	O. Bruton Smith	Donald E. Massey	Arngar, Inc
			Capitol Cadillac Corp
			Crest Cadillac Corp
			Donald Massey Buick Inc
			Donald Massey Cadillac Inc
			Massey Cadillac, Inc
			Massey Cadillac, Incorporated
			Massey Chevrolet, Inc
			Massey-Cadillac-Oldsmobile, Ltd
20020454	First Reserve Fund IX, L.P	Frank Vallentine Novak, Jr	Welding Services, Inc
20020455	First Reserve Fund IX, L.P	Philip Nelson Hulsizer	Welding Services, Inc
20020456	Berkshire Hathaway Inc	Carl M. Bouckaert and Marie T. Bouckaert.	Beaulieu Group, LLC

Trans #	Acquiring	Acquired	Entities
20020458	First Horizon Pharmaceutical Corporation.	AstraZeneca plc	South Richmond Chemical, LLC AstraZeneca UK Limited
20020460	US Unwired Inc	IWO Holdings, Inc	IWO Holdings, Inc
20020463	Exxon Mobil Corporation	Solutia Inc	Advanced Elastomer Systems, L.P
20020470	JAKKS Pacific, Inc	Toymax International, Inc	Toymax International, Inc
20020472	Giant Industries Inc	BP, p.l.c	BP Corporation North America Inc
20020478	Deutsche Post AG	DHL International Limited	DHL International Limited
Transactions Granted Early Termination—02/28/2002			
20020434	Cablevision Systems Corporation	Loral Space & Communications Ltd	R/L DBS Company L.L.C
20020457	Keane, Inc	Arlington Capital Partners, L.P	SignalTree Solutions Holdings, Inc
20020459	Kvaerner ASA	Kjell Inge Rokke	Aker Oil & Gas Holding AS
20020461	Spectrum Equity Investors IV, L.P	Broadwing, Inc	Cincinnati Bell Director Inc
20020468	Joseph M. & Marie H. Field	Jeffrey H. Smulyan	Emmis Radio License Corporation Emmis Radio Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6253 Filed 3–14–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

Proposed Collection Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy will submit to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, Submission, and Negotiation of Subcontracting Plans requires all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions:

(1) When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans),

(2) When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1,

(3) The acquisition is not a commercial item acquisition, and

(4) The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether the information collection generated by the GSAR Clause, Preparation, Submission, and Negotiation of Subcontracting Plans is necessary for small business/subcontracting plans; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* May 14, 2002.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Office of Acquisition Policy (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting that the Office of Management and Budget (OMB) review and approve information collection, 3090–0252, concerning the Preparation, Subcommission, and Negotiation of Subcontracting Plans. This provision requires a contractor (except other than small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions:

When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans), when award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1, the acquisition is not a commercial item acquisition, and the acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Annual responses: 1.

Average hours per response: 12.

Burden hours: 12,240.

Obtaining copies of proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans.

Dated: March 8, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–6197 Filed 3–14–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. State Studies on TANF Caseload—NEW—The Assistant Secretary for Planning and Evaluation has developed a common TANF beneficiary survey instrument to be administered by five states and the District of Columbia through cooperative agreements. This data collection will provide information on the characteristics, barriers to employment and service needs of the TANF caseload. *Respondents:* Individuals; *Number of Respondents:* 6,640; *Average Burden per Response:* .66 hours; *Total Burden:* 4,378 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: February 28, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–6191 Filed 3–14–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974: Revision to Existing System of Records

AGENCY: Child Care Subsidy Program, Office of the Assistant Secretary for Administration and Management, Office of the Secretary, HHS.

ACTION: Notice of revision to an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Department of Health and Human Services (HHS) is publishing a notice of the revision of an existing system of records, 09–09–2000, child Care Subsidy Program. The revised system will collect family income data from employees in the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR), as well as the Health Resources and Services Administration, the Food and Drug Administration (FDA), the Program Support Center (PSC), the Office of the Secretary (OS), the Administration on Aging (AoA), and the Substance Abuse and Mental Health Services Administration (SAMHSA) who are already covered by this system, for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: This revision does not revise the routine uses for this system. This amendment will be effective without further notice on the day of its publication unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Child Care Subsidy Program Administrator, Office of Human Resources, Office of the Assistant Secretary for Administration and Management, U.S. Department of Health and Human Services, Room 536–E, 200 Independence Ave., SW., Washington, DC 20201. The telephone number is 202–690–6191.

SUPPLEMENTARY INFORMATION: The current Notice of System of Records covered only employees of OS, AoA, HRSA, SAMHSA, FDA and the PSC. Since that time, CDC/ATSDR has established a child care subsidy program for its employees. This amendment expands coverage of the Child Care Subsidy Program Records to include employees in CDC/ATSDR who are eligible for this program. The notice is published below in its entirety, as amended.

Dated: March 6, 2002.

Roy L. Tucker,

Acting Deputy Assistant Secretary for Human Resources.

09–90–0200

SYSTEM NAME:

Child Care Subsidy Program Records (HHS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located throughout HHS in offices of agency child care program administrators and in offices of contract employees engaged to administer the subsidy programs. Since there are several sites around the country, contact the appropriate System Manager listed in Appendix A for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the Administration on Aging (AoA), Office of the Secretary (OS), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Program Support Center (PSC), Health Resources and Services Administration (HRSA) and the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) in the Department of Health and Human Services (HHS), who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issues, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 630 of Pub. L. 107–67 (November 12, 2001) and Executive Order 9397 (November 22, 1943).

PURPOSE(S):

To establish and verify HHS employees' eligibility for child care subsidies in order for HHS to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records where collected.

3. HHS intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of HHS if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of Health and Human Services is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name and may also be cross-referenced to Social Security Number.

SAFEGUARDS:

—Authorized Users: Only HHS personnel working on this project and personnel employed by HHS contractors to work on this project are authorized users as designated by the system manager.
—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.
—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.
—Technical Safeguards: Electronic records are protected by use of passwords.
—Implementations Guidelines: HHS Chapter 45–13 of the General Administration Manual, ''Safeguarding Records Contained in Systems of Records and the HHS Automated Information System Security Program Handbook, Information Resources Management Manual.''

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESSES:

The records of individuals applying for and receiving child care subsidies are managed by System Managers at the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the local System Manager.

RECORD ACCESS PROCEDURES:

Request from individuals for access to their records should be addressed to the local System Manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by HHS employees who apply for child care subsidies. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

Appendix A

1. For employees of the Office of the Secretary and the Administration on Aging, nationwide, contact:

Child Care Subsidy Program Coordinator, PSC Work/Life Center, Room 1250, 330 C Street, SW., Washington, DC 20201

2. For employees of the Substance Abuse and Mental Health Services Administration, contact:

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857

3. For employees of the Food and Drug Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Office of Human Resources and Management Services, Food and Drug Administration—HFA—410, 5600 Fishers Lane, Rockville, Maryland 20857

4. For employees of the Program Support Center, contact:

Work & Family Coordinator, Program Support Center, Room 1250, 330 C Street SW., Washington, DC 20201

5. For employees of the Health Resources and Services Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–25, Rockville, MD 20857

6. For Employees of the Centers of Disease Contract and Agency for Toxic Substances and Disease Registry, nationwide, contact:

Work Family Program Specialist, Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724

[FR Doc. 02–6192 Filed 3–14–02; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 2002, through February 1, 2004.

For further information, contact Julie Fishman, Acting Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., (D–23), Atlanta, GA 30333, telephone 404/639–7080 or fax 404/639–7171.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 11, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–6223 Filed 3–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N–0042]

RIN 0910–AA01

Anticaries Drug Products for Over-the-Counter Human Use; Use of Intraoral Appliance Models for Compliance With Biological Testing Requirements; Request for Information and Comments; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 12, 2002, the comment period on the notice requesting information and comments on the use of intraoral appliance (IOA) models as a substitute for the animal caries reduction biological test required by the monograph for over-the-counter (OTC) anticaries drug products to demonstrate the availability of fluoride in OTC dentifrice formulations. The notice was published in the **Federal Register** of October 15, 2001 (66 FR 52418). FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the use of IOA models. The comment period for this information closed on January 14, 2002.

DATES: Submit written or electronic comments by July 12, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Robert L. Sherman, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 2001 (66 FR 52418), FDA published a notice requesting information and comments regarding use of the IOA test in lieu of animal caries studies to demonstrate the effectiveness of new fluoride formulations. FDA issued this notice to gather information concerning IOA models and whether and how they can be used in lieu of the animal caries models in meeting the biological testing requirements for OTC anticaries drug products. The agency has determined that it is appropriate to address these issues in a public forum where experts can debate the usefulness and acceptability of alternate biological testing methods such as the IOA model. The agency anticipates that this information-gathering process will be followed by an advisory committee meeting at which the various models and the appropriate statistical analyses will be discussed.

On November 14, 2001, the Joint Anticaries Task Group (the Task Group) of the Consumer Healthcare Products Association, a trade association of manufacturers of nonprescription drugs and dietary supplements, and the Cosmetic, Toiletry, and Fragrance Association, a trade association of manufacturers of personal care products, requested a 180-day extension in which to file comments and new information (Ref. 1). The request stated that the closing date for the original comment period would not allow the Task Group to utilize the results of its ongoing research in its response to FDA, resulting in important information being omitted from the agency's consideration. In addition, the Task Group noted that the agency's request raises complicated questions concerning statistical approaches that could potentially impact statistical methodology utilized for current biological testing requirements for fluoride dentifrices. The Task Group also stated that manufacturers need sufficient time to assess the potential impact that the agency's statistical questions may have on manufacturing practices, as well as research and product development.

FDA has carefully considered the request and acknowledges the complicated issues concerning statistical approaches used to evaluate IOA testing and their potential affect on current biological testing requirements of the anticaries monograph. Manufacturers and the Task Group may require additional time to obtain and review information to fully respond to the agency's request. FDA considers an extension of time for comments in this case to be in the public interest. Accordingly, the comment period is reopened to July 12, 2002.

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this notice by July 12, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT11, Docket No. 80N–0042.

Dated: March 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6181 Filed 3–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April:

Name: Council on Graduate Medical Education (COGME).

Date and Time: April 10, 2002, 8:30 a.m.–5 p.m., April 11, 2002, 8 a.m.–12 p.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

Agenda: The agenda for April 10 will include: Welcome and opening comments from the Chair and Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of ''Views on the Adequacy of the Physician Supply'' and a presentation on ''Physician Workforce Models of the Bureau of Health Professions.'' The afternoon agenda includes a panel on ''Physician Preparedness to Meet Emerging Public Health Needs.''

The Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for April 11 will include reports from the three workgroup chairs. There will be a discussion of COGME's 2002 Summary Report, plans for future work, and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: March 8, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–6225 Filed 3–14–02; 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: Projects for Assistance in Transition From Homelessness (PATH) Annual Report—(0930–0205, extension)

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for extension of the current approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions. The estimated annual burden for these reporting requirements is summarized in the table that follows.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
States—automated	55	1	26	1,430
States—hard copy	1	1	28	28
Local provider agencies—automated	398	1	31	12,338
Local provider agencies—hard copy	1	1	24	24
Total	455			13,820

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: March 8, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–6224 Filed 3–14–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 8, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–6027 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; United Auburn Indian Community of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California on February 5, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On February 5, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California pursuant to Section 1300I of the Auburn Indian Restoration Act of October 31, 1994, 25 U.S.C. 1300I (1994). The Secretary shall acquire title in the name of the United States in trust for the United Auburn Indian Community of California for the following parcel of land described below no sooner than 30 days after the date of this notice.

That portion of Parcel ''B'' described in the Resolution to Approve a Minor Boundary Line Adjustment recorded June 27, 1997, as Instrument No. 97–0037123, Official Records of Placer County, located in Section 33, Township 12 North, Range 6 East, Mount Diablo Meridian, Placer County, California, as shown on the Record of Survey filed in Book 9 of Surveys, Page 19, Placer County Records, described as follows:

Beginning at the southeasterly corner of said Parcel ''B,'' thence along the boundary of said Parcel ''B'' the following three courses and distances: (1) North 00°31′40″ East 616.00 feet; (2) South 89°53′59″ West 285.00 feet; and (3) North 00°13′49″ East 186.41 feet; thence, leaving said boundary, South 89°53′59″ West 150.00 feet; thence South 00°06′01″ East 100.00 feet; thence South 89°53′59″ West 300.00 feet; thence North 00°06′01″ West 100.00 feet; thence South 89°53′59″ West 2018.08 feet; thence South 00°13′49″ West 812.49 feet to a point on the southerly boundary of said Parcel ''B'', thence along the southerly boundary of said parcel ''B'' the following two courses and distances: (1) North 89°48′20″ East 1652.05 feet; and (2) North 89°30′51″ East 1097.92 feet to the point of beginning, containing 49.21 acres, more or less. APN 021–280–063.

Dated: March 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6315 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–1269]

Public Land Order No. 7516; Revocation of Oil Shale Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order and a Public Land Order insofar as they affect the lands in the State of Colorado withdrawn for protection of oil shale values. This action will open approximately 900,000 acres of public lands to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5327, as amended, and Public Land Order No. 4522, as amended, which withdrew oil shale deposits and the public lands containing such deposits for the protection of oil shale and associated

values are hereby revoked insofar as they affect all of the lands in the State of Colorado within the following Townships:

Sixth Principal Meridian

T. 3 N., R. 98 W., Tps. 2 N., Rs, 98, 99, and 100 W.; Tps. 1 N., Rs. 95, 96, 97, 98, 99, and 100 W.; Tps. 1 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 2 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 3 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 4 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 5 S., Rs. 93, 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 6 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 7 S., Rs. 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 8 S., Rs. 99 and 100 W.

The areas described aggregate approximately 900,000 acres in Moffat, Rio Blanco, Garfield, and Mesa Counties.

2. At 9 a.m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a. m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands identified in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 27, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6233 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–1430–ET; NMNM 23614]

Public Land Order No. 7517; Extension of Public Land Order No. 6182; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6182 for an additional 20-year period. This extension is necessary to continue the protection of the land for use as training site by the New Mexico Army National Guard.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6182 (47 FR 9842, March 8, 1982), which withdrew land for use as a training site by the New Mexico Army National Guard, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6182 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6232 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–044–1430–ET; OKNM 36236]

Public Land Order No. 7518; Extension of Public Land Order No. 6183; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6183 for an additional 20-year period. This extension is necessary to continue the protection of the land for use by the Department of the Army for military purposes at Fort Sill, Oklahoma.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6183 (47 FR 9842, March 8, 1982), which withdrew land from use by the Department of the Army, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6183 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6231 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public comment period extension.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of availability of and public hearing for a draft environmental impact statement (EIS) on the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions in the **Federal Register**, (67 FR 1988), on January 15, 2002, requesting comments on the adequacy of the draft EIS. This notice extends the original comment period, as identified below in the **DATES** section.

DATES: The comment period for receiving comments on the draft EIS has been extended from March 12, 2002, to March 26, 2002.

ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: Reclamation has issued a draft EIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement a proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. The QSA provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111.

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 11, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–6284 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–446]

Certain Ink Jet Print Cartridges and Components Thereof; Notice of Commission Decision to Review-in-Part an Initial Determination That Finds a Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (ID) of the presiding administrative law judge (ALJ) that finds a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3094. 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.ustic.gov).

Copies of the public version 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.

SUPPLEMENTARY INFORMATION: On January 19, 2001, the Commission instituted this investigation based on a complaint filed by Hewlett-Packard Company (''HP''), alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain inkjet print cartridges and components thereof by reason of infringement of U.S. Letters Patent 4,827,294; 4,635,073; 4,680,859; 4,872,027; 4,992,802; and 5,409,134; 66 FR 7783 (January 25, 2001). The following five firms were

named as respondents: Microjet Technology Co., Ltd. of Taipei, Taiwan; Printer Essentials of Reno, Nevada; Price-Less Inkjet Cartridge Company of Port Charlotte, Florida; Cartridge Hut and Paperwork Plus of Sun City, California; and ABCCo.net, Inc. of Port Charlotte, Florida.

Based on joint stipulations and proposed consent orders, the ALJ issued IDs terminating the investigation as to Printer Essentials (Order No. 7, dated May 11, 2001) and as to Cartridge Hut (Order No. 15, dated October 12, 2001). These IDs became Commission final determinations, pursuant to 19 CFR 210.42(h)(3).

On August 21, 2001, the ALJ issued an ID (Order No. 12) granting HP's motion for summary determination on the economic prong of the domestic industry requirement for all patents at issue. This ID became a Commission final determination, pursuant to 19 CFR 210.42(h)(3).

On October 24, 2001, HP filed a motion to terminate the investigation as to its infringement allegations based on claim 5 of U.S. Letters Patent 4,635,073, claim 2 of U.S. Letters Patent 4,827,294 and claims 12–14 of U.S. Letters Patent 5,409,134. On November 15, 2001, the ALJ issued an ID (Order No. 17) terminating the investigation as to the patent claims that were the subject of HP's motion. These IDs were not reviewed by the Commission, and thus became the determinations of the Commission, pursuant to 19 CFR 210.42(h)(3).

The ALJ issued his final ID, along with a recommended determination on remedy and bonding, on January 25, 2002, concluding that there was a violation of section 337, based on his findings that (a) the accused devices infringe claims of five of the six patents at issue, U.S. Letters Patent 4,827,294, 4,680,859, 4,872,027, 4,992,802 and 5,409,134; and (b) that a domestic industry exists with respect to each of these patents. The ALJ found no infringement of U.S. Letter Patent 4,635,073, and he found that HP had not satisfied the technical prong of the domestic industry requirement with respect to this patent.

On February 14, 2002, complainant HP and the Commission investigative attorney (''IA'') petitioned for review of parts of the ID concerning the '073 patent. No responses to these petitions for review were filed.

Having examined the record in this investigation, including the ID, and the petitions for review, the Commission has determined to review:

(1) The ID's construction of the asserted claim of the '073 patent;

(2) The ID's finding of no infringement with respect to the '073 patent; and

(3) The ID's findings with respect to the technical prong of the domestic industry requirement with respect to the '073 patent.

The Commission has determined not to review the remainder of the ID. The Commission does not request further briefing on the issues that it has determined to review.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to this investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than 14 days from the date of issuance of this notice. Response submissions must be filed no later than seven days after the deadline for filing the main submissions. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.42–45 of the Commission's rules of practice and procedure (19 CFR 210.42–45).

Issued: March 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6316 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Preliminary)]

Silicon Metal From Russia

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–991 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 22, 2002. The Commission's views are due at Commerce within five business days thereafter, or by April 29, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179/ *ffischer@usitc.gov),* Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. 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:

Background.—This investigation is being instituted in response to a petition filed on March 7, 2002, by Globe Metallurgical Inc., Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.–C.W.A, AFL–CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5–89), Boomer, WV; and the United Steel Workers of America (AFL–CIO, Local 9436), Niagara Falls, NY.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 26, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 / *ffischer@usitc.gov*) not later than March 22, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 2, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 11, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–6193 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–006]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 19, 2002 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–922 (Final) (Automotive Replacement Glass Windshields from China)—briefing and

vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 28, 2002.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 12, 2002

By order of the Commission:

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6460 Filed 3–13–02; 2:46 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 258–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Commissary Accounts Record System, JUSTICE/BOP–006'', last published on September 30, 1977 (42 FR 53288, 53294). JUSTICE/BOP–006 has been retitled the ''Inmate Trust Fund Accounts and Commissary Record System'' and will become effective 60 days from the date of publication.

The new title reflects the addition of information on vendors who provide supplies to institution commissaries.

In addition to edits which have been made to better describe the system and/or improve its clarity, the Bureau proposes to modify the system as follows:

(1) By further expanding the categories of individuals covered by the system to include all individuals placed directly under the custody of the Director of the Bureau and persons who send and/or receive funds to/from inmates.

(2) By providing additional authorities for the maintenance of the expanded categories of records.

(3) By expanding the categories of records in the system to include system-generated reports.

(4) By adding a statement on the purpose of this system.

(5) By reorganizing the routine use section to group similar routine uses together, to re-designate certain routine uses, to better describe, clarify or expand certain routine uses, and to add new routine uses.

(6) By expanding the policies and practices for storage, retrieval, access, retention and disposal of records in the system to reflect technological advances and new agency practices.

(7) By redesignating the system manager from the Chief of Management and Information Systems to the Chief of the Trust Fund Branch in the Administration Division.

(8) By adding exemptions from (e)(1) and (e)(5) of the Privacy Act for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/BOP–006

SYSTEM NAME:

Inmate Trust Fund Accounts and Commissary Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer, financial and/or correctional services to the Bureau. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons, vendors who supply products to institution commissaries, and persons who send or receive funds to/from inmates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Financial data on individuals currently or formerly under custody; (2) personal identification data for individuals covered by this system; (3) vendor lists and linked product information; and (4) system generated reports, such as Inmate Balance Reports, Transaction Input Listings, Inmate Sales Receipts, and Stock Status Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under authority of 18 U.S.C. 3621, 4042, and 5003, and 31 U.S.C. 1321.

PURPOSE(S):

The purpose of this system is to track trust fund accounts of current and former inmates, including all payments in and out of these accounts, to provide accounting of inmate trust fund balances for purposes of verifying pauper status under 28 U.S.C. 1915, and to maintain information on all vendors who supply products to institution commissaries to facilitate ordering of commissary products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To officers and employees of the Department of Justice who have a need for the information in the performance of their official duties;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear for purposes of verifying pauper status under 28 U.S.C. 1915, or when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations

which require information concerning the suitability or eligibility of an individual for a license or permit;

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(g) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(h) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records; and

(j) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media, including the Federal Prison Point of Sale (FPPOS) System, in Bureau and contractor facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, Compact Discs (CDs), magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data of the persons covered by the system, including name and address, inmate register number, and/or system-generated vendor number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau and contractor personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Inmate financial data in the system of records is retained for six years from the date of transaction, and system-generated reports are retained for as long as they are needed. Computerized records are destroyed by degaussing; documentary records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Trust Fund Branch, Administration Division, Federal Bureau of Prisons, 320 First Street NW., Room 5005, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked ''Privacy Act Request.'' This system is exempt, under 5 U.S.C. 552a (j) from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by individuals currently or formerly under custody, persons sending or receiving funds to/from inmates, vendors supplying products to institution commissaries, Department of Justice and contractor employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6203 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 256–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Physical and Mental Health Record System, JUSTICE/BOP–007''. This system, which was last published on September 28, 1978, (43 FR 44676, 44735), is now being modified and will become effective May 14, 2002.

As previously published, the system included only those persons who were committed to the custody of the Attorney General and thereby to the Bureau of Prisons under 18 U.S.C. 4003, 4042 and 4082. The Bureau is modifying the system to include all additional individuals who are committed directly to the custody of the Bureau of Prisons, pursuant to the additional authority of 18 U.S.C. 3621, 5003 (state inmates) and inmates from the District of Columbia, pursuant to Section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 740). The authority of 18 U.S.C. 4014 is also added to authorize the maintenance and disclosure of records relating to HIV testing. The Bureau has also added a statement on the purpose of this system.

The list of records in this system has been expanded to include drug testing and DNA samples and analysis.

The section on routine uses has been reorganized and expanded. New routine uses have been added to permit release of information to former employees, a court or administrative body, the General Services Administration for record management inspections and to prevent immediate loss of life or serious bodily injury in emergency situations, such as an inmate escape. Another new routine use assists the Bureau in complying with recent laws requiring limited, specific disclosures of

information concerning infectious diseases.

Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The Bureau has re-designated the system manager from the Chief of Management and Information Systems to the Assistant Director, Health Services Division. The Bureau has also clarified record access procedures.

The authorities for exemptions from certain Privacy Act provisions have been specified. Exemptions from subsections (e)(1) and (e)(5) have been added for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be given a 30-day period in which to comment.

The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the modified system is provided below.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–007

SYSTEM NAME:

Inmate Physical and Mental Health Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) or at any location operated by a contractor authorized to provide correctional, medical, and/or computer service to the Bureau. A list of Bureau system locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Identification data, including name, inmate register number, date of birth, Social Security number, FBI number, drug testing and DNA samples and analysis; (2) medical and dental history and examinations (past and present), including diagnosis and treatment notes, records, and pharmaceutical information; (3) medical information concerning deaths of inmates; (4) offense information, including Pre-sentence Reports; (5) designations of inmates from parent facilities to medical facilities, including date and type of referral; (6) pre-certifications authorizing inmates to receive care at local medical facilities, including authorized and actual length of stay, and all associated cost information; (7) mental health and drug abuse information, including interview, testing data, and progress or observation notes, generated and maintained by Bureau staff; (8) mental health and drug abuse information generated outside the Bureau by other corrections agencies and health care providers such as surgical clinics, mental hospitals, private therapists, etc.; (9) urine surveillance reports of drug program participants; (10) automated data, including Electronic Signatures, Sensitive Medical Data (SMD), Medical Duty Status (MDS), and Diagnosis Group (DGN); and (11) information concerning infectious diseases, including HIV and Tuberculosis (TB) testing and treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4014, 4042, 4082, 4241 et seq., 5003, and section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997.

PURPOSE(S):

This system assists the Bureau in providing appropriate health care to persons in the custody of the Bureau. It provides for the maintenance and release of records concerning the medical, mental and dental health of persons in the Bureau's custody.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(b) To community health care professionals, including physicians, psychiatrists, psychologists, state and federal medical facility personnel, who are providing treatment for a pre-existing condition to former federal inmates;

(c) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(d) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(e) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(f) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(h) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(i) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury; and

(j) For information relating to infectious diseases, as follows:

(1) To state health departments and/or the Center for Disease Control, pursuant to state and/or federal laws requiring notice of cases of reportable infectious diseases;

(2) To the United States Probation Office in the district where an inmate is being released from Bureau custody on parole, placement in a community-based program, furlough, or full-term release, when the inmate is known to be HIV positive or under treatment for exposure to or active Tuberculosis (TB);

(3) To the Director of a Community Corrections Center (halfway house) receiving an inmate from Bureau custody when the inmate is known to be HIV positive or under treatment for exposure to or active TB;

(4) To the physician/provider of a Bureau or non-Bureau staff, or other person exposed to a blood-born pathogen while lawfully present in a Bureau facility, for the purpose of providing prophylaxis or other treatment and counseling; and

(k) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, Compact Discs (CDs), floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders, microfilm and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data, including last name and inmate register number, and/or the inmate's social security number and/or FBI number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of thirty (30) years after expiration of the sentence. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Health Services Division, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked ''Privacy Act request.'' This system is exempt, under 5 U.S.C. 552a(j), from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Records are generated by: (1) Individuals currently or formerly under Bureau custody; (2) Bureau of Prisons staff; (3) community health care providers, including individuals, hospitals and/or other professionals involved in the medical, mental, and dental care of inmates and/or former inmates; and (4) other federal and/or state, local or tribal agencies, including those preparing or providing information on pre-sentence reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6205 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Application for Naturalization; Form N–400.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 14, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form N–400. Business Process and Reengineering Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to response:* 700,000 responses at 6 hours and 8 minutes (6.13) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,291,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 11, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6213 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV

Wisconsin
WIO020046 (MAR. 15, 2002)
WIO020047 (MAR. 15, 2002)
WIO020048 (MAR. 15, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (MAR. 1, 2002)
NJ020003 (MAR. 1, 2002)

Volume II:

Maryland
MD020002 (MAR. 1, 2002)
MD020037 (MAR. 1, 2002)
MD020042 (MAR. 2, 2002)
MD020048 (MAR. 1, 2002)
MD020057 (MAR. 1, 2002)

Volume III

Alabama
AL020008 (MAR. 1, 2002)

Volume IV

Illinois
IL020001 (MAR. 1, 2002)
IL020002 (MAR. 1, 2002)
IL020003 (MAR. 1, 2002)
IL020007 (MAR. 1, 2002)
IL020012 (MAR. 1, 2002)
IL020013 (MAR. 1, 2002)
IL020014 (MAR. 1, 2002)
IL020015 (MAR. 1, 2002)
IL020016 (MAR. 1, 2002)

IL020017 (MAR. 1, 2002)
IL020019 (MAR. 1, 2002)
IL020021 (MAR. 1, 2002)
IL020025 (MAR. 1, 2002)
IL020026 (MAR. 1, 2002)
IL020028 (MAR. 1, 2002)
IL020033 (MAR. 1, 2002)
IL020034 (MAR. 1, 2002)
IL020036 (MAR. 1, 2002)
IL020040 (MAR. 1, 2002)
IL020041 (MAR. 1, 2002)
IL020044 (MAR. 1, 2002)
IL020056 (MAR. 1, 2002)
IL020058 (MAR. 1, 2002)
IL020060 (MAR. 1, 2002)
IL020062 (MAR. 1, 2002)
IL020063 (MAR. 1, 2002)
IL020064 (MAR. 1, 2002)
IL020067 (MAR. 1, 2002)
IL020068 (MAR. 1, 2002)

Indiana
IN020001 (MAR. 1, 2002)
IN020002 (MAR. 1, 2002)
IN020004 (MAR. 1, 2002)
IN020005 (MAR. 1, 2002)
IN020006 (MAR. 1, 2002)
IN020017 (MAR. 1, 2002)
IN020021 (MAR. 1, 2002)

Michigan
MI020002 (MAR. 1, 2002)
MI020005 (MAR. 1, 2002)
MI020007 (MAR. 1, 2002)
MI020013 (MAR. 1, 2002)
MI020028 (MAR. 1, 2002)
MI020030 (MAR. 1, 2002)
MI020062 (MAR. 1, 2002)
MI020063 (MAR. 1, 2002)
MI020073 (MAR. 1, 2002)
MI020077 (MAR. 1, 2002)
MI020078 (MAR. 1, 2002)
MI020083 (MAR. 1, 2002)

Wisconsin
WI020001 (MAR. 1, 2002)
WI020002 (MAR. 1, 2002)
WI020003 (MAR. 1, 2002)
WI020004 (MAR. 1, 2002)
WI020005 (MAR. 1, 2002)
WI020009 (MAR. 1, 2002)
WI020030 (MAR. 1, 2002)

Volume V

Arkansas
AR020023 (MAR. 1, 2002)

Volume VI

Oregon
OR020002 (MAR. 1, 2002)
OR020003 (MAR. 1, 2002)
OR020004 (MAR. 1, 2002)

Washington
WA020001 (MAR. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during this year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–6044 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Current Population Survey (CPS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before May 14, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of data on total employment and unemployment, with the monthly unemployment rate obtained through this survey being regarded as one of the most important economic indicators. Moreover, the survey also yields data on the basic status and characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which the various components of the American population are participating in the economic life of the Nation and with what success.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, consistent with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race and ethnic origin, marital status, family composition, educational level, and other characteristics. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on the general trends in employment and unemployment. Information of this type can be obtained only through

demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. They provide a measurement of total employment, including farm work, self-employment and unpaid family work, while the other surveys are generally restricted to the nonagricultural wage and salary sector. The CPS provides data on all jobseekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from other surveys are usually devoid of demographic information.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Current Population Survey (CPS).

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Affected Public: Households.

Total Respondents: 57,000 per month.

Frequency: Monthly.

Total Responses: 684,000.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 79,800 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of March, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–6235 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. D & F Deep Mine Buck Drift

[Docket No. M–2002–001–C]

D & F Deep Mine Buck Drift, RD #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner further states that one gas test result would be recorded in the on-shift examination record and equipment operation will be suspended when methane concentration at the equipment reaches 0.5 percent CH_4, either during operation or when found during a pre-shift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Canyon Fuel Company, LLC

[Docket No. M–2002–002–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of a nominal voltage of longwall power circuits not to exceed 4,160 volts to supply power to permissible longwall mining equipment. The petitioner has listed specific terms and conditions in this petition that would be followed when implementing the proposed alternative method. The petitioner states that its present longwall voltage is 2,400-volts, but due to increased horsepower necessary to operate the longwall, the operating voltage must be increased. The petitioner asserts that a diminished safety factor exists as the short circuit interrupting rating limits of the available 2,400-volt breaker are approached and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Knott County Mining Company

[Docket No. M–2002–003–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mallet Branch Mine (I.D. No. 15–18393) located in Knott County, Kentucky. The petitioner proposes to use contactors to obtain undervoltage protection instead of using circuit breakers. The petitioner states that all qualified persons who perform work on the equipment and circuits will receive training in safe maintenance procedures as well as the terms and conditions of the proposed decision and order. The training will occur before

implementing the proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Perry County Coal Company

[Docket No. M–2002–004–C]

Perry County Coal Company, 1845 South Hwy, 15, P.O. Box 5001, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its HZ4–1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to establish evaluation check points to measure the quality and quantity of air in certain areas of the return air course. This is necessary due to hazardous roof and rib conditions impeding passage. The petitioner states that the check points will be established at locations that will allow effective evaluation of ventilation in the affected areas and will be examined by a certified person. These measuring stations will be maintained in safe conditions at all times. Further, conditions at the stations will be recorded in a book or on a date board located at each measuring station with the date, time and results of the measurements. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Cannelton Industries, Inc.

[Docket No. M–2002–005–C]

Cannelton Industries, Inc., P.O. Box 88, Mammoth, West Virginia 25132 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Shadrick Mine (I.D. No. 46–08159) and its Mine #130 (I.D. No. 46–06051) both located in Kanawha County, West Virginia. The petitioner proposes to use a spring-loaded device on battery plug connectors on mobile battery-powered machines in lieu of a padlock to prevent the plug connector from accidentally disengaging while under load. The petitioner states that a warning tag that states ''Do Not Disengage Under Load'', will be installed on all battery plug connectors and that instructions on the safe practices and provisions for complying with its proposed alternative method will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

6. Point Mining, Inc.

[Docket No. M–2002–006–C]

Point Mining, Inc., 197 Branch Road, Belle, West Virginia 25015 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Point Mining Number 4 Mine (I.D. No. 46–08437) located in Kanawha County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device on battery plug connectors on mobile battery-powered machines instead of a padlock to prevent the plug connector from accidentally disengaging while under load, and provide instructions to all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with its proposed alternative method. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

7. OCI Wyoming, L.P.

[Docket No. M–2002–001–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a 12 to 18 volt battery powered cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee or Hilti, or use similar battery powered drills for an indefinite period of time, in or beyond the last open crosscut. The drills would be used to drill spad holes for surveying and to install rock mechanics stations. The petitioner asserts that the alternative method of using a cordless drill would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. OCI Wyoming, L.P.

[Docket No. M–2002–002–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a Topcon GTS Series Electronic Total Station surveying instrument or similar surveying instrument in or beyond the last open crosscut to traverse for mine expansion and obtain elevations in support of on-going geologic and rock mechanics modeling. The petitioner states that the Topcon GTS is mounted with an intrinsically sealed 9.6 volt battery and that the use of the Topcon GTS would eliminate labor intensive ventilation modifications and allow for more accurate surveying of abandoned panels. The petitioner asserts that the alternative method of using the Topcon would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 12th day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–6236 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0228(2002)]

Forging Machines Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Forging Machines Standard (29 CFR 1910.218). The paperwork provisions of the Standard specify requirements for developing and maintaining inspection records. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition.

DATES: Submit written comments on or before May 14, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0228(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Forging Machines Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select *''Information Collection Requests.''*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Forging Machines Standard (*i.e.,* ''the Standard'') specifies two paperwork requirements. The following section describes who use the information collected under each requirement, as well as how they use it.

Information of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and keep a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, thereby assuring that they will operate properly and safely, and prevent impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Forging Machines Standard (29 CFR 1910.218). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Forging Machine Standard (29 CFR 1910.218).

OMB Number: 1218–0228..

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 27,700.

Frequency of Recordkeeping: Biweekly.

Average Time per Response: Twenty minutes (.33 hour) to inspect a forging machine and its guard or point-of-operation protection, and to prepare, maintain, and disclose the inspection certification record.

Total Annual Hours Requested: 244,868.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on March 8, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–6216 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Learning Opportunities Grant Application Form

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collectinos of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed inforamtion collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 14, 2002.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Mary Estelle Kennelly, Director Office of Museum Programs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 610, Washington, DC 20506. Fax: 202–606–0010 or by e-mail *mkennely@imls.gov* Fax or e-mail preferred.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. Learning Opportunities Grants will be a one year transitional program as IMLS refines and refocuses its current General Operating Support grant program to better meet the changing needs of the public.

Agency: Institute of Museum and Library Services.

Title: Learning Opportunities Grant Application

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums.

Number of Respondents: 500.

Estimated Time Per Respondent: 9 hours.

Total Burden Hours: 4500 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. E-mail *mbittner@imls.gov* fax (202) 606–8591. E-mail of fax preferred.

Dated: March 12, 2002.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 02–6237 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice; the first notice was published at 66 FR 64889 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. comments regarding these information collections are best assured to having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Louis Stokes Alliance for Minority Participation (LSAMP) Program.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Louis Stokes Alliance for Minority participation (LSAMP) Program. The goal of this program is to increase the number of interested, academically qualified minority students receiving baccalaureate degrees in science, technology, engineering and math (STEM), continuing to graduate school to attain a STEM graduate degree, and entering the STEM workforce. The program makes awards to alliances, which are composed of institutional partnerships (e.g., with two- and four-year higher education institutions, business, research labs, and local, state, and federal agencies). LSAMP projects fund students, offer a range of student support services, and undertake systemic reform of undergraduate education in STEM (particularly curricular improvement and faculty professional development). This mixed-methods study will gather data through telephone interviews with project staff, a survey questionnaire of program graduates, and in person interviews with faculty, staff, and students at three selected case study sites. The process evaluation component of this study will identify strategies that accelerate or inhibit the attainment of project goals, strategies employed to promote linkages among Alliance partners, and the manner in which the LSAMP model has evolved since its inception. The impact evaluation component of this study will examine program impact on institutions of higher education in promoting diversity in STEM, and participant career outcomes.

2. Expected Respondents

The expected respondents are project directors and/or managers of all 27 projects; LSAMP graduates who received program funding and who earned STEM baccalaureate degrees between 1992 and 1997; and, faculty, staff, and student participants at the three selected case study sites.

3. Burden on the Public

The total elements for this collection are 308 burden hours for a maximum of 795 participants annually, assuming a 90-100% response rate. The average annual reporting burden is under 1 hour per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the LSAMP Program.

Dated: March 11, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–6283 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 3, 2002, 9 a.m.–5:30 p.m. and April 4, 9 a.m.–2:30 p.m.

Place: Stafford II Annex, Room 555, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

April 3

AM

Panel Discussion: Building a Diverse Workforce in Environmental Science, Engineering, Education, and Technology

Update on NSF Activities

PM

General Discussion of Outline/Draft Decadal Plan

Modifications of Outline/Draft Decadal Plan: Small Group Meetings

April 4

AM

Meeting with Director: (Tentative)

Approval of Specific Modifications to Outline/Draft Decadal Plan

PM

Trends and Opportunities in Research & Education: Tom Graedel

Plans for Vetting and Publication of Decadal Plan and Wrap-up

Dated: March 12, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6282 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; 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 G, for Facility Operating License Nos. DPR–52 and DPR–68, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Plant, located in Limestone county Alabama. 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 TVA to apply the methodologies of the American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T [Pressure-Temperature] Limit Curves for ASME B&PV [Boiler and Pressure Vessel] Code, Section XI, Division 1,'' for the Browns Ferry Plant reactor vessel circumferential welds.

The proposed action is in accordance with the licensee's application dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002.

The Need for the Proposed Action

Appendix G of 10 CFR part 50, requires that P–T limits be established for reactor pressure vessels during normal operating and hydrostatic pressure or leak-testing conditions. Specifically, 10 CFR part 50, Appendix G, states that ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G further specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

To address the provisions of amendments to the Technical Specifications P–T limits, the licensee requested in its submittals that the staff exempt Browns Ferry Units 2 and 3 from the application of the specific requirements of 10 CFR part 50, Appendix G, and permit the use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness for reactor vessel materials in determining P–T limits.

Application of the methodology specified in Appendix G to Section XI of the ASME Code for the development of facility P–T limits may not be necessary to meet the underlying purpose of the regulations, which is to protect the reactor coolant pressure boundary from brittle fracture. To satisfy this purpose, the staff had previously required the use of the conservative assumptions in Appendix G to 10 CFR part 50, because the conservatism was initially necessary due to the limited knowledge of the fracture toughness of reactor pressure vessel (RPV) materials at that time. Since 1974, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness resulting from the application of this ASME Code Case would greatly exceed the margin of safety required to protect the public and safety from potential RPV failures. Exemptions to employ an alternative to the methodology specified in Appendix G to Section XI of the ASME Code which result in the development of less conservative P–T limits may be granted by the NRC staff. The use of ASME Code Case N–640 represents one of these alternatives.

Licensees may request the use of alternative methodologies which continue to meet the underlying intent of the regulations for many reasons. Regarding Browns Ferry Plant, application of the specific requirements of Appendix G to Section XI of the ASME Code would result in the need for the licensee to maintain an unnecessarily high vessel temperature during pressure testing which would have an adverse impact on personnel safety because of the corresponding higher temperatures which would exist inside containment as leakage

walkdown inspections are conducted. Further, less restrictive P–T limit curves based on the application of ASME Code Case N–640 will enhance overall plant safety by minimizing challenges to operators during pressure testing, heatup, cooldown, and normal power operation. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulations will continue to be served.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the use of the alternative analysis methods to support the revision of the RPV P–T limits for the Browns Ferry Plant, Units 2 and 3.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not 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 NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the 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

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Browns Ferry Plant, Units 2 and 3, dated April 1975.

Agencies and Persons Consulted

On February 28, 2002, the staff consulted with the Alabama State official, Kirk Whatley, of the Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002. 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 Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* 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 to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of March 2002.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6229 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest assumptions for multiemployer plan valuations following mass withdrawal under the Pension Benefit Guaranty Corporation's regulation on Duties of Plan Sponsor Following Mass Withdrawal (part 4281). These assumptions are published elsewhere but are referenced in this notice for the convenience of the public. This notice also informs the public that announcement of the required interest rate for determining the variable-rate premium under the PBGC's regulation on Premium Rates is being deferred. The PBGC plans to announce the required interest rate well before the variable-rate premium is due. Interest rates are published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). Until recently, that yield figure was reported in Federal Reserve Statistical Release H.15.

The Treasury Department has suspended issuance of 30-year Treasury securities and, effective February 18, 2002, ceased supplying the Federal Reserve board with an estimate of the annual yield on 30-year Treasury securities for publication in Statistical Release H.15. As a result of these changes, the PBGC is consulting with the Treasury Department on how best to determine the required interest rate. As soon as the PBGC determines the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in

March 2002, it will inform the public of the rate. This will be well before the variable-rate premium for premium payment years beginning in March 2002 is due.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of March 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6428 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement of a Revised Information Collection: Nonforeign Area Cost-of-Living Allowance; Price and Background Surveys

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of two previously-approved information collections for which approval has expired. OPM uses the two information collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances (COLAs) for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price surveys will be conducted in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area. The background surveys will be conducted in these same areas and according to the same schedule, but on a more limited basis.

The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLAs) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the allowance areas. COLAs are based on differences in living costs in the allowance areas compared with living costs in the Washington, DC, area. The background survey is used to improve the COLA methodology and to plan the price surveys and determine such things as the appropriateness of items, services, and businesses selected for survey.

OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. Approximately 2,200 establishments will be contacted in the price survey, and approximately 30 establishments will be contacted in the background survey. Participation in the surveys is voluntary.

OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 257 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 5 hours.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358; fax: (202) 418–3251; or e-mail: *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Submit comments on or before April 15, 2002.

ADDRESSES: Send or deliver comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, fax: (202) 606–4264, or e-mail: *cola@opm.gov.*

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request a reinstatement of the price and background surveys in the **Federal Register** on October 17, 2001 (66 FR 52813). OPM received one comment in response to the notice. The commenter noted that a sentence in the Summary section of the notice could be interpreted to mean that OPM will conduct surveys annually in selected COLA areas. We agree that the sentence could be misinterpreted, and wish to clarify that OPM will not conduct price surveys annually in any COLA area. As stated in the Supplementary Information section of the notice, OPM will conduct the price surveys in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–6200 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Federal Long Term Care Insurance Program Early Enrollment

AGENCY: Office of Personnel Management.

ACTION: Notice of Federal Long Term Care Insurance Early Enrollment.

SUMMARY: The Office of Personnel Management, in conjunction with LTC Partners, is announcing an early enrollment for eligible persons to submit applications for enrollment in the Federal Long Term Care Insurance Program. LTC Partners is an organization formed by the John Hancock and Metropolitan Life Insurance Companies to provide long term care insurance to eligible persons under this Program.

DATES: Early enrollment will run from March 25 through May 15, 2002.

FOR FURTHER INFORMATION CONTACT: You may call 1–800–LTC–FEDS (1–800–582–3337) or visit *www.ltcfeds.com* for information on applying during early enrollment.

SUPPLEMENTARY INFORMATION: The Federal Long Term Care Insurance Program early enrollment is an opportunity for eligible persons to submit applications for enrollment before the open season begins on July 1, 2002. Early enrollment is designed for persons who are already knowledgeable about long term care insurance and do not need the extensive educational campaign that LTC Partners will undertake before and during the open season.

In our contacts with potential applicants ever since the Program was announced, we realized that there were

a significant number of persons who were very familiar with the various aspects of long term care insurance, and wanted to purchase the insurance as soon as possible. We decided to provide an early enrollment opportunity for this group of applicants, so they would not have to wait until the open season to apply for coverage.

The specific provisions of early enrollment are as follows:

Eligible persons: Persons eligible for early enrollment are those specified in the Federal Long Term Care Insurance law (5 U.S.C. 9002) as eligible for coverage. The eligible groups are Federal civilian employees and annuitants; members of the uniformed services; retired members of the uniformed services; their spouses and adult children; and the parents, stepparents, and parents-in-law of employees and members of the uniformed services. There will be no difference in eligibility requirements between the early enrollment period and the open season.

Underwriting requirements: Federal civilian employees, members of the uniformed services, and their spouses will be required to submit applications with short form underwriting. The short form contains several questions regarding health status.

All other eligible persons will be required to submit applications with long form, or full, underwriting. If you are subject to full underwriting, you must answer more questions about your health status. It may also include a review of medical records and/or a personal interview.

Benefits available: Under early enrollment, a limited number of benefit options will be available. Benefit levels will be described in printed material provided by LTC Partners and on their Web site at *www.ltcfeds.com.* More options will be made available during the open season that begins in July. You will be able to change to a different benefit level during that open season if you wish, and still retain your ''billing age'' from early enrollment.

Billing age: Premiums are based on your age at the time LTC Partners receives your application for coverage (your ''billing age''). Billing age rules will be different for the open season.

Premiums: Premiums vary depending on your age and the level of coverage you choose. Premiums will be provided by LTC Partners in print material and on their Web site at *www.ltcfeds.com.*

During early enrollment, premiums may be paid in one of two ways. You may request direct billing for premiums, or you may have premiums automatically deducted from a bank account. Payroll deductions will not be available until the open season. You may switch to payroll deductions at any time after they become available.

Effective date: The effective date of an enrollee's coverage under early enrollment is the later of May 1, 2002, or the first day of the month that is on or after the date LTC Partners approves your application for coverage.

Authority: 5 U.S.C. 9008.

Kay Coles James,

Director.

[FR Doc. 02–6198 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Teresa Floyd, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–2309.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway—Chair,
William E. Flynn,
Richard A. Ferris,
John C. Gartland,
Teresa M. Jenkins,
Kathleen M. McGettigan,
Mark A. Robbins,
Ronald P. Sanders.

[FR Doc. 02–6199 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25457; 812–12706]

LaSalle Funding LLC; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

Summary of Application: Applicant, LaSalle Funding LLC (''LaSalle Funding''), seeks an order to permit LaSalle Funding to sell securities and use the proceeds to finance the business activities of certain companies controlled by its parent company, ABN AMRO Bank N.V. (''Bank'').

Filing Dates: The application was filed on December 3, 2002 and amended on March 11, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002, and should be accompanied by proof of service on 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 135 South LaSalle Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The ABN AMRO group (''ABN AMRO Group''), which consists of Bank,

Bank's parent company ABN AMRO Holding N.V. (''Holdings'') and subsidiaries of Holdings, offers a wide range of commercial and investment banking products and services on a global basis. Holdings and its subsidiaries, on a worldwide basis, are extensively regulated in The Netherlands by the Dutch Central Bank. ABN AMRO Group is one of the largest banking groups in the world with total consolidated assets, as of December 31, 2000, of EUR 543.2 billion.

2. LaSalle Funding, a Delaware limited liability company, is an indirect wholly owned subsidiary of Bank. LaSalle Funding was established to engage in financing activities and to provide financing to LaSalle Bank, National Association (''LaSalle Bank'') and to other companies controlled by Bank within the meaning of rule 3a–5(b)(3) under the Act and after giving effect to the requested order (such companies, together with LaSalle Bank, collectively, the ''Controlled Companies''). LaSalle Funding proposes to issue in the United States up to $2.5 billion of debt securities (''Notes'') with maturities expected to range from nine months to 30 years pursuant to an effective ''shelf'' registration statement under the Securities Act of 1933 (''1933 Act''). LaSalle Funding may also offer other debt securities in the United States pursuant to a registration statement or an applicable exemption from registration under the 1933 Act.

3. The Notes and any other issuance of debt securities by LaSalle Funding will be guaranteed unconditionally by Bank with a guarantee that meets the requirements of rule 3a–5(a) (''Guarantee''). In accordance with rule 3a–5(a)(5), at least 85% of any cash or cash equivalents raised by LaSalle Funding will be invested in or loaned to Controlled Companies as soon as practicable, but in no event later than six months after LaSalle Funding's receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by LaSalle Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the 1933 Act.

4. In connection with LaSalle Funding's offering of securities guaranteed by Bank, Bank will submit to the jurisdiction of any State or Federal court located in the Borough of Manhattan in the City of New York and will appoint an agent to accept any process which may be served in any action based upon Bank's obligations to LaSalle Funding as described in the application. Such consent to jurisdiction and such appointment of an agent to accept service of process will be irrevocable until all amounts due and to become due with respect to securities issued by LaSalle Funding as described in the application have been paid.

Applicant's Legal Analysis

1. LaSalle Funding requests relief under section 6(c) of the Act for an exemption under 6(c) of the Act from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of the Controlled Companies do not, or are not expected to, fit within the definition of ''companies controlled by the parent company'' because they derive their non-investment company status from section 3(c) of the Act. LaSalle Funding states that neither LaSalle Bank, nor any other Controlled Company excluded under section 3(c), nor Bank will engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. LaSalle Funding submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

LaSalle Funding agrees that any order issued on the application shall be subject to the following condition:

LaSalle Funding will comply with all of the provisions of rule 3a-5 under the Act, except paragraph (b)(3)(i) to the extent that LaSalle Funding will be permitted to invest in or make loans to entities that do not meet that portion of the definition of ''company controlled by the parent company'' solely because they are corporations, partnerships and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (3), (4), (5), (6) or (7) of the Act, provided that any such entity:

(i) If excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act;

(ii) If excluded from the definition of investment company pursuant to section 3(c)(5) of the Act, will fall within section 3(c)(5)(A) or 3(c)(5)(B) solely by reason of its holding of accounts receivable of either its own customers or of the customers of other Bank subsidiaries, or by reasons of loans made by it to such subsidiaries or customers; and

(iii) If excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in (ii) above).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6254 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25456; 812–12771]

The Catholic Funds, Inc., et al.; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit the proposed reorganizations of the following series of The Catholic Funds, Inc. (''CFI''): The Catholic Equity Income Fund (''Equity Income Fund'') with and into The Catholic Equity Fund (''New Equity Fund''); The Catholic Large-Cap Growth Fund (''Large-Cap Growth Fund'') with

and into the New Equity Fund; and The Catholic Disciplined Capital Appreciation Fund (''Capital Appreciation Fund'' and, together with the Equity Income Fund and the Capital Appreciation Fund, the ''Existing Funds'') with and into the New Equity Fund. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: CFI and Catholic Financial Services Corporation (''CFSC'').

Filing Dates: The application was filed on February 4, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2002, and should be accompanied by proof of service on applicants, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Fredrick G. Lautz, Esq., Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. CFI, a Maryland corporation, is registered under the Act as an open-end management investment company and currently offers several series, including the Existing Funds (and together with the New Equity Fund, the ''Funds''). The New Equity Fund is a newly designated series of CFI. CFSC, a Wisconsin corporation, is registered under the Investment Advisers Act of 1940 and is the investment adviser to the Funds. As of December 31, 2001, Catholic Knights and Catholic Order of Foresters, both of which are non-profit organizations, each owned beneficially and of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of each Existing Fund.

2. On February 14, 2002, the board of directors of CFI (''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), unanimously approved separate Agreements and Plans of Reorganization and Liquidation (each, a ''Plan''), whereby each of the Existing Funds would be consolidated with and into the New Equity Fund. In each of these reorganization transactions (a ''Reorganization''), the relevant Existing Fund would transfer substantially all of its assets, net of its liabilities, to the New Equity Fund in exchange solely for shares of the New Equity Fund. In each Reorganization, shareholders of the relevant Existing Fund will receive shares of the New Equity Fund having an aggregate net asset value equal to the aggregate net asset value of the Existing Fund's shares. The value of the assets of each Fund will be determined in the manner set forth in each Fund's then-current prospectus and statement of additional information. Immediately after the exchange, each Existing Fund would liquidate and distribute the shares of the New Equity Fund received in the exchange to its shareholders pro rata.

3. Applicants state that the Board has determined that the investment objective, program and policies of the Funds are sufficiently similar to make an investment in the New Equity Fund an appropriate substitute investment for shareholders of the Existing Funds. Each Existing Fund offers one class of shares, Class A, and the New Equity Fund will offer three classes of shares, only one of which, Class A, will be issued in the Reorganizations. In connection with the Reorganizations, shareholders of each Existing Fund will receive the corresponding Class A shares of the New Equity Fund. No sales charge will be imposed on shares of The New Equity Fund issued to shareholders of the Existing Funds in the Reorganizations. CSFC has committed to pay all costs incurred by an Existing Fund in connection with each Reorganization.

4. The Board, including a majority of the Independent Directors, determined that the Reorganizations are in the best interests of the New Equity Fund and the Existing Funds and that the interests of the shareholders of the Existing Funds would not be diluted by the Reorganizations. In approving the Reorganizations, the Board considered various factors, including, among others: (a) The investment objectives and policies of the Existing Funds and the New Equity Fund; (b) the terms and conditions of each Plan; (c) the tax-free nature of the Reorganizations; and (d) the expense ratios of the Existing Funds and the New Equity Fund.

5. The consummation of each Reorganization is subject to a number of conditions, including, among others: (a) Approval of the Plan by the affirmative vote of a majority of the outstanding voting securities of the relevant Existing Fund; (b) receipt by CFI of an opinion from its legal counsel that the relevant Reorganization will not result in recognition of income, gain or loss for federal income tax purposes by the New Equity Fund, the relevant Existing Fund or the shareholders of the relevant Existing Fund, and (c) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan also provides that, prior to completion of the Reorganization to which it relates, the relevant Existing Fund shall have declared and paid dividends and other distributions, effectively distributing to its shareholders substantially all investment company taxable income and all net capital gains for all taxable years ending on or before the date of the relevant Reorganization. Each Plan may be terminated by the Board. Applicants agree not to make any material changes to a Plan that would affect the application without prior approval of the Commission or its staff.

6. CFI began mailing definitive proxy statements/prospectuses for each of the three separate Reorganizations on March 1, 2002. The definitive proxy statements/prospectuses were filed with the Commission on March 6, 2002. Special meetings of shareholders of each of the Existing Funds are scheduled for April 2, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among others: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more

of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Section 2(a)(9) of the 1940 Act defines ''control'' in part to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of any company shall be presumed to control such company.''

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Existing Funds and the New Equity Fund may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Each Existing Fund and the New Equity Fund may be deemed affiliated persons since they are under the common control of CFSC. Additionally, the Existing Funds may be deemed affiliated persons since they are under the common control of Catholic Knights, which beneficially owns more than 25% of the outstanding voting securities of each Existing Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Reorganizations will be based on the relative net asset values of the Existing Funds and New Equity Fund's shares. Applicants also state that the investment objective and policies of the Funds are substantially similar. Applicants state that the Board, including the Independent Directors, has made the requisite determinations that the participation of each Existing Fund in the respective Reorganization is in the best interests of each Existing Fund and the New Equity Fund and that such participation will not dilute the interests of the existing shareholders of each Existing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6255 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 18, 2002: A closed meeting will be held on Tuesday, March 19, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, March 19, 2002, will be: Opinion; litigation matter; formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

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: March 12, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6318 Filed 3–12–02; 4:12 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45532; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Notice of Filing of a Proposal To Establish Terms Governing the Provision by OPRA of a Best Bid and Offer for Each of the Options Series Included in OPRA's Market Data Service, and Governing Its Use by Vendors

March 11, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 26, 2002, the Options Price Reporting Authority (''OPRA''),[2] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The amendment would add to the OPRA Plan terms governing the provision by OPRA of a best bid and offer (''BBO'') for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed amendment would establish in the OPRA Plan, and in BBO Guidelines that would be a part of the OPRA Plan, terms governing the provision by OPRA of a consolidated BBO service that would show the best

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

bid and offer for each options series that is included in OPRA's market data service. The BBO for a given options series would show the number of contracts included in the best bid and best offer for that series subject to a minimum of ten contracts, and would identify the exchange where the best bid is being quoted and where the best offer is being quoted. In accordance with the proposed OPRA Plan amendment, OPRA vendors would be required to include only the consolidated BBO for any series of options included in the market data they provide to their customers (together with last sale reports for each such series of options), instead of having to show all bids and offers in all markets for each such series as they are currently required to do.

Under the proposed OPRA Plan amendment, the BBO for any series of options would be the highest bid and the lowest offer currently being quoted on any of OPRA's participant exchanges. In the case of options traded on two or more participant exchanges, if the same best bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified as the exchange that is quoting the best bid or offer, and if the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, the BBO would be prioritized, in order, on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO is no less than five cents, and that the minimum size increment for purposes of the BBO is no less than ten contracts.[3] This means that in order to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract, and in order to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from entering bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that increase the number of contracts by less than ten. However, in order to displace the disseminated BBO, the price or size improvement must equal or exceed these minimums.

The adoption by OPRA of these minimum price and size increments occurred after OPRA received input from its vendors and subscribers, who view a BBO service that would enable OPRA to offer a meaningful options market data service as a significant benefit. Additionally, OPRA believes that the proposed BBO would require significantly less data processing and transmission capacity on the part of vendors and subscribers than is required by OPRA's full market data service. In this respect, OPRA anticipates that the BBO service would mitigate the huge increase in message traffic represented by OPRA's full service over the past several years, and the concomitant increase in the capacity required of vendors' and subscribers' systems in order to handle the full service. By proposing minimum price and size increments for purposes of the BBO at five cents and ten contracts respectively, OPRA believes that it has attempted to strike a balance between the need to show meaningful price and size improvement, and the need to keep the capacity demands of the BBO service at a level that is significantly less than the capacity demands of OPRA's full service.

OPRA states that its full market data service would continue to include all disseminated bids and offers from all of OPRA's participant exchanges and this information would continue to be available to vendors of, and subscribers to, the full service. OPRA believes that since major vendors may be expected to continue to offer the full OPRA service, and since most if not all broker-dealer subscribers would likely continue to subscribe to the full service in order to be able to fulfill their best execution obligations to customers, broker-dealers would have access to the same complete market data as they do today. For this reason, OPRA believes that the new BBO service should be viewed as an alternative to the full service for those persons who do not require the full service, and who therefore do not need to maintain the large systems needed to handle the full service.

The text of the amendment is set forth below. Text additions are in italics, deletions are in brackets:

III. Definitions

* * * * *

(g) ''Quotation information'' means bids, offers, or related information pertaining to quotations in eligible securities, *including information consisting of the BBO (as defined below) for eligible securities.*

* * * * *

(s) ''BBO'' (''Best Bid and Offer'') means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with ''BBO Guidelines'' adopted by the parties. The adoption of the initial BBO Guidelines shall require the approval of all of the parties; thereafter the BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

* * * * *

V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

* * * * *

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of *consolidated options information,* on fair and reasonable terms over a network or networks to vendors, subscribers and other approved persons. [Last sale reports and quotation] *Such* information [with respect to eligible securities] shall [be disseminated only through the OPRA System,] *include consolidated last sale reports and consolidated quotation information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a)–(b) of this Section V. Not later than _____ 2002,*[4] *or upon the earlier completion of modifications to the OPRA System necessary to enable the System to carry the BBO, such information shall also include* [and only] *the BBO for all* such [reports] *series of options. Once the BBO is available through the OPRA System, OPRA may offer a complete options market data service consisting of the BBO combined with consolidated last sale reports and quotation information, or OPRA may offer a limited service consisting of the BBO combined with consolidated last sale reports only while separately continuing to offer last sale*

[3] The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under $3.00 per share per option contract; *See, e.g.,* American Stock Exchange Rule 952.

[4] OPRA represents that it will specify the date when the BBO service will be in production by the filing of a subsequent amendment to this proposal. *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2002.

reports and complete quotation information. Only such consolidated market information and *related* information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

* * * * *

VII. Vendors, Subscribers and Other Approved Persons

* * * * *

(b) Agreements. Agreements for the furnishing of options [last sale reports and/or quotation] information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved vendors, subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of last sale reports and quotation information, or it may offer last sale reports and quotation information together in a single contract. A*s provided in Section V(c), upon the availability of a BBO through the OPRA System OPRA may contract separately for last sale reports combined with the BBO, or it may offer last sale reports, quotation information and the BBO together in a single contract.* OPRA may *also* contract separately for access to information and facilities pertaining to FCO securities or index option securities.

Agreements with vendors shall provide that last sale reports and quotation information may be received by vendors only for the purpose of (A) developing a data base that enables the vendor to respond to inquiries from interrogation devices or other devices located in the office of approved subscribers that are capable of displaying last sale reports of transactions in, and/or quotations for, eligible securities as they occur; (B) reporting changes in last sale reports and quotation information through display devices located in the office of approved subscribers; and (C) providing last sale reports and/or quotation information to approved subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, vendor agreements shall include provisions relating to the following:

(i) There shall be uniform specifications governing the manner in which last sale reports and quotation information are transmitted by or on behalf of OPRA to vendors. Such specifications may be different for different categories of eligible securities;

(ii) There shall be standards governing the services provided by vendors to subscribers which shall require that such services facilitate dissemination of last sale reports and quotation information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(iii) Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of last sale reports or quotation information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market *, provided, however, that agreements with vendors may provide that the requirements of this paragraph (b)(iii) will be deemed to be satisfied if a vendor's market data service includes last sale reports together with the BBO, or last sale reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.*

All agreements entered into between the parties and persons receiving last sale reports and/or quotation information shall provide that the respective reports and information covered thereunder remain the property of the respective party on or in whose market the reported transaction or quotation took place, and all contracts shall be executed, and the fees collectable thereunder shall be billed and collected, on behalf of all parties, except that OPRA may provide for certain contracts pertaining exclusively to FCO securities or index option securities to be executed, and certain fees pertaining to such eligible securities to be billed and collected, on behalf of those parties that provide a market in such eligible securities.

* * * * *

Options Price Reporting Authority

BBO Guidelines

Section V(c)(i) of the OPRA Plan provides for the dissemination by OPRA of, among other things, a consolidated BBO. Section III(s) of the OPRA Plan defines the BBO as the highest bid and lowest offer for a series of options available in one or more of the options markets maintained by the parties, as determined in accordance with ''BBO Guidelines'' adopted by the parties to the Plan. The BBO Guidelines as currently in effect are as follows:

1. Price/Time Priority. The BBO is determined on the basis of the best price (highest bid and lowest offer) quoted first in time by a market, provided that in order to displace the current best bid or offer, a quote must improve the current quote by no less than five cents.

2. Size Included in BBO. The BBO will include the actual size of the included bid and offer, subject to a minimum size of 10 contracts. A bid or offer at the same price as the current BBO but for a size larger than the current BBO by no less than ten contracts will displace the current BBO.

3. Market Identifier. The BBO as disseminated by OPRA will include identification of the market quoting the best bid or best offer comprising the BBO in accordance with these Guidelines.

4. Crossed or Locked Markets. Crossed or locked markets may be shown as the BBO.

5. Excluded Quotes. Whenever quotes in a market are identified by that market as not being firm, those quotes will be excluded for purposes of determining the BBO. In addition, if, based on information provided by an exchange, the OPRA Processor determines that the exchange is experiencing system problems resulting in the unreliability of its quotes, the Processor will exclude those quotes from the BBO determination until it determines that these problems have been resolved.

II. Implementation of Plan Amendment

OPRA believes that its BBO service will be implemented upon the approval of the proposed OPRA Plan amendment (including its proposed BBO Guidelines) and promptly as practicable upon completion by OPRA's processor of the systems modifications necessary for its implementation. According to OPRA, its processor, the Securities Industry Automation Corporation (''SIAC''), is not now in a position to estimate when that work may be completed, since that depends upon certain technical decisions that have not yet been made by OPRA. However, OPRA has represented to the Commission that once SIAC is able to provide such an estimate, OPRA will amend this filing to include the latest date when the BBO service will go into production.[5] In addition, the introduction of OPRA's BBO service

[5] *Id.*

will likely necessitate certain changes to OPRA's forms of Vendor Agreement and Subscriber Agreements to make them conform to the revised requirements of the Plan, and perhaps to OPRA's fee structure. OPRA intends to file any such proposed amended agreements and fee changes with the Commission in one or more separate filings that may need to become effective prior to the implementation of the BBO service.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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 the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–01 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6256 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45527; File No. SR–EMCC–2002–02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Conforming Rule Changes Resulting From the Integration With The Depository Trust and Clearing Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 1, 2002, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend EMCC's rules to conform the rules to recent changes EMCC made to its by-laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 25, 2001, the Commission approved EMCC's integration with The Depository Trust and Clearing Corporation (''DTCC'') whereby EMCC became a subsidiary of DTCC (''Integration Filing'').[3] As part of the integration, (i) EMCC's Class A shareholders were to be offered the right to exchange their EMCC shares for DTCC common shares, (ii) the EMCC shares held by EMCC's trade association shareholders were to be repurchased and cancelled, and (iii) EMCC's certificate of incorporation and by-laws were to be revised to provide for a corporate governance structure consistent with its integration into the DTCC organization. The integration, including the exchange offer, trade association share repurchases, and amendment of EMCC's governing documents, was completed as of January 1, 2002, and on that date EMCC became a subsidiary of DTCC.

When EMCC's by-laws were amended, the reference to ''participant directors'' was deleted because that term was no longer relevant in the new corporate governance structure. A conforming change should also have been made to EMCC's rules in the Integration Filing but was inadvertently omitted. Also, because EMCC users are now given the opportunity to buy shares of DTCC at periodic intervals under the new structure, the obligation to become an EMCC shareholder as part of an applicant's initial membership requirements should have been omitted from EMCC's by-laws.

Accordingly, Rule 1 (''Definitions'') and Rule 31 (''Hearing Procedures'') are being amended to delete the definitions of ''participant director.'' Rule 1 is also being amended to delete the definition of ''ISMA,'' which was a ''participant director.'' EMCC Rule 2 (''Members'') is being amended to delete the requirement that applicants for membership become EMCC shareholders.

EMCC believes that the proposed rule change is consistent with the requirements of the section 17A of the Act[4] and the rules and regulations thereunder because it permits EMCC's rules to be consistent with its current corporate governance structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Securities Exchange Act Release No. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001).

[4] 15 U.S.C. 78q–1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)[5] of the Act, which requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. In approving the Integration Filing, the Commission found that the proposed rule change was consistent with section 17A(b)(3)(C). Because this proposed rule change merely makes changes to EMCC's rules to conform them to the changes made in the Integration Filing, the Commission also finds this proposed rule change to be consistent with section 17A(b)(3)(C).

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to immediately conform its rule to its current corporate governance structure which should help to avoid confusion among participants.

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, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6069. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC–2002–02 and should be submitted by April 5, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC–2002–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6264 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–U

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45522; File No. SR–ISE–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to the Status of Market Makers

March 8, 2002.

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 February 11, 2002, 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

The ISE proposes to amend its rules to clarify that its market makers are specialists for all purposes under the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The term ''specialist'' includes any market maker deemed to be or treated as a specialist for purposes of the Act by an exchange.[3] The purpose of this proposed rule change is to specify in the Exchange's rules that ISE market makers are deemed to be specialists under the Act.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed, among other things, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to

[3] *See, e.g.,* Exchange Act Release No. 17574 (Feb. 25, 1981), 46 FR 15134 (Mar. 4, 1981). *See also* Rule 8.1 of the Chicago Board Options Exchange; Rule 958.01(a) of the American Stock Exchange; Rule 1014.01 of the Philadelphia Stock Exchange; and Rule 6.32 of the Pacific Exchange.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after February 11, 2002, the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE–2002–04 and should be submitted by April 5, 2002.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6258 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45529; File No. SR–ISE–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC Proposal to Restructure From a Limited Liability Company to a Corporation

March 8, 2002.

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 January 11, 2002, 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. Amendment No. 1 was filed on March 5, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The International Securities Exchange LLC (''Old ISE'') proposes to restructure from a limited liability company to a corporation, New ISE, (with the on-going business of both Old ISE and New ISE referred to collectively as ''ISE'' or the ''Exchange'') and to ''demutualize'' by separating the equity interest in the Exchange from members' trading rights. The text of the proposed rule change consists of: (1) A new Certificate of Incorporation; (2) a new Constitution; and (3) amendments to the Exchange's Rules. In addition, the Exchange has adopted the following interpretation of its Rules:

> Upon reorganization, the Exchange would be a Delaware corporation. Pursuant to Paragraph (a)(ii) of section II of the Exchange's Certificate of Incorporation, the holders of the Exchange's Class A Common Stock ''would be entitled to receive, when and if declared by the Board of Directors, out of the assets of [New ISE] which are by law available therefor, dividends payable either in cash, in stock or otherwise.'' The Exchange states its policy is that any revenues it receives from regulatory fees or regulatory penalties: would be segregated; would be applied to fund the legal, regulatory and surveillance operations of the Exchange; and would not be used to pay dividends to the holders of the Class A Common Stock.

The text of the proposed rule change is available for inspection at the Office of the Secretary, the ISE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov*).

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

The ISE is currently structured as a limited liability company (''LLC''), in which memberships encompass both trading rights and equity ownership. The Exchange states that the purpose of this proposed rule change is to restructure the company into a corporation, in which trading rights are separated from equity ownership. Except as specified below, the Exchange represents that these changes do not

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 4, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange expanded the concentration limits regarding ownership of the Class A Common Stock of its proposed corporation, International Securities Exchange, Inc. (''New ISE''). Specifically, the Exchange amended the proposed rule change to include a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Exchange states that its Board of Directors (''Board'') would be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: members; their affiliates; or persons subject to a statutory disqualification. In addition, Amendment No. 1 specifies that any ''poison pill'' New ISE adopts will be subject to prior Commission approval.

affect the manner of the Exchange's operations or governance structure. The three documents that would accomplish the restructuring and demutualization of the Exchange, and that encompass this rule change, are as follows:

- Certificate of Incorporation: This is the basic corporate document and replaces Old ISE's current LLC Operating Agreement.
- Constitution and By-Laws: This document replaces Old ISE's Constitution.
- Amended rules: These proposed rule changes reflect the changes to the Certificate and Constitution. Most changes are non-substantive and reflect changes to ''membership'' terminology required by the demutualization. In particular, the applicability of various rules to ''owners'' of shares and to ''Members'' of the Exchange, which are broker-dealers that have been approved to exercise trading privileges on the Exchange, has been clarified.

Overview of the Restructuring and Demutualization

The Exchange would convert into a Delaware stockholder corporation through a merger of Old ISE with New ISE, its newly-formed subsidiary; the members of Old ISE would become stockholders of New ISE. Memberships in Old ISE would convert into shares of New ISE Class A Common Stock, par value $.01 per share (the ''Class A Common Stock''), and shares of New ISE Class B Common Stock, par value $.01 per share (the ''Class B Common Stock''). Other than the nominal par value of the Class B Common Stock, the Class A Common Stock would constitute all of the equity in New ISE. New ISE may issue classes of preferred stock in the future, the terms of which would be defined by the Board and filed with the Commission for approval.

The Class B Common Stock would confer upon holders trading privileges and specified voting rights associated with the memberships in Old ISE. The Class B shares would be issued in three series corresponding with the existing membership types. Each series of Class B Common Stock would confer the same trading privileges associated with the membership interest that is converted into such series, and would be distributed as follows:

- Each Class A Membership Interest (Primary Market Maker (''PMM'') Members) would receive one share of Class B Common Stock, Series B–1 (the ''Series B–1 Stock'');
- Each Class B Membership Interest (Competitive Market Maker (''CMM'') Members) would receive one share of Class B Common Stock, Series B–2 (the ''Series B–2 Stock''); and
- Each Class C Membership Interest (Electronic Access Members (''EAM'')) would receive one share of Class B Common Stock, Series B–3 (the ''Series B–3 Stock'').

Description of New ISE Stock

Class B Common Stock

As discussed below, the holders of the Class B Common Stock would have the right to elect six members of New ISE's Board of Directors. In addition, Series B–1 Stock holders and Series B–2 Stock holders would have voting rights with respect to actions affecting the number of issued shares of Series B–1 Stock and Series B–2 Stock (the ''Core Rights''). A vote with respect to a Core Right would require the majority approval of the Series B–1 holders, voting as a separate class, and the Series B–2 holders, voting as a separate class. This replicates the voting provisions of Old ISE.

A holder of Class B Common Stock, together with any affiliate, may not own more than 20% of Series B–1 Stock or Series B–2 Stock. ISE Founders [4] would have a temporary exemption, not to extend past May 26, 2010, from the ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B–1 Stock or 20% of the Series B–2 Stock.

The holders of Class B Common Stock would not have the right to receive any dividends. Upon liquidation of New ISE, holders of each series of Class B Common Stock would be entitled to receive a liquidation amount equal to the par value of the shares of Class B Common Stock ($0.01 per share). The shares of Series B–1 and B–2 Common Stock may be transferred only with approval of the Exchange, as is currently required with respect to PMM and CMM memberships. As with current EAM memberships, the shares of Series B–3 Stock would be non-transferable. In the event an EAM withdraws from trading, New ISE would buy back its share of B–3 Stock at par value.

Class A Common Stock

As discussed below, the holders of shares of Class A Common Stock would have the right to elect nine members of the Board of Directors of New ISE. The holders of the Class A Common Stock also would have the right to vote on any matter that requires a vote of the stockholders of New ISE, other than votes with respect to the Core Rights. Upon liquidation of New ISE, the holders of Class B Common Stock receive the par value of their stock and the holders of Class A Common Stock receive all residual amounts, subject to the rights of any classes of preferred shares.

If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, may approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under section 3(a)(3) of the Act,[5] if the Board determines that such an exemption generally would be consistent with the New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

The holders of shares of Class A Common Stock would be entitled to receive dividends, when and if declared by the Board of Directors. Prior to its registration as a national securities exchange, the ISE adopted an interpretation restricting the ISE from paying dividends out of revenues received from regulatory fees or regulatory penalties.[6] The ISE proposes a similar interpretation to apply the same restrictions to New ISE.

Election of Board of Directors

The size and composition of the Board of Directors of New ISE would remain the same following the demutualization. The Board would be comprised of 15 directors, and initially would consist of the current Board of Old ISE. In future elections, the holders of the Class B Common Stock would elect six directors: Two directors elected by the holders of Series B–1 Stock; two directors elected by the holders of Series B–2 Stock; and two directors elected by the holders of Series B–3 Stock.

[4] As defined in the New ISE Constitution, the term ''Founder'' means a person or entity that purchased the former Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such memberships.

[5] 15 U.S.C. 78c(a)(3).

[6] File No. 10–127, Amendment No. 2 (Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000).

The holders of the Class A Common Stock would elect nine directors: Eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. As opposed to the current structure, PMMs, CMMs, and EAMs would have the right to vote for the non-industry directors only to the extent they own Class A Common Stock. The Exchange believes that retaining members' rights to elect six directors fully complies with the statutory requirement that the ISE ''assure a fair representation of its members in the selection of its directors. * * *.''[7]

Currently, the Exchange has a single nominating committee, consisting of both industry and non-industry members, that nominates all candidates for election to the Board. Consistent with the new election structure, a nominating committee consisting of representatives of holders of the Series B Common Stock would select the nominees for Series B directors, and the non-industry directors on the Board would select the nominees for non-industry directors. Holders of the appropriate classes of common stock also would be able to nominate rival candidates for the Board.

Trading Privileges on the Exchange

The holders of each series of Class B Common Stock would have the same trading privileges they currently hold as PMMs, CMMs, and EAMs. The proposed rules of New ISE do not change any trading privileges. According to the Exchange, virtually all of the proposed changes are intended simply to conform the rules to the new Certificate of Incorporation and Constitution.

Transfer of Memberships

In filing number SR–ISE–2001–24, the Exchange proposed changes to the process by which members could transfer memberships. Concurrently with submitting the current filing, the ISE is withdrawing SR–ISE–2001–24 and including the substantive provisions of that filing in the Rules of New ISE. These changes update the Exchange's rules relating to the sale, transfer, and lease of market maker memberships. In particular, these changes eliminate the bid/offer system of selling these memberships and eliminate the claims process and deposit requirements for sales, transfer, and leases.[8]

Current ISE Rules provide that market maker memberships generally must be sold through a bid and offer system. Given its experience to date, the Exchange believes that the bid/offer system is not compatible with the unique structure of its market maker memberships. The PMM and CMM memberships are assigned to particular bins. In contrast to memberships on other exchanges, these memberships are not fungible with memberships outside those bins. In addition, there are relatively few memberships within each bin (1 PMM and 10 CMMs), rendering a bid/offer system limited to bin and class impractical. The Exchange proposes instead to allow members to negotiate their own purchases and sales, subject to the purchase or transfer agreement being filed with, and approved by, the Exchange. As a convenience, the Exchange would maintain a ''bulletin board'' for members to list memberships for sale, but use of that facility would be voluntary.

Currently, the Rules require the Exchange to hold proceeds from sales made pursuant to the bid/offer system for 20 days, during which time claims against the proceeds may be made. Similarly, under the lease provisions contained in the Exchange's current rules, a deposit is required prior to the lease becoming effective, to be applied at the beginning and the end of the lease term to satisfy the claims process. The Exchange proposes to remove the claims process and deposit requirements. These modifications would eliminate a significant administrative burden on the Exchange, Clearing Members, and other members that is a byproduct of the current membership claims process. As exists currently, Members can still pursue claims against other Members through the arbitration process.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such 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–2002–01 and should be submitted by April 5, 2002.

[7] Section 6(b)(3) of the Act. 15 U.S.C. 78f(b)(3).

[8] The Exchange also proposes to change the terminology used in these Rules to reflect the fact that the sale or transfer of market maker trading rights will be accomplished by the sale or transfer of the appropriate share of Series B–1 or Series B–2 Class B Common Stock.

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6260 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–10–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45531; File No. SR–NASD–2002–05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval to Proposed Rule Change Relating to Revisions to Form U–4 and Form U–5

March 11, 2002.

On January 9, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or the ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change revising the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and Uniform Termination Notice for Securities Industry Registration (''Form U–5'') (collectively, the ''Forms''). On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[4] On February 28, 2002, NASD Regulation submitted Amendment No. 3 to the proposed rule change.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7, 2002.[6] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder,[7] and, in particular, the requirements of Section 15A of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[9] Section 15A(b)(6)[10] requires, among other things, that the NASD's rules be 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.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the Investment Adviser Registration Depository (''IARD'') system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not use the CRD or IARD systems; clarifying certain items that have been a source of confusion for Web CRD users; and updating the Form U–4 to add examination and registration categories that were not previously included. The proposed rule change also amends NASD IM–8310–2, Release of Disciplinary Information, to refer to the newly numbered Item 14 of the Form U–4.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NASD–2002–05) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated January 22, 2002 (''Amendment No. 1'').

[4] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated January 31, 2002 (''Amendment No. 2'').

[5] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated February 27, 2002 (''Amendment No. 3''). In Amendment No. 3, NASD Regulation made various technical corrections to the proposed language changes to Form U–4 and Form U–5.

[6] *See* Securities Exchange Act Release No. 45385 (February 1, 2002), 67 FR 5862.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6259 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45521; File No. SR–NYSE–99–51]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Order Tracking by Exchange Members and Member Organizations

March 8, 2002.

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 February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.[4] On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.[5] The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation (''Division''), Commission, dated May 22, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange deleted the phrase ''or execution'' from proposed Rule 132B(a)(1)(C) as unnecessary for application of the Rule.

[4] *See* Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposed to: (1) amend Rule 123 by adding proposed paragraph (f) which would set forth the details required to be recorded of each execution report, including a unique order identifier, and (2) amend Rule 132.30 by deleting 132.30(10), which would have required a unique order identifier be added to the data elements in post trade processing. The Exchange represents that this change will ensure that a unique order identifier will be attached throughout the life of an order, thus simplifying the tracking process.

[5] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 (''Amendment No. 3''). In Amendment No. 3, the Exchange explained that it did not believe that it was cost-effective to store all order tracking data collected from members on a daily basis, and

Continued

proposed rule change was published, as amended, on January 30, 2002.[6] The Commission is publishing this notice to solicit comments on Amendment No. 4 to File No. SR–NYSE–99–51 from interested persons.

I.Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendments to NYSE Rule 132, and the proposed adoption of NYSE Rules 132A, B and C on order tracking. In Amendment No. 4 to the proposed rule change, the Exchange proposes that the requirement that copies of execution reports be entered into an Exchange database be implemented within 6 months, instead of 15 months (as originally proposed), after Commission approval of the filing.

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or ''FESC'') [7] and proposed requirements for the electronic capture of orders at the point of receipt (order tracking system, or ''OTS'').[8] The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing. As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendment of Exchange Rule 132, and adoption of new Rules 132A, B and C on order tracking. These new rules require the recording of details of orders in Exchange listed securities by members and member organizations.

Amendment No. 1 effected a minor change to proposed NYSE Rule 132(B).[9] Amendment No. 2 proposed amendments to NYSE Rules 123 and 132 to require that members and member organizations provide a drop copy of the report of execution to FESC, with the unique order identifier linking the execution report to the original order, rather than requiring that the order identifier be submitted as part of audit trail post-trade processing.[10] Amendment No. 3 discussed the Exchange's position that data be submitted to the Exchange on an ''as requested'' basis rather than daily as a matter of routine under NYSE Rule 132C.[11]

As originally proposed in File No. SR-NYSE–99–51, the implementation date for the entire rule change and amendments would occur fifteen (15) months after Commission approval, if such approval is granted. The Exchange now proposes to amend this time frame with respect to the drop copy of execution reports requirement *only* (as described in Amendment No. 2 to the proposed rule change) to a shorter time frame, namely six (6) months after Commission approval of the filing. The Exchange believes that this is feasible since the system architecture for the Exchange database (FESC) is already in place. This six-month time frame should allow sufficient time for members and member organizations to do programming and training so that execution reports can be captured and drop-copied into the Exchange database. In addition, the Exchange believes that the phasing-in of the requirements will give members and member organizations time to better plan for full implementation of the rule changes proposed in File No. SR-NYSE–99–51.

2. Statutory Basis

The Exchange believes that the basis under the Act for Amendment No. 4 to this proposed rule change is the requirement under section 6(b)(5)[12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes that this amendment to the proposed rule change will enhance the Exchange's tools to effectively surveil its market. The Exchange notes that the proposed rule change fulfills an undertaking contained in an order issued by the Commission relating to the Exchange's regulatory responsibilities.[13] Specifically, the Order directed the Exchange to ''design and implement * * * an audit trail sufficient to enable the NYSE to reconstruct its market promptly. * * *'' The Order called for ''an accurate, time-sequenced record of orders * * *'' throughout an order's life, from receipt through execution or cancellation and for synchronization of clocks used in connection with the audit trail of orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

clarified that therefore members would be required to submit data to the NYSE on an ''as requested'' basis rather than daily as a matter of routine. The Exchange also represented that the data collected would be used solely for regulatory purposes, and that it would not use data received from its members pursuant to the proposed rules to gain a competitive advantage over another self-regulatory organization or broker-dealer. Lastly, the Exchange explained what it considered order origination and time of receipt of an order.

[6] *See* Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

[8] *See* note 6, *supra.*

[9] *See* note 3, *supra.*

[10] *See* note 4, *supra.*

[11] *See* note 5, *supra.*

[12] 15 U.S.C. 78f(b)(5).

[13] *See* In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999); Administrative Proceeding File No. 3–9925 (''the Order'').

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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to Amendment No. 4 of File No. SR–NYSE–99–51 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6262 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45534; File No. SR–OCC–2001–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the By-Laws

March 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on December 19, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend certain sections of Article IV and Article VI of OCC's By-Laws to correct minor errors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this rule change is to correct technical errors in Article IV of OCC's By-Laws that deals with officers. There are two principal errors that OCC desires to correct. First, in 1980, when Chapter XII of OCC's Rules was amended to eliminate the authority of the Chairman and the President to prescribe penalties for rule violations, Article IV of the By-Laws should have also been amended to eliminate references to that authority in Section 6 (''Chairman of the Board'') and Section 8 (''President'').

Second, in 1997, when Article IV was amended to create the office of Management Vice Chairman, OCC's stated intent was to remove the Member Vice Chairman from the line of succession.[3] However, language that should have been deleted in order to implement that intent was inadvertently left in. As a result, there are now mutually inconsistent By-Laws providing that in the absence or disability of the Chairman, the Management Vice Chairman and the Member Vice Chairman each succeed to the powers of the Chairman.

A secondary purpose of this rule change is to make minor corrections to Section 15 and 16 of Article VI of the By-Laws. Those corrections are to delete material that should have been deleted when references to market baskets were removed from the By-Laws and Rules.[4]

The proposed rule change is consistent with Section 17A of the Act because it provides consistency within OCC's by-laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Prior to that time, the By-Laws provided that Member Vice Chairman would succeed to the power of the Chairman in the absence or disability of the President and all the Vice Presidents. Securities Exchange Act Release No. 39420 (December 10, 1997), 62 FR 66167 (December 17, 1997) [File No. SR-OCC–97–08].

[4] Securities Exchange Act Release No. 41222 (March 29, 1999), 64 FR 16772 (April 6, 1999) [File No. SR–OCC–99–03].

[5] 5 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC–2001–18 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6257 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45523; File No. SR–Phlx–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt an Application Fee for Equity Trading Permits

March 8, 2002.

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 February 11, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on March 1, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to apply a $200 Application Fee to applicants for Equity Trading Permits (''ETPs'') who, at the time application is made, are not Exchange members or foreign currency options (''FCO'') participants. The Exchange states that it would not charge the $200 ETP Application Fee to ETP applicants who, at the time the application is made, are Exchange members or FCO participants. The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23 which provides for ETPs.[4] The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to amend the Exchange's Schedule of Dues, Fees and Charges, to establish that a $200 ETP Application Fee will be charged to applicants for ETPs who, at the time application is made, are not Exchange members or FCO participants.[5] The Exchange proposes this new ETP application fee to defray the Exchange's administrative costs of review and processing such applications.

Exchange Rule 23(b) provides that ETP holders must meet all qualifications that are required for membership in the Exchange. It provides that applications must be approved by the Exchange, and that applicants who are not Exchange members must be admitted by the Exchange. Exchange Rule 23(b) also states that the admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and that the decision to grant or deny an application for admission will be made by the Admissions Committee. The Exchange noted in its filing proposing Exchange Rule 23, that ETP applicants who are members of the Exchange when they apply for an ETP will have already received a favorable admissions determination by the Exchange's Admissions Committee when they became a member. Consequently, they will not be charged the ETP Application Fee. The Exchange now proposes that a $200 ETP Application Fee apply to ETP applicants who are not members or FCO participants at the time of application in order to defray the administrative costs associated with processing applications made by individuals who have not previously been evaluated by the Exchange as applicants for membership or FCO participation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the $200 ETP Application Fee is reasonable and equitable, because it is charged to all ETP applicants who are not members or FCO participants.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[8] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that application of the $200 ETP Application Fee to ETP applicants who are not members or FCO participants when they apply will defray administrative costs involved in the review and processing of an ETP application when made by an individual with respect to whom this has not previously been done in the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 1, 2002, the Exchange filed a new Form 19b–4, which replaces and supercedes the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR–Phlx–00–02 and SR–Phlx–00–03).

[5] The Exchange has separately filed pursuant to section 19(b)(3)(A) of the Act, SR–Phlx–2002–10, a proposed rule change amending Appendix A to its Schedule of Dues, Fees and Charges to establish fees applicable to ETP holders and ETP organizations. *See* Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001) (SR–Phlx–2001–01). That filing does not address the $200 ETP Application Fee that is proposed here. The Exchange now files this proposed rule change pursuant to section 19(b)(2) of the Act.

[6] 15 U.S.C 78f(b).

[7] 15 U.S.C 78f(b)4.

[8] 15 U.S.C 78f(b)(5).

context of an application for a membership or FCO participation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) hereunder.[10] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–12 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6263 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–U

[9] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45533; File No. SR–SCCP–2002–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communications Networks

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 17, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing to implement the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. (''Phlx'') for Electronic Communications Networks (''ECNs'').[2] The current pilot program expired on January 23, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.[4] Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges but not account fees, research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.[5] The fee schedule was to operate as a pilot program for one year. It was intended that after the initial pilot period, the ECN would be eligible for the SCCP fee schedule rates for ECNs only if the ECN achieved certain average daily equity volume on the Phlx.[6] At this time, SCCP proposes to continue to implement the existing fee schedule for ECNs, as described above, without imposing volume requirements.

This rule change affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting

[1] 15 U.S.C. 78s(b)(1).

[2] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR–SCCP–2001–01).

[5] Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges and buy-ins.

[6] The average daily equity volume requirements on the Phlx were initially at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.

its non-ECN floor operation.[7] In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee as would any ECN's specialist trades. Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather as an ECN, would be subject only to the monthly and not other transaction charges.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's, and therefore SCCP's, competitive position in equity trading and clearing.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing to implement the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act[8] because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that ECNs operate a unique electronic agency business similar to a securities exchange as opposed to directly executing orders for their own customers as principal or agent.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–02 and should be submitted by April 5, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6261 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[7] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b-4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys in accordance with E.O. 12862.

No: N/A.

Frequency: On Occasion.

Description of Respondents: SBA Customers.

Responses: 33,115.

Annual Burden: 2,760.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–6187 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Loan Closing Forms.
No's: 159, 160, 160A.
Frequency: On Occasion.
Description of Respondents: 7(a) Participants.
Responses: 60,000.
Annual Burden: 15,000.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 02–6188 Filed 3–14–02; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3397]

State of New York

Jefferson County and the contiguous counties of Lewis, Oswego and St. Lawrence in the State of New York constitute a disaster area as a result of a fire that occurred in the Village of Carthage on March 2, 2002. The fire destroyed nine buildings containing a number of rental units and businesses. Applications for loans for physical damage may be filed until the close of business on May 7, 2002 and for economic injury until the close of business on December 9, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 339705 and for economic injury the number is 9O7700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 2002.

Hector V. Barreto,
Administrator.
[FR Doc. 02–6189 Filed 3–14–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed

Aviation Proceedings, Agreements filed during the week ending March 1, 2002. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11696.
Date Filed: February 25, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0136, dated 26 February 2002, Mail Vote 208—TC23 Europe-South East Asia, Resolution 078i, PEX Fares from Europe to South East Asia via EH, FE, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11697.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 SATL–EUR 0085 dated 1 February 2002, TC12 South Atlantic-Europe Resolutions r1-r12, Minutes—TC12 SATL–EUR 0087, dated 22 February 2002, Tables—TC12 SATL–EUR Fares 0026, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11698.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MATL–EUR 0060 dated 1 February 2002, Mid Atlantic-Europe Resolutions r1-r28, PTC12 MATL–EUR 0062 dated 22 February 2002, (Technical Correction), Minutes—PTC12 MATL–EUR 0061, dated 22 February 2002, Tables—PTC12 MATL–EUR Fares 0021, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11699.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–ME 0161 dated 15 February 2002, North Atlantic-Middle East Resolutions r1-r27, Minutes—PTC12 NMS–ME 0160, dated 15 February 2002, Tables—PTC12 NMS–ME Fares 0089, dated 19 February 2002, Intended effective date: 1 April 2002.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–6302 Filed 3–14–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending February 8, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4686.
Date Filed: February 7, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 2002.
Description: Amendment of Continental Airlines, Inc., to its application, amending its authority to engage in the scheduled foreign air transportation of persons, property, and mail over the following segments: (1) From points behind the United States via the United States and intermediate points to point or points in France, the French Departments of America, French Polynesia, Saint-Pierre and Miquelon

and beyond; (2) from points behind the United States via the United States to New Caledonia and/or Wallis and Futuna. Continental also requests to integrate its U.S.-France certificate authority with its existing exemption and certificate authority.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6301 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending March 1, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2686.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity for Route 744, to engage in foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Zurich, Switzerland, and the terminal point Prague, Czech Republic.

Docket Number: OST–2002–11708.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Application of ExpressJet, d/b/a Continental Express, requesting the Department to disclaim jurisdiction and reissue a certificate, designations and code-sharing authority to New ExpressJet Airlines, Inc. (NewCo), which will be renamed ExpressJet Airlines, Inc. and do business as Continental Express.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6303 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Thomas F. Oelerich, P.E., Acting Regional Director, State Office Building; 250 Veterans Memorial Highway; Hauppauge, NY 11788; Telephone: (631) 952–6632 or Robert, E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve the Northern State Parkway/NYS Route 110 interchange in Suffolk County, New York. The proposed improvement would involve the reconstruction of the existing routes in the Town of Huntington for a distance of about 0.98 miles along Northern State Parkway and 1.65 miles along NYS Route 110. Improvements to this interchange are considered necessary to provide for the existing and projected traffic demand along NYS Route 110 and to address an area with a history of accidents. Also included in this project is the replacement of the Northern State Parkway bridge over NYS Route 110.

Alternatives under consideration include: (1) Taking no action; (2) reconfiguring the Northern State Parkway/NYS Route 110 interchange and replacing the existing Northern State Parkway bridge over NYS Route 110; (3) reconfiguring the Northern State Parkway/NYS Route 110 interchange without replacing the existing Northern State Parkway bridge over NYS Route 110; (4) replacing the Northern State Parkway bridge over NYS Route 110 without reconfiguring the interchange; this would include widening of the Northern State Parkway; and (5) widening NYS Route 110 to a six lane arterial. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment and various intersection improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition to scoping discussion with these interested parties, the general public will have the opportunity to make scoping comments both in writing and in person at a Public Information/Scoping Meeting that will be held at the Sunquam Elementary School, 15 Sweet Hollow Road, Melville on March 14, 2002. After the DEIS is prepared, it will available for public and agency review and comment. This will be followed by a public hearing. Public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addressed provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; CFR 771.123

Issued on: February 27, 2002.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 02–6281 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34171]

Butte-Silver Bow County—Acquisition Exemption—Silver Bow County, MT

Butte-Silver Bow County (BSB, or the County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire an 11-mile rail line known as the Missoula Gulch and Butte Hill Line (MGBH) in and near Butte, in Silver Bow County, MT.[2] The MGBH extends from milepost 0.0 at Rocker, west of Butte, to milepost 4.40 at the Butte Hill Yard (Missoula Gulch segment), and also extends north and east from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine (Butte Hill segment). BSB is acquiring the MGBH in order to facilitate abandonment of the line, an environmental cleanup, and conversion of the railroad beds to trail and public use.[3]

The exemption was scheduled to become effective on February 22, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34171, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Susan J. Geer, Esq., Davis Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: March 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6308 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BSB has also invoked 49 CFR 1180.2(d)(1), pertaining to finance transactions involving more than one railroad. However, because the acquisition in question does not involve more than one railroad, this provision is inapplicable.

[2] The MGBH was most recently owned and operated by a non-profit corporation called the Butte/Anaconda Historic Park and Railroad Corporation (BAHPR, or the Railroad). The BAHPR operated a tourist train over the portion of the MGBH between Rocker and the former Butte Hill Yard. BAHPR operated over the MGBH under a lease from the State of Montana from 1988 to 1991, at which time the BAHPR acquired the MGBH. *See Butte/Anaconda Historic Park and Railroad Corporation—Acquisition Exemption—State of Montana, Department of Commerce,* ICC Finance Docket No. 31982 (ICC served Feb. 11, 1992). In 1994, the Montana Secretary of State's Office involuntarily dissolved the BAHPR for failing to maintain its filings. However, the BAHPR continued intermittently to operate a tourist train over the MGBH through 1996, did not seek reinstatement, and never distributed its assets following dissolution.

[3] BSB states that it intends to seek authority to abandon the line following receipt of authority to acquire it. In *Land Conservancy—Acq. And Oper.—Burlington Northern*, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998) (*Land Conservancy*), *pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB*, 238 F.3d 429 (9th Cir. 2000), the Board disallowed the sale of an active rail line to a purchaser that had, immediately after the purchase, sought to abandon the line. Acquisitions of active rail lines under 49 U.S.C. 10901 are supposed to be for continued rail use. In *Land Conservancy*, the Board found that the deliberate course of conduct on the part of the abandoning carrier and the purchaser constituted a misuse of Board procedures and acted to preserve the integrity of its processes.

Here, the acquisition is not taking place pursuant to an agreement or course of conduct by the parties—no transaction has occurred—but rather pursuant to the operation of state law. BAHPR didn't sell the line to BSB. Rather, the Railroad was dissolved by the Montana Secretary of State. The County acquired the Railroad's assets pursuant to an order of the Court of the Second Judicial District of Montana, Silver Bow County. Acquisition of an active rail line—the line is not presently in service, but it has never been abandoned—requires Board authority and BSB has sought to comply with the statute. BSB has no desire to go into the railroad business—it is an agency of local government, not a commercial enterprise—and seeks merely to dispose of the property. Under the circumstances, BSB's notice invoking the class exemption to obtain authority for its acquisition is consistent with the statute.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 606X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

On February 25, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad in its Northeast Region, Baltimore Division, P&W Subdivision, extending between milepost BFH 0.0 and milepost BFH 2.1, a distance of approximately 2.1 miles, in Pittsburgh, Allegheny County, PA. The line traverses U.S. Postal Service Zip Code 15212 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision is anticipated to be issued by June 14, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 4, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 606X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before April 4, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on

the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6024 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, March 21, 2002, and Friday, March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, March 21, 2002, from 9 a.m. to 4 p.m. and Friday, March 22, 2002, from 8 a.m. to Noon at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Public comments will be welcome during the meeting, or you can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and an update on the recruitment for new panel members.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cynthia Vanderpool,

CAP Project Manager.

[FR Doc. 02–6299 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Florida Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Saturday, March 23, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Saturday, March 23, 2002, from 8 a.m. to 1 p.m, at the Sunrise Hilton, 3003 N. University Drive, Sunrise, Florida 33322. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com*. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973, or e-mail *firstcapsfl@mindspring.com.*

The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cindy Vanderpool,

Director, CAP, Communications and Liaison.

[FR Doc. 02–6300 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

Notices

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

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

Submission for OMB Review; Comment Request

March 11, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR Part 1951–L, Servicing Cases Where Unauthorized Loan or Other Assistance are Received.

OMB Control Number: 0560–0160.

Summary of Collection: The Farm Service Agency (FSA) farm loan programs are administered under the provisions of the Consolidated Farm and Rural Development Act (CONACT) [P.L. 87–128). Occasionally, FSA encounters cases where unauthorized assistance was received by a borrower. This assistance may be a loan where the recipient did not meet the eligibility requirements set forth in program regulations or where the borrower qualified for loan assistance but a subsidized interest was charged on the loan, resulting in receipt of unauthorized interest subsidy benefits. The assistance may also be loan servicing where a borrower received an excessive write down or write-off of their debt. The information collected under the provisions of this regulation is provided on a voluntary basis by the borrower, although failure to cooperate to correct loan accounts may result in liquidation of the loan.

Need and Use of the Information: The information collected by FSA will primarily be financial data such as amount of income, farm operating expenses, crop yields, etc. The borrower will provide written records or other information to refute FSA's findings when it is determined through audit or by other means that a borrower has received financial assistance to which he or she was not entitled. If the borrower is unsuccessful in having the FSA change its determination of unauthorized assistance, the borrower may appeal the FSA decision. Otherwise, the unauthorized loan recipient may pay the loan in full, apply for a loan under a different program, convey the loan security to the government, enter into an accelerated repayment agreement, or sell the security in lieu of forced liquidation.

Description of Respondents: Farms, Individuals or household; Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Reporting; On occasion; Annually.

Total Burden Hours: 800.

Farm Service Agency

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Summary of Collection. The USDA Farm Service Agency (FSA) Aerial Photography Field Office (APFO) has the authority to coordinate aerial photography work in USDA, develop and carry out aerial photography and remote sensing programs and the Agency's aerial photography flying contract programs. Section 387 of the Agriculture Adjustment Act of February 1, 1938, states ''The Secretary may furnish reproduction of such aerial or other photographs, mosaics, and maps as have been obtained in connection with the authorized work of the Department of farmers and governmental agencies at the estimated cost of furnishing such reproduction, and to persons other than farmers at such prices (not less than estimated cost of furnishing such reproductions) as the Secretary may determine. The money received from such sales is deposited in the Treasury to the credit of the appropriation charged with the cost of making such reproductions. FSA will collect information using FSA–441 form to collect the necessary customer and photography information needed for the USDA FSA Aerial Photography Field Office to produce and ship the various products ordered from their office.

Need and Use of the Information: FSA will collect information on the name, address, contact name, telephone, fax, e-mail, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/po amount. Customers have the option of placing orders by mail, fax, telephone, walk-in or floppy disk. Furnishing this information requires the customers to research and prepare their request before submitting it to APFO.

Description of Respondents: Farms; Individuals or household; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting; Other (when ordering).

Total Burden Hours: 8,000.

Animal and Plant Health Inspection Service

Title: 9 CFR part 94 Importation of Pork from Yucatan and Sonora, Mexico.

OMB Control Number: 0579–0138.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as, to take actions to prevent and to manage exotic diseases such as classical swine fever. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. Veterinary Services, a division within USDA's Animal and Plant Health Inspection Service, is responsible for administering regulations intended to prevent the introduction of animal diseases, such as classical swine fever, into the United States. APHIS will collect information from the foreign meat inspection certificate that accompanies the pork from Yucatan and Sonora to the United States.

Need and Use of the Information: APHIS will collect information to certify that; the pork is from swine slaughtered at Federally inspected slaughter plants and are approved to export to the United States; and the pork has not been in contact with pork from any State in Mexico other than Yucatan or Sonora. Also, the Secretary certificate must show the seal number that appears on the shipping container in which the pork is transported.

Description of Respondents: Farms; Business or other for-profit; Individuals or households; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 40.

Animal and Plant Health Inspection Service

Title: Virus-Serum-Toxin Act and Regulations in 9 CFR, Subchapter E, Parts 101–124.

OMB Control Number: 0579–0013.

Summary of Collection: To fulfill its mission of preventing the importation, preparation, sale, or shipment of harmful veterinary biological products, the Veterinary Biologics Division of USDA's Animal and Plant Health Inspection Service (APHIS) issues licenses to qualified establishments that produce biological products, and issues permits to importers seeking to import such products into the United States. In order to effectively implement the licensing, production, labeling, importation, and other requirements, APHIS employs a number of information gathering tools such as establishment license applications, product license applications, product permit applications, product and test report forms and field study summaries.

Need and Use of the Information: APHIS uses the information collected as a primary basis for the approval or acceptance of issuing licenses or permits to ensure veterinary biological products that are used in the United States are pure, safe, potent, and effective. Also, APHIS uses the information to monitor the serials for purity, safety, potency and efficacy that are produced by licensed manufacturers prior to their release for marketing.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 51,177.

Animal and Plant Health Inspection Service

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. which permits the Secretary to prevent, control and eliminate domestic disease such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as bovine spongiform encephalopathy (BSE) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products.

Need and Use of the Information: APHIS will collect information to ensure that imported items do not present a disease risk to the livestock and poultry populations of the United States. The information will provide APHIS with critical information concerning the origin and history of the items destined for importation into the United States. Without the information, the United States would be at risk of an exotic disease incursion.

Description of Respondents: Business or other for-profit; Individuals or households; Not for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 7,098.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 17,830.

Animal Plant and Health Inspection Service

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Summary of Collection: Title 21, U.S.C. authorizes the Secretary and the Animal and Plant Health Inspection Service (APHIS) to prevent, control and eliminate domestic diseases, as well as to take actions to prevent and manage exotic disease such as hog cholera, foot-and-mouth disease, and other foreign disease. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS ability to compete in the world market of animals and the trade of animal products. Garbage is one of the primary media through which numerous infections or communicable diseases of swine are transmitted. The Act and the regulations will allow only operators of garbage treatment facilities, which meet certain specification to utilize garbage for swine feeding. APHIS will use various forms to collect information.

Need and Use of the Information: APHIS collects information from persons desiring to obtain a permit (license) to operate a facility to treat garbage. Prior to issuance of a license, an inspection will be made of the facility by an authorized representative to determine if it meets all requirements of the regulations. Periodic inspections will be made to determine if licenses are meeting the standards for operation of their approved facilities. Upon receipt of the information from the Public Health Officials, the information is used by Federal or State animal health personnel to determine: whether the waste collector is feeding garbage to swine; whether it is being treated; and whether the feeder is licensed or needs to be licensed.

Description of Respondents: Farms; Business or other for profit.

Number of Respondents: 383.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 584.

Animal Plant and Health Inspection Service

Title: Foreign Animal Disease (Emerging Disease Investigation (FAD/ED) Database).

OMB Control Number: 0579–0071.

Summary of Collection: Title 21 U.S.C. authorizes section 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g, which permits the Secretary to prevent, control and eliminate domestic diseases, as well as taking actions to prevent and manage

exotic diseases such as foot-and-mouth disease, exotic Newcastle disease, and other foreign diseases. Animal and Plant Health Inspection Service (APHIS) has the responsibility to investigate and eventually control foreign animal disease occurrences. Through its Foreign Animal Disease Surveillance Program, the Emergency Program Staff of Veterinary Services compiles essential epidemiological and diagnostic data that is used to define foreign animal diseases and their risk factors. APHIS collects the information using form VS 12–27.

Need and Use of the Information: APHIS collects information such as the purpose of the diagnostician's visit to the site, the name and address of the owner/manager, the type of operation being investigated, the number of and type of animals on the premises, the number of sick or dead animals, the results of post mortem examinations, and the name of the suspected disease. This information assists APHIS personnel in detecting and eradicating foreign animal disease incursions.

Description of Respondents: Farm; Business or other for profit.

Number of Respondents: 535.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,070.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508), requires APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the kind of pesticide used, the date of application, the location and description of where samples are collected, and the environmental conditions at the collection site including wind speed and direction, temperature, humidity, amount of rainfall, and topography. The supporting information contained on the APHIS Form 2060 is vital for interpreting the laboratory test APHIS conducts on collected samples. Also, if a given sample were not accompanied by the form, APHIS would have no way of knowing from which site the sample was taken.

Description of Respondents: Federal Government; Individuals or households; Farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Animal Plant and Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests form entering the United States, as well as the spread of pests not widely distributed in the United States, and eradicating those imported when feasible. The Plant Quarantine Act and the Federal Pest Act authorizes the Department to carry out this mission. The regulations in 7 CFR part 353 allow non-government facilities (such as commercial laboratories and private inspection services) to be accredited by the Animal and Plant Health Inspection Service (APHIS) to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal or re-export phytosanitary certificates, or export certificates for processed plant products. APHIS provides export certification services to assure other countries that the plants and plant products are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name, full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If the activities are not conducted properly, APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: business or other for profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 300.

Food and Nutrition Service

Title: Report of Coupon Issuance & Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: The Emergency Food Stamp Assistance Program is authorized by the Disaster Relief Act of 1970; the Food Stamp Act, as amended; and Part 274 of the Food Stamp Program regulations. The Food and Nutrition Service (FNS) initiated this program in a food stamp project area when all or part of the area had been affected by a disaster. Sections 274.7 and 274.14 of the Food Stamp Program regulations contain requirements that State agencies keep records and submit reports on food stamps issued under disaster procedures ''as may from time to time be required by FNS.'' Food distribution in disaster situation is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disaster such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply. Form FNS–292 will be used by State welfare departments to report to FNS the number of households and persons who were certified for Emergency Food Stamp Assistance, and also to report the value of coupons issued to those households.

Need and Use of the Information: FNS will collect information through the use of form FNS–292, which is used by the FNS Administrator, the Food Distribution Division, and the three Food Stamp Program divisions to monitor program activity, assess coverage provided to needy recipients, and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of food stamp coupons and the distribution of surplus foods during disaster situations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 97.

Food and Nutrition Service

Title: Affidavit of Return or Exchange of Food Coupons.

OMB Control Number: 0584–0052.

Summary of Collection: Section 11(a), of the Food Stamp Act (the Act) requires that the state agencies assume responsibility for the certification of applicant households and for the issuance of coupons and the control and accountability thereof. Records shall be kept to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for not less than 3 years.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information on coupons returned or exchanged and provides verification of who returned and received the coupons. FNS will use form FNS–135, Affidavit of Return or Exchange of Food Coupons to collect information.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 30,000.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 7,500.

Forest Service

Title: 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1982, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 million acres of National Forest set up by proclamation from the public domain. The law gives individuals the right to search for and extract valuable mineral deposits of locatable minerals and secure title to the lands involved. Recording the claim in the local courthouse and with the appropriate BLM State Office affords protection to the mining claimant from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The Forest Service (FS) will collect information using form FS 2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent; to identify the area involved; the nature of the proposed operations; the route to the area of operations; and the method of transport. The information requirements for a Plan of Operations includes: the name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access route; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operation include: verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; and maintenance of the site, structure, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,208.

Frequency of Responses: Reporting: Other (approved for a given period).

Total Burden Hours: 13,174.

Forest Service

Title: Forest Products Free Use Permit, Forest Products Removal Permit and Cash Receipt, and Forest Products Sale Permit and Cash Receipt.

OMB Control Number: 0596–0085.

Summary of Collection: Individuals or other Federal agencies that wish to remove forest products from the National Forest must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5–223.13 sets forth conditions under which free use of forest product may be obtained by individuals and organizations. 15 U.S.C. 607 provides that a defense against trespass is that the forest product be removed under the regulations. These statutes and regulations apply to 16 U.S.C. 477, 492, and 607a. Regulations at 36 CFR 216.6 require persons to obtain permits to remove special forest products from National Forest Land. Forest Service Regional offices have been issuing Forest Product Removal Permit for over 20 years. The collection of information is required to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee complies with the regulations and terms of the permit. This information is also needed to allow Forest Service (FS) compliance personnel to identify permittees in the field.

Need and Use of the Information: FS will collect the name address and tax identification number from person applying for permits. The information will be used by FS to keep a record of persons buying forest products. The information will also be used to ensure that the permittee has not received product values in excess of the amount allowed by regulation in any one fiscal year. Without the forest product removal program, achieving multiple use management programs such as reducing fire hazard and improving forest health on the National Forest would be impaired.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 18,500.

Frequency of Responses: Recordkeeping, Reporting: On occasion.

Total Burden Hours: 1,365.

Farm Service Agency

Title: Agreement for the use of Proceeds/Release of Chattel Security.

OMB Control Number: 0560–0171.

Summary of Collection: Section 335(f) of the Consolidated Farm and Rural Development Act (CONACT) requires release of normal income security to pay essential household and farm operating expenses of the borrower, until the Farm Service Agency (FSA) accelerates the loans. The FSA agreed in the consent degree to approve a borrower's planned use of proceeds from the disposition of their chattel security, record any changes to planned use, and record the actual disposition of chattel security for the year of operation.

Need and Use of the Information: FSA will collect information on the actual and planned disposition of chattel security through the use of form FSA 1962–I. This form allows for normal income releases as required for payment of essential family living and farm operating expenses, provides the borrower with information on how to report sales of chattels, income received and how to notify agency of any changes to the operation or the use of chattel proceeds. The information collected will come from FSA borrowers who may be individual farmers and farming entities.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 68,750.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 20,350.

Farm Service Agency

Title: Lamb Meat Adjustment Assistance Program (LMAAP).

OMB Control Number: 0560–0205.

Summary of Collection: The Lamb Meat Adjustment Assistance Program (LMAAP) is administered and implemented under the general direction and supervision of the Farm Service Agency (FSA) through its State and County Committees. Authorizing legislation for LMAAP provides for the re-establishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The objective of the LMAAP is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the 4 year period from July 21, 1999 through July 31, 2003.

Need and Use of the Information: FSA will collect information using form FSA 383 for program year 2–4 for the sheep and lamb operations. The information obtained from the form is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.

Description of Respondents: Farm; Individuals or households; Business or other-for-profit.

Number of Respondents: 60,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 339,240.

Farm Service Agency

Title: General Regulations Governing Loans for 1996 and Subsequent Crops.

OMB Control Number: 0560–0087.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996, authorizes The Farm Service Agency (FSA) to make commodity loans for certain commodities to eligible producers. Producers requesting Commodity Credit Corporation (CCC) commodity loans must meet eligibility requirements that are basic to all commodity loan programs. These requirements that are needed to insure the integrity of the loan program and that only eligible producers receive the benefits of the loan program. FSA will collect information on commodity type, quantity of commodity, storage, location, liens on the commodity, etc., through the use of a variety of forms.

Need and Use of the Information: FSA County Committees are responsible for administration of the CCC loan program. The committees use the information collected to verify eligibility of participants to receive loan benefits and to determine cases of noncompliance with the regulations governing the loan program. Furnishing this data is voluntary; however, without it, assistance under the CCC loan program cannot be provided.

Description of Respondents: Farm.

Number of Respondents: 382,455.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 700,591.

Agricultural Marketing Service

Title: Recordkeeping Requirements for Certified Application of Federally Restricted Use Pesticides (7 CFR part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), ''shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state.'' In addition, USDA and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records, develop and maintain a database so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, of which copies must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.

Need and Use of the Information: AMS will collect information using form STD–8, Pesticide for Recordkeeping Inspection. The form provides information on the brand or product name and the EPA registration number of the federally restricted use pesticide that was applied; the total amount of the federally restricted use pesticide applied; the location, the size of the area treated, the crop, commodity, stored product or site to which a restricted use pesticide was applied; the month, day and year on which the restricted use pesticide application occurred; and the name and certification number of the certified applicator who applied or who supervised the application of the restricted use of pesticide. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the stature requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farm; Federal Government; State, Local or Tribal Government.

Number of Respondents: 915,780.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,785,041.

Rural Development

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: The Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin.

Need and Use of the Information: RD will use this information to monitor a recipient's compliance with the civil rights laws and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. This information is made available to USDA officials, officials of other Federal agencies and to Congress for reporting purposes. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 19,565.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 555,692.

Food and Nutrition Service

Title: Uniform Grant Application for Non-Entitlement Discretionary Grants.

OMB Control Number: 0584–New.

Summary of Collection: The Food and Nutrition Service (FNS) has establish a process for a uniform grant application usable for all of the non-entitlement discretionary grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required to use the uniform grant application package. The authorities for these grants vary. The term ''grant'' in this submission refers only to non-entitlement discretionary grants or cooperative agreements Discretionary grant announcements include a number of information collections, including a ''project description'' (program narrative), assurances and certifications. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102 and OMB A–110.

Need and Use of the Information: As the primary users of the information collected, FNS will review, evaluate and approve application package will include general information and instructions; requirements for the program narrative statement describing how the grant objectives will be reached as well as a description of the budget; the Standard Form (SF 424 series that requests basic information, budget information and assurances) and certifications. Currently, there is no government-wide OMB pre-approved form for the project narrative, although a program narrative is required in existing OMB circulars.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not for profit institutions.

Number of Respondents: 505.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 30,000.

Food and Nutrition Service

Title: Consumer Food Guide Pyramid Study.

OMB Control Number: 0584–New.

Summary of Collection: The U.S. Department of Agriculture's Food Guide Pyramid is designed to help all healthy Americans two years of age and older implement the Dietary Guidelines for Americans. The proposed qualitative consumer research will describe consumers' understanding and use of the Food guide Pyramid along with possible barriers to following the Pyramid's guidance. The study involves 18 focus group sessions, 6 with general consumers and 4 each with the elderly, overweight, and food stamp recipients, to explore how consumers understand concepts and messages of the consumer brochure and graphic illustration of the Food Guide Pyramid. The authority to conduct this information collection is found in 7 CFR 2.19(a)(3).

Need and Use of the Information: The Center for Nutrition Policy and promotion (CNPP) will collect information to develop practical and meaningful food and nutrition guidance for Americans to help improve their diets. Information will be collected concerning how the Food Guide Pyramid recommendations and messages are understood and used by consumers to improve their diets, and barriers to their use of the Pyramid. If the information is not collected, USDA's ability to incorporate messages and materials that are practical, meaningful, and relevant for the intended audience in any proposed update of the Food Guide Pyramid will be impaired.

Description of Respondents: Individuals or households.

Number of Respondents: 2,700.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 1,035.

Forest Service

Title: Small Business Timber Set-Aside Program: Appeal Procedures on Recomputation of Shares.

OMB Control Number: 0596–0141.

Summary of Collection: The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub L. 104–208) requires that the Forest Service establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-aside (SBA) shares or changes in policies impacting the Small Business Timber Sale Set-aside Program.

Need and Use of the Information: the information collected is submitted to a Forest Service Officer to review any appeal of decisions related to recomputations of timber sale share to be set-aside for small business timber purchasers.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 320.

Sondra A. Blakey,

Departmental Information Clearance Officer.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is June 3, 2002.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3-year term, respectively. As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories will expire September 30, 2002. Nominations for a 3-year appointment for all 10 of the vacant categories are sought.

In addition, the current member of Category U. Food and Fiber Processors, will not be serving out the remainder of his term. Therefore, this slot will be vacant as well and available for a 1-year term nomination. All nominees will be carefully reviewed for their broad expertise, leadership, and relevance to a category. The full 11 slots to be filled are:

Category B. Farm Cooperatives

Category D. Plant Commodity Producers
Category G. National Aquaculture Associations
Category J. National Food Science Organizations
Category L. National Nutritional Science Societies
Category M. 1862 Land-Grant Colleges and Universities
Category R. Scientific Community not closely associated with Agriculture
Category U. Food and Fiber Processors (1-year term)
Category AA. An Agency of USDA lacking Research Capabilities
Category BB. Research Agency of the Federal Government other than USDA
Category DD. National Organization directly concerned with REE

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person below or may printed out from the following Web site: *http://www:fs.fed.us,* then search AD–755). All nominees will be vetted before selection. Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture. Send nominee's name, resume, and their completed AD–755 to USDA, Office of the Advisory Board, Research, Education, and Economics, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255, postmarked no later than June 3, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue, SW., Room 344–A, JL Whitten Building, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics, U.S. Department of the Agriculture.

[FR Doc. 02–6208 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board general meeting and focus session from March 28, 2002—March 29, 2002. This meeting is entitled, Food and Agriculture Biosecurity: Research and Education Implications. It will be held at the Washington Court Hotel in Washington, DC. Also, a pre-meeting reception with special guest speakers, including the President of the Council of Scientific Society Presidents, Dr. Martin Apple, will be held the evening of Wednesday March 27 from 7–8 p.m. at the same location.

On Thursday, March 28, 2002, the morning session will begin with opening remarks by the Chair of the Advisory Board, Dr. Victor Lechtenberg. Dr. Michael Osterholm, Director of the Center for Infectious Disease Research and Policy, University of Minnesota, will provide the keynote address. The Deputy Secretary of Agriculture, Jim Moseley, has been invited to provide an overview on Food and Agricultural Biosecurity at USDA. Additional remarks on USDA's key research activities will be given by Dr. Joseph Jen, Under Secretary for Research, Education, and Economics. There will also be a panel on ''Homeland Security in USDA Agencies,'' followed by a panel on ''Preparedness Plans.'' A mid-afternoon panel at 3 p.m. will address ''Biosecurity Education and Protection for the American Public.'' The floor will be open to the public, as time permits, prior to the day's adjournment. A buffet reception with be held that evening (Thursday, March 28) from 5:30 p.m.—7:30 p.m. with an invited guest speaker from the Office of Homeland Security.

On Friday, March 29, 2002, the Advisory Board will reconvene with a panel that addresses ''Biosecurity in the Food and Agriculture Industries Involved in the Food Supply Chain,'' and include topics such as grain handling and transportation, meat production, food processing, retail, food service, and fresh produce. Dr. John Marburger, Director of the Office of Science and Technology Policy, Executive Office of the President, has been invited to speak during lunch on high priority research and development issues, interagency collaborations, and public and private sector partnerships with regard to homeland security in food and agriculture. The afternoon panel session focuses on ''Research Implications for Biosecurity.'' Guest speakers at this meeting are representative of the broad food and agriculture stakeholder community across the country. Prior to the wrap up of the meeting and as time permits, the floor will be open for public comments. The Board will discuss in detail findings of this 2-day meeting on Food and Agriculture Biosecurity and begin to develop research and education recommendations that will be tendered as advice to the Secretary of Agriculture. Written comments will be accepted at the USDA Advisory Board Office for public record up to 2 weeks following the Board meeting.

This meeting is open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Should an attendee at this meeting require any special needs, please contact the USDA Research, Education, and Economics Advisory Board Office cited below.

DATES:

March 27 7 p.m. to 8 p.m.—Pre-Meeting Reception with Guest Speaker
March 28 8:30 a.m. to 4:15 p.m.—Focus Session

March 28 4:15 p.m. to 4:30 p.m.—Public Comments and Adjournment for the Day
March 28 5:30 p.m. to 7:30 p.m.—Working Reception with Guest Speaker
March 29 8 a.m. to 12 noon—Advisory Board Meeting and Focus Session
March 29 12 noon to 1:15 p.m.—Working Lunch with Guest Speaker
March 29 1:15 p.m. to 3 p.m.—Focus Session and Discussion
March 29 3 p.m. to 3:45 p.m.—Public Comments, Wrap-up and Recommendations, and Adjournment of Meeting

Place: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C.; Atrium Ballroom and Executive Room (Receptions Only).

Type of Meeting: Open to the Public.

Comments: The public may file written comments before or up to two weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office; Room 344–A, Jamie L. Whitten Building; U.S. Department of Agriculture; STOP: 2255, 1400 Independence Avenue, SW.,; Washington, DC 20250–2255; Telephone: 202–720–3684; Fax: 202–720–6199; or e-mail: *SMORGAN@reeusda.gov.* Done at Washington, DC, this 26th day of February 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 02–6207 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCIES: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Commodity Credit Corporation (CCC), through the Farm Service Agency (FSA), to request an extension and revision of the currently approved information collection for the regulation used in support of the CCC Conservation Reserve Program (CRP). This renewal includes revisions incorporated in the proposed rule, ''Cropland Eligibility and Private Sector Technical Assistance,'' including revisions to amend total burden hours to reflect ongoing CRP activity as authorized by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, and Title XI of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Pub. L. 106–387.

DATES: Comments on this notice must be received on or before May 14, 2002 to be assured consideration.

FOR FURTHER INFORMATION, AND TO FILE COMMENTS, CONTACT: Comments may be sent to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, telephone (202) 720–6221; facsimile (202) 720–4619; or e-mail at *crppra@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 1410) Conservation Reserve Program.

OMB Control Number: 0560–0125.

Expiration Date: October 31, 2002.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0125, as identified above allows FSA to effectively administer the regulations under the CRP. The CRP regulations at 7 CFR part 1410 and formerly at 7 CFR part 704 set forth basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term CRP contracts with financial and technical assistance and for making cost-share and annual rental payments under the program. All information collection under 7 CFR part 704 has ceased. This regulation was removed by the final CRP rule published February 19, 1997, which revised 7 CFR part 1410. CRP information collection requirements will continue under 7 CFR part 1410.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6.7 minutes per respondent.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 160,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 153,861.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Robert Stephenson, Director, Conservation and Environmental Programs Division, USDA, FSA, 1400 Independence Avenue, SW., STOP 0513, Washington DC 20250–0513.

Comments will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed at Washington, DC, on January 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6206 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Marketing Quota Referenda Results: Burley and Flue-Cured Tobaccos, 2001

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of results of marketing quota referenda for burley and flue-cured tobaccos for 2001.

SUMMARY: The Farm Service Agency (FSA) herein announces results of marketing quota referenda held in 2001 for burley and flue-cured tobacco. These referenda were conducted to determine if a sufficient number of voting producers who own or grow these tobaccos wanted national marketing quotas to continue for the three marketing years 2001, 2002 and 2003. A majority of the eligible producers voting in the referenda approved continuation of the national marketing quotas.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202)720–2715 or at e-mail address *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Notice

In January 2001, the Secretary of Agriculture (the Secretary) announced that national marketing quotas would be in effect for flue-cured tobacco for the three marketing years beginning with 2001, subject to approval by flue-cured producers in a referendum held in accordance with Sec. 312(c) of the Agricultural Adjustment Act of 1938, as amended. The flue-cured tobacco referendum was conducted January 8 through January 12, 2001, and indicated that 97 percent of voting producers favored the quotas.

The Secretary announced in February 2001, that national marketing quotas would be in effect for burley tobacco for the three marketing years beginning with 2001, subject to approval by burley producers in a referendum. The burley marketing quota referendum, held from February 12 through February 16, 2001, indicated that 97.4 percent of the producers who voted favored the quotas.

This notice is to announce the referenda results, as required by 7 CFR part 717.24. The results of each referenda are set forth below.

Notice

Results of the National Marketing Quota Referenda for the 2001 Through 2003 Marketing Years for Flue-Cured and Burley Tobaccos

The following is a summary, by State, of the results of each referendum.

FLUE-CURED

State	Yes	No	Total
Alabama	1	0	1
Florida	133	3	136
Georgia	363	84	447
North Carolina	6,589	160	6,749
South Carolina	761	13	774
Virginia	1,420	37	1,457
Total	9,267	297	9,564

BURLEY

State	Yes	No	Total
Alabama	1	0	1
Arkansas	1	0	1
Georgia	13	2	15
Indiana	3899	183	4,082
Kansas	19	2	21
Kentucky	85,682	1,272	86,954
Missouri	770	33	803
North Carolina	4,644	164	4,808
Ohio	4,851	201	5,052
Oklahoma	0	0	0
Tennessee	26,720	1,442	28,162
Virginia	7,146	219	7,365
West Virginia	1,276	47	1,323
Total	135,022	3,565	135,587

Signed at Washington, DC, on February 28, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–6209 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC); Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold meetings/work sessions on March 15 & 20, in Quincy, California, and another in Portola, CA on April 12. The purpose of the March 15 meeting is to design concept paper review and project evaluation/selection processes. The purpose of the March 20 work session is to answer questions from members of the community interested in submitting projects for funding consideration under the Title 2 provisions of the Secure Rural Schools and Community Self-Determination Act of 2000. The purpose of the April 12 meeting is to review proposed project concept papers and generate comments for project proponents' use.

DATES AND ADDRESSES: The March 15 meeting will take place from 9–3 p.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California. The March 20 work session will take place from 7–9 p.m., at the Catholic Church Annex, 176 Lawrence Street, Quincy, CA. The April 12 meeting will take place from 9–3 p.m., at the Williams House, 424 East Sierra Ave (Highway 70), Portola, CA.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by E–MAIL *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the March 15 meeting include: (1) Review applicable sections of the Secure Rural Schools and Community Self-Determination Act of 2000, regarding project solicitation and approval; and (2) Continue project solicitation/design and selection process; and, (3) Future meeting schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee at any time, after being recognized by the Chair. The March 20 work session is open to the public. Agenda items for the April 12 meeting include: (1) Review concepts papers and generate comments for project proponents' use; (2) Public Comment; and, (3) Future meetings schedule/logistics/agenda. The meeting is open to the public and individuals may address the Committee in the time provided on the agenda.

Dated: March 8, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–6220 Filed 3–14–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

Comments Must Be Received on or Before: April 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product and service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Holder, Key and Credit Card/ 7510–01–445–9348.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.
Product/NSN: Holder, Key and Credit Card/ 7510–01–NIB–0613.
NPA: The Travis Association for the Blind, Austin, Texas.
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, New York.

Services

Service Type/Location: Janitorial/Custodial/ Alton Federal Building, Alton, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Ed Jones Federal Building & U.S. Courthouse, Jackson, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, Tennessee.
Contract Activity: GSA, Public Buildings Service.
Service Type/Location: Janitorial/Grounds Maintenance/Federal Building & U.S. Post Office, Dyersburg, Tennessee.
NPA: Madison Haywood Developmental Services, Jackson, TN.
Contract Activity: GSA, Public Buildings Service.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products and services proposed for deletion from the Procurement List.

The following products and services are proposed for deletion from the Procurement List:

Products

Product/NSN: Hood, Sleeping Bag/8465–00–518–2769.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, California.
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA.
Product/NSN: Stamp, Rubber/7520–00–NSH–0001.
Product/NSN: Stamp, Rubber/7520–00–NSH–0002.
Product/NSN: Stamp, Rubber/7520–00–NSH–0003.
Product/NSN: Stamp, Rubber/7520–00–NSH–0004.
Product/NSN: Stamp, Rubber/7520–00–NSH–0005.
Product/NSN: Stamp, Rubber/7520–00–NSH–0006.
Product/NSN: Stamp, Rubber/7520–00–NSH–0007.
Product/NSN: Stamp, Rubber/7520–00–NSH–0008.

Product/NSN: Stamp, Rubber/7520–00–NSH–0009.
Product/NSN: Stamp, Rubber/7520–00–NSH–0010.
Product/NSN: Stamp, Rubber/7520–00–NSH–0011.
Product/NSN: Stamp, Rubber/7520–00–NSH–0012.
Product/NSN: Stamp, Rubber/7520–00–NSH–0013.
Product/NSN: Stamp, Rubber/7520–00–NSH–0014.
Product/NSN: Stamp, Rubber/7520–00–NSH–0015.
Product/NSN: Stamp, Rubber/7520–00–NSH–0016.
Product/NSN: Stamp, Rubber/7520–00–NSH–0017.
Product/NSN: Stamp, Rubber/7520–00–NSH–0018.
Product/NSN: Stamp, Rubber/7520–00–NSH–0019.
Product/NSN: Stamp, Rubber/7520–00–NSH–0020.
Product/NSN: Stamp, Rubber/7520–00–NSH–0021.
Product/NSN: Stamp, Rubber/7520–00–NSH–0022.
Product/NSN: Stamp, Rubber/7520–00–NSH–0023.
Product/NSN: Stamp, Rubber/7520–00–NSH–0024.
Product/NSN: Stamp, Rubber/7520–00–NSH–0025.
Product/NSN: Stamp, Rubber/7520–00–NSH–0026.
Product/NSN: Stamp, Rubber/7520–00–NSH–0027.
Product/NSN: Stamp, Rubber/7520–00–NSH–0028.
Product/NSN: Stamp, Rubber/7520–00–NSH–0029.
Product/NSN: Stamp, Rubber/7520–00–NSH–0030.
Product/NSN: Stamp, Rubber/7520–00–NSH–0031.
Product/NSN: Stamp, Rubber/7520–00–NSH–0032.
Product/NSN: Stamp, Rubber/7520–00–NSH–0033.
Product/NSN: Stamp, Rubber/7520–00–NSH–0034.
Product/NSN: Stamp, Rubber/7520–00–NSH–0035.
Product/NSN: Stamp, Rubber/7520–00–NSH–0036.
Product/NSN: Stamp, Rubber/7520–00–NSH–0037.
Product/NSN: Stamp, Rubber/7520–00–NSH–0038.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: McClellan Air Force Base, California.
Product/NSN: Stamp, Rubber/7520–00–NSH–0045.
Product/NSN: Stamp, Rubber/7520–00–NSH–0046.
Product/NSN: Stamp, Rubber/7520–00–NSH–0047.
Product/NSN: Stamp, Rubber/7520–00–NSH–0048.
Product/NSN: Stamp, Rubber/7520–00–NSH–0049.
Product/NSN: Stamp, Rubber/7520–00–NSH–0050.
Product/NSN: Stamp, Rubber/7520–00–NSH–0051.
Product/NSN: Stamp, Rubber/7520–00–NSH–0052.
Product/NSN: Stamp, Rubber/7520–00–NSH–0053.
Product/NSN: Stamp, Rubber/7520–00–NSH–0054.
Product/NSN: Stamp, Rubber/7520–00–NSH–0055.
Product/NSN: Stamp, Rubber/7520–00–NSH–0056.
Product/NSN: Stamp, Rubber/7520–00–NSH–0057.
Product/NSN: Stamp, Rubber/7520–00–NSH–0058.
Product/NSN: Stamp, Rubber/7520–00–NSH–0059.
Product/NSN: Stamp, Rubber/7520–00–NSH–0060.
Product/NSN: Stamp, Rubber/7520–00–NSH–0061.
Product/NSN: Stamp, Rubber/7520–00–NSH–0062.
Product/NSN: Stamp, Rubber/7520–00–NSH–0063.
Product/NSN: Stamp, Rubber/7520–00–NSH–0064.
Product/NSN: Stamp, Rubber/7520–00–NSH–0065.
Product/NSN: Stamp, Rubber/7520–00–NSH–0066.
Product/NSN: Stamp, Rubber/7520–00–NSH–0067.
Product/NSN: Stamp, Rubber/7520–00–NSH–0068.
Product/NSN: Stamp, Rubber/7520–00–NSH–0069.
Product/NSN: Stamp, Rubber/7520–00–NSH–0070.
Product/NSN: Stamp, Rubber/7520–00–NSH–0071.
Product/NSN: Stamp, Rubber/7520–00–NSH–0072.
Product/NSN: Stamp, Rubber/7520–00–NSH–0073.
Product/NSN: Stamp, Rubber/7520–00–NSH–0074.
Product/NSN: Stamp, Rubber/7520–00–NSH–0075.
Product/NSN: Stamp, Rubber/7520–00–NSH–0076.
Product/NSN: Stamp, Rubber/7520–00–NSH–0077.
Product/NSN: Stamp, Rubber/7520–00–NSH–0078.
Product/NSN: Stamp, Rubber/7520–00–NSH–0079.
Product/NSN: Stamp, Rubber/7520–00–NSH–0080.
Product/NSN: Stamp, Rubber/7520–00–NSH–0081.
Product/NSN: Stamp, Rubber/7520–00–NSH–0082.
NPA: PRIDE Industries, Roseville, California.
Contract Activity: Travis Air Force Base, California.

Services

Service Type/Location: Janitorial/Custodial/West LA VA Community Base Clinic, Los Angeles, California.
NPA: Job Options, Inc., San Diego, California.
Contract Activity: Department of Veterans Affairs.

Sheryl D. Kennerly,
Director, Information Management.

[FR Doc. 02–6286 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 25, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (66 FR 3683) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the commodities and services.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection

with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Laundry Service/ Naval Air Station, Patuxent River, Maryland.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Contract Activity: Department of the Navy.
Service Type/Location: Transcription Services/Equal Employment Office (Federal Bureau of Prisons), Washington, DC.
NPA: The Lighthouse of Houston, Houston, Texas.
Contract Activity: Federal Bureau of Prisons Department of Justice.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6287 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Addition; Correction

In the correction document appearing on page 10664, FR Doc. 02–5612, in the issue of March 8, 2002, in the second column the Committee published a notice of proposed addition to the Procurement List of, among other things, Janitorial/Custodial, Ronald Reagan Building, International Trade Center, At the Federal Tenant Spaces Only, Washington, DC. This notice is amended by deleting the reference ''International Trade Center''. The proposed addition now reads ''Janitorial/Custodial, Ronald Reagan Building, at the Federal tenant spaces only, Washington, DC''.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–6285 Filed 3–14–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 030802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement.

Form Number(s): None.

OMB Approval Number: 0648–0435.

Type of Request: Emergency submission.

Burden Hours: 316.

Number of Respondents: 787.

Average Hours Per Response: 20 minutes for a citizen survey; 45 minutes for a survey of Washington Department of Fish and Wildlife personnel; and 60 minutes for interviews of public officials, key stakeholders, and Washington Department of Fish and Wildlife managers.

Needs and Uses: Community-oriented policing (COP) promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community problems at their source. Recognizing the significant role non-traditional enforcement efforts will play in Endangered Species Act enforcement in the Northwest, a measurement tool has been developed to ensure that the performance outcomes of these non-traditional enforcement (COP) efforts are effectively measured. Through this instrument, COP efforts can be evaluated for success and elements essential for achieving successful outcomes in future programs can be identified and quantified. Anadromous species enforcement will be the focus of the survey, and the surveys/interviews will take place in the Walla Walla and Cherry Creek river basins.

Affected Public: Individuals or households, and State, Local, or Tribal Government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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 6608, 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 by April 19, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–6184 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 010209034–2035–03]

RIN 0607–XX63

Urban Area Criteria for Census 2000

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This Notice announces the Bureau of the Census' (Census Bureau's) criteria for defining urban and rural territory based on the results of Census 2000. These criteria replace and supersede the 1990 census criteria for defining urban and rural territory. In establishing these criteria, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff. The new criteria appear later in this Notice.

EFFECTIVE DATE: This Notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, U.S. Census Bureau, 4700 Silver Hill Road-Stop 7400; Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail at: *ua@geo.census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau identifies and tabulates data for the urban and rural populations and their associated areas solely for the presentation and comparison of census statistical data. It does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some Federal and state agencies are required by law to use Census Bureau-defined urban and rural classifications for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urban and rural criteria for Census 2000 might affect the implementation of their programs.

If a Federal, state, local, or tribal agency voluntarily uses these urban and rural criteria in a nonstatistical program, it is that agency's responsibility to ensure that the results are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the results of implementing the urban and rural criteria specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly identifies the different criteria being applied so as to avoid confusion with the Census Bureau's official urban and rural classifications.

This section of the Notice, among other things, provides a brief synopsis of the public comments the Census Bureau received in response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) **Federal Register** Notices, and the decisions the Census Bureau made in response to the public comments received.

In addition, the Census Bureau plans to announce the determinations of Census 2000 urban and rural territory in the near future. Federal agencies should begin to use the new urban/rural definitions to tabulate and publish statistics when the determinations are announced.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Even though we gave the public prior notice and an opportunity for public comment, we were not required to do so by Title 5, United States Code (U.S.C.), Section 553, or any other law. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603[a]).

Paperwork Reduction Act

This program Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Summary of Comments Received in Response to the March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143) Federal Register Notices

The March 28, 2001 **Federal Register** document provided the proposed criteria and the July 27, 2001 **Federal Register** document provided further clarification. Both Notices requested comment on the Census Bureau's proposed Urban Area Criteria for Census 2000. In response to the two Notices, the Census Bureau received 142 comment letters. Of that number, 81 comments were received from regional planning and nongovernmental organizations, 24 from municipal and county officials, 22 from Members of Congress, 8 from state government officials, 4 from officials of other federal agencies, and 3 from individuals. Many comment letters addressed more than one topic.

Of the 142 letters, 67 offered comments to the proposed criteria for recognizing uninhabitable areas adjacent to bodies of water (floodplains, marshes, and other wetlands); 37 of these dealt specifically with areas not accommodated in the criteria that respondents believed to be uninhabitable. Of these 37 letters, 22 expressed concern about the area that separates Brunswick City and St. Simons Island, Georgia, and 15 dealt with the area in the vicinity of the St. Francis Levee between West Memphis, Arkansas, and Memphis, Tennessee. The majority of the comments concerned the inability of the proposed criteria to define additional types of areas as ''uninhabitable'' territory. In particular, respondents commented on the inadequacy of the criteria to define intermittently flooded, uninhabited land adjacent to water bodies as uninhabitable, and thus exempted from the distance measurement when attempting to connect qualifying territory. It was recommended that if these additional types of uninhabitable land areas were included in the criteria, important outlying urban territory would qualify for inclusion in urban areas. Not having this territory included in the urban areas would result in a loss of valuable funding. The remaining comments addressed the criteria that allow a 5 mile jump over uninhabitable area, stating that they would benefit large states and urban areas, but not small states and urban areas.

Ten comments expressed concern that there were no provisions in the criteria to include nonresidential urban land uses, such as airports, industrial parks, and large commercial areas, within urban areas. Comments were received from the Lewiston, Idaho-Clarkston, Washington, area (3); the Dallas-Fort Worth, Texas, area (2); the Reno-Sparks, Nevada, area (2); and one comment each was received from the Indianapolis, Indiana; Paducah, Kentucky-Metropolis, Illinois; and Grand Forks, North Dakota-East Grand Forks, Minnesota, areas. The commentors believed the population density criterion of 500 people per square mile (ppsm) was too high and, therefore, would unfairly exclude the surrounding adjacent nonresidential urban land use areas and what they considered the complete extent of their urbanized area. All comments expressed concern about a possible loss of funding or an inability to expend the funding where the community believed it was needed if there were no way to identify and include nonresidential land use as part of the Urban Area Criteria for Census 2000.

Twenty-seven of the comments questioned elimination of the grandfathering criteria; that is, not automatically retaining in the Census 2000 urban definition territory that had been classified as urban based on the 1990 census. Of those commenting, 16 of the 27 comments were concerned with the Bristol, Tennessee-Bristol, Virginia, area and 5 were concerned with the Ventura County and Orange County areas in California. The remaining 6 letters did not cite a specific area; however, all were similar in that they asserted grandfathering should be retained as part of the Urban Area Criteria for Census 2000. It was believed the elimination of this criterion would cause not only a loss in funding, but, more importantly, a loss of urbanized area status.

There were 26 comments expressing concern about eliminating the provision for including whole functioning governments, particularly incorporated cities, towns, villages, and boroughs. Ten of those commenting were especially concerned about the Bristol, Tennessee-Bristol, Virginia, area and one comment was received regarding the Lewiston, Idaho-Clarkston, Washington, area. Although 15 of the 26 responses did not refer to a specific area, all letters dealing with the elimination of the whole-functioning government criterion were in favor of retaining it as part of the Urban Area Criteria for Census 2000. It was believed that by using corporate limits to include whole governmental units in urban definitions, additional nonresidential urban land use would be included in the urban area definitions, thereby alleviating concerns of loss of funding and loss of urbanized area status.

Coupled with elimination of the grandfathering and the whole-functioning government criteria, 18 additional comments specifically expressed concern regarding the loss of urbanized area status; 11 of these additional comments addressed the governments in the Bristol, Tennessee-Bristol, Virginia area. All 18 favored retention of the grandfathering and the whole-functioning government criteria,

as all believed their elimination would result in a loss of urbanized area status.

The Census Bureau received 31 comments regarding the splitting and merging of urban areas; 23 of these expressed concern about splitting urban areas in the vicinity of Los Angeles, California, in particular in Ventura County (the Oxnard-Ventura, Simi Valley, and Thousand Oaks areas) and in Orange County. The comments questioned whether smaller urban areas would retain their individual status or be included in the larger Los Angeles urbanized area. The majority of these comments dealt equally with the loss of funding, loss of data, and loss of urbanized area status. There were no comments in favor of merging existing urbanized areas. It was widely held that the splitting of urbanized areas should occur at metropolitan area boundaries.

Twenty-four comments addressed the overall population density criterion, with the majority agreeing that the population density requirement of 500 ppsm was too high and did not allow for the inclusion of nonresidential urban land use areas adjacent to the urbanized area core. Five comments remarked on the density requirements for military installations; all concerned Vandenberg Air Force Base near Lompoc, California, and stated the population density requirement of 500 ppsm was too high and, therefore, would exclude some blocks that are part of the military installation.

There were 11 commenters who remarked about the 2 square mile size limit criterion for census block groups with qualifying density. The majority of commenters believed that the area size limitation should be larger than 2 square miles or that an area threshold should not be used to determine urban area qualification. The consensus among the commenters was that this criterion was arbitrary and, thus, should be removed.

The enclave and indentation criteria generated 11 comments. Those commenters who wanted the criteria to include nonresidential urban land uses in urban areas believed that the 5 square mile size limit for adding enclaves to urban areas was too small. Other commenters remarked that the 3:1 ratio criterion for including indentations favors large urban areas over small urban areas.

There were 19 comments received regarding the jump and hop criteria. The jump and hop criteria are used to include noncontiguous but qualifying territory within an urban area. The criteria are based on the distance of the connection and overall density or population in the qualifying territory. All 19 agreed that the distance for hops and jumps should be increased to better include nonresidential urban land uses in urban areas.

The Census Bureau received one comment requesting the recognition of ferries and other nonroad transport networks as links to discontiguous qualifying areas. It favored the use of ferries and other nonroad connections for hops and jumps, especially in the West, as some transit systems have ferry service across water bodies or lines tunneling through mountains where the alternate road connections may not meet the hop or jump distance criteria.

The Census Bureau's Decisions Regarding Recommendations Received From Comments Concerning Changes to the Urban Area Criteria for Census 2000

This section of the Notice provides information about the Census Bureau's decisions related to the recommendations and comments received. These decisions benefited greatly from the public participation, which served as a reminder that, although identified for purposes of collecting, tabulating, and publishing federal statistics, the urban areas defined through these standards represent areas in which people reside, work, and spend their lives and to which they attach a considerable amount of pride. In arriving at its decisions, the Census Bureau took into account the comments received regarding the information published in the **Federal Register** on March 28, 2001 (66 FR 17018) and July 27, 2001 (66 FR 39143), as well as research and investigation conducted by Census Bureau staff.

I. The Census Bureau presents below its decisions on changes that were incorporated into the Urban Area Criteria for Census 2000 in response to the many comments received.

A. The Census Bureau accepted the recommendations to include criteria that define ''uninhabitable'' territory along major bodies of water. The Census Bureau is changing the proposed criteria to include selected unpopulated blocks adjacent to a road connection where that road connection crosses a substantial water area. In addition, the Census Bureau is replacing the term uninhabitable with the term ''exempted'' to more clearly define the territories that are in this category: water bodies, uninhabited census blocks adjacent to bridged water bodies, military installations, national parks, and national monuments.

The original uninhabitable criteria, which were more restrictive than in the past, were limited to bodies of water, military installations, national parks, and national monuments. The intent was to make the delineation process as objective and uniform as possible, and because only these four categories of topography and land use were uniform and complete for the Nation in the Census Bureau's TIGER database, they were the only items that the Census Bureau believed it could use as a basis for evaluation.

The Census Bureau decided to rename ''uninhabitable'' as ''exempted,'' and to include as exempted those land portions of a hop or jump (defined in Sections II.B. and II.C. of the Urban Area Criteria for Census 2000) where the tabulation blocks on both sides of the road connection have zero population and the road connection crosses at least 1,000 feet of water.

Incorporating this new criterion, which is meant to provide a measurable and objective surrogate to define floodplains and marshlands, will allow the Census Bureau to achieve its goal of being able to apply the criteria uniformly throughout the Nation.

B. The Census Bureau accepted the recommendations to include major airports adjoining or surrounded by qualifying urbanized areas or urban clusters, but the Census Bureau decided not to include commercial or industrial areas.

The Census Bureau decided to include major airports adjoining qualifying urbanized areas (UAs) or urban clusters (UCs) when it was able to obtain a comprehensive database of major airports. The decision was made to include only those airports that, according to 2000 Federal Aviation Administration statistics, had an annual enplanement of at least 10,000 people and, thus, qualified as a primary airport. The research conducted regarding the methodology for determining what boundaries to use for the airports determined that airport inclusion should be by whole census block where at least half the land area of the census block was within the airport.

The Census Bureau believes it is advantageous to include major airports within urban areas because doing so will give a better overall picture of an ''urbanized area.'' Heavily used airports are considered part of the urban fabric of an area and, most importantly, the Census Bureau was able to obtain a single, reliable database source that its staff could use to apply the criteria objectively.

The Census Bureau determined that it could not include industrial or commercial areas on the fringes of UAs or UCs because it could not find a consistent national database that

identifies such areas, as it found for major airports. Thus, the Census Bureau does not have the capability to specifically identify commercial and industrial areas on a uniform and comprehensive basis. The Census Bureau is continuing research to determine some objective and consistent way to address issues involving nonresidential urban land uses for urban area determinations in future censuses.

C. The Census Bureau adopted criteria that would permit the splitting of a UA within the same metropolitan statistical area (MSA) and primary metropolitan statistical area (PMSA), and in counties that are not within an MSA or PMSA, when two areas that each would qualify as a UA have only a point connection or are connected by a hop or a jump.

The Census Bureau determined that it is just as important to recognize the autonomy of areas within a metropolitan area (MA) as it is between two or more MAs. The Census Bureau also determined it would not be realistic to apply the same distance criterion of 3 miles used to split a UA that has qualifying territory in separate MAs as the basis for splitting a UA that is within the same MA or outside any MA. The Census Bureau believes the criteria for splitting a UA within the same MA or outside any MA should be more restrictive to ensure that the splitting is limited to areas that are more likely to be independent and to avoid the splitting of a single large UA into many smaller UAs that are not autonomous.

D. The Census Bureau reevaluated the block population density criterion within a military installation. The Census Bureau revised the final Urban Area Criteria for Census 2000 to treat blocks on a military installation that have a population of 1,000–2,499 the same as blocks that have a population density of 500–999 ppsm. The Census Bureau also decided to treat blocks that have a population of 2,500 or more the same as blocks that have a population density of 1,000 ppsm or greater.

The change in the block density criterion for census blocks within a military installation formally recognizes the special situation that was created in agreement with the Department of Defense regarding the collection and presentation of data about military installations. The block numbering algorithm used by the Census Bureau specified that military installations be identified by using as few block numbers as possible. Blocks that have a large area and significant population were created, but seldom did they meet the minimum criteria for qualification as urban based on population density. Even though the density requirement is consistent, the delineation of military blocks is inconsistent; therefore, the 500 ppsm requirement is being waived for blocks on military installations. To apply these new criteria to other blocks would not be appropriate because the Census Bureau used consistent criteria to define the blocks in areas where external agreements for processing were not a factor.

E. The Census Bureau modified the methodology for the indentation criteria from the 3:1 linear ratio measurement to a 4:1 area ratio measurement; it also clarified the criteria.

The decision to change from the linear ratio of measurement to an area ratio, or ''circle method,'' of measurement was based on the results of research by Census Bureau staff. The results of the research showed that the ''circle method'' gives a constant comparative ratio, whereas the linear measurement method does not. It also is more difficult to use the length-to-area measurement in a computer environment, where one must first determine the values of an indentation and then calculate the ratio. The inability to ensure consistent automated results made the proposed indentation criteria less objective.

II. Recommendations and comments were received from the public regarding other issues, and subsequent research by Census Bureau staff determined that changes to the current criteria for some issues would be detrimental to the goals of the program. The Census Bureau has decided that no changes will be made to accommodate the following issues in the Urban Area Criteria for Census 2000.

A. Grandfathering

The goal for Census 2000 is to bring the urban area criteria back to a single set of rules that allow for application of automated processes that yield consistent results rather than to have the areas defined through a process of accretion over time. The Census Bureau is striving to eliminate any subjectivity in these delineations. This can be done only by reexamining areas that qualified as UAs in earlier censuses due to the implementation of different criteria following each of those censuses, the possibility of misinterpretations of the criteria, and the inevitable mistakes made during clerical delineations of the past. The areas that no longer qualify as UAs likely will qualify as UCs for Census 2000.

B. Developing a Set of Criteria To Include Whole Functioning Governments in Urban Area Definitions

The Census Bureau wants to define a continuum of urban territory created objectively and equitably for the entire Nation. To apply these criteria consistently, the use of governmental unit boundaries and criteria designed to include whole functioning governments must be eliminated. The Census Bureau evaluated the geographic characteristics of municipal corporations and found widespread variation as a result of each state's unique set of annexation and incorporation laws. The Census Bureau believes the lack of consistency among state laws for establishing governmental unit boundaries would result in inconsistency in urban area definitions.

C. Recognition of Ferries and Other Transportation Modes To Link Discontiguous Qualifying Areas

There is no consistent database of ferry connections and other transportation networks; therefore, the Census Bureau cannot apply the limited data available consistently.

D. Size Criteria for Block Groups

The Census Bureau included a maximum block group size criterion to avoid adding large sparsely settled territories to urban areas. Census Bureau staff found a significant reduction in the percentage of individual blocks that have a population density greater than 500 ppsm, and a significant increase in the land area of blocks that have a population density less than 500 ppsm, when the size of a block group exceeded two square miles. Based on this research, and with the allowance in the criteria for inclusion of individual blocks that have qualifying density, the Census Bureau determined that it was not necessary to change the block group size criterion.

E. Changing the Distance Allowable for a Hop

The Census Bureau determined, after further research, to retain the proposed length for a hop at a distance of less than or equal to 0.5 mile. Based on empirical review, allowing a longer distance for a hop resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected.

F. Changing the Distance Allowable for a Jump

The Census Bureau determined, after further research, to retain the proposed increase in length for a jump at greater than 0.5 mile but no more than 2.5 miles (it was 1.5 miles in 1990). Based on

empirical review, allowing a longer distance for a jump resulted in a significant number of areas linking to other urban areas that were not perceived as actually being connected. In the case of longer jumps, many of the connections would be eliminated subsequently because a UA would be split to avoid joining autonomous qualifying UAs.

G. Changing the Population Density Criteria for Block Groups and Blocks

The proposed population density requirement of 500 ppsm will remain unchanged. This change in the population density requirement will allow the Census Bureau to take into account government policies requiring green space between developments, lessen the effect of large census block groups and blocks that contain both a developed and undeveloped portion, and because consistent nonresidential land use information is not available, will help to qualify areas that have mixed land use within the same block group or block.

Urban Area Criteria for Census 2000

The following criteria apply to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States.

I. Census 2000 Urbanized Area (UA) and Urban Cluster (UC) Definitions

For Census 2000, a UA consists of contiguous,[1] densely settled census block groups (BGs)[2] and census blocks[3] that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people.

For Census 2000, a UC consists of contiguous, densely settled census BGs and census blocks that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 2,500 people, but fewer than 50,000 people.

All criteria based on land area, population, and population density reflect the information contained in the Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) database (the Census 2000 TIGER/Line file at the time of initial delineation) and the official Census 2000 redistricting data file (the Public Law 94–171 file at the time of initial delineation).

II. UA and UC Delineation Process Criteria

The following criteria are provided in the sequence in which they are used by the Census Bureau in an automated software program, with limited interactive modifications, to delineate the UAs and UCs. The purpose of providing the criteria in sequence and in technical terms is to ensure that others can develop similar software to replicate the Census Bureau's urban area delineations.

A.The Census Bureau initiates its delineation of a potential urban area by delineating a densely settled ''Initial Core.'' The Initial Core is defined by sequentially including the following qualifying territory:

1. One or more contiguous census BGs that have a total land area less than 2 square miles and a population density of at least 1,000 people per square mile (ppsm)[4]. NOTE: All calculations of population density include only land; the areas of water contained within census BGs and census blocks are not used to calculate population density.

2. If no qualifying census BG exists, one or more contiguous census blocks that have a population density of at least 1,000 ppsm.

3. One or more census BGs that have a land area less than 2 square miles, a population density of at least 500 ppsm, and are contiguous with the BGs identified by criterion II.A.1.

4. One or more contiguous census blocks, each of which has a population density of at least 500 ppsm, and at least one of which is contiguous with the qualifying census BGs or census blocks identified by criterion II.A.1., II.A.2., or II.A.3.

5. Any enclave of contiguous territory that does not meet the criteria above but that is surrounded by census BGs and census blocks that qualify for inclusion in the initial core by criteria II.A.1. through II.A.4., provided the area of the enclave is not greater than 5 square miles.

B. The Census Bureau continues its delineation of a potential urban area by adding, to all initial cores that have a population of 1,000 or more[5], other territory with qualifying density that can be reached using a ''hop'' connection. That is, from the edge of the initial core, the Census Bureau will define a road connection of no greater than 0.5 mile across land that is not classified as ''exempted'' territory[6] and that consists of one or more nonqualifying census blocks that connect the initial core to a contiguous area of census BG(s) and/or census blocks(s) that otherwise qualify based on population density and land area.

1. The territory being added to the initial core using a hop connection, which includes the connecting census block(s), census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or area with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have 1,000 or more total population in the qualifying area being added.

2. When adding qualifying territory to the initial core using a hop connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 0.5 mile across land that is not classified as ''exempted'' territory, and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire area (hop blocks plus

[1] Contiguity requires at least one point of intersection.

[2] A census block group is a group of census blocks within a census tract whose numbers begin with the same digit; for example, BG 3 within a census tract includes all census blocks numbered from 3000 to 3999.

[3] A census block is an area normally bounded by visible features, such as streets, streams, and railroads, and by nonvisible features, such as the boundary of an incorporated place, minor civil division (MCD), county, or other Census 2000 tabulation entity.

[4] The Census Bureau, in agreement with the Department of Defense, imposed restrictions on the selection of features that could be used as block boundaries within military reservations. This resulted in census blocks within military reservations that contain populations of 1,000 or greater, but with unusually low population densities caused by these restrictions. In recognition of this situation, for purposes of urban area delineation, the Census Bureau treats blocks on military reservations that have a population of 2,500 or more as having a population density of 1,000 ppsm, even if the actual density is less than 1,000 ppsm, and those that have a population of 1,000 to 2,499 as having a population density of 500 ppsm.

[5] All cores of less than 1,000 population are not selected as the starting point for the delineation of a separate urban area; however, these core areas still are eligible for inclusion in a UA or UC, using subsequent criteria and procedures.

[6] The Census Bureau defines ''exempted'' territory as areas in which normal residential development is significantly constrained or not possible due to either topographic or land use reasons. Exempted territory is limited to bodies of water, national parks and monuments, military installations, and those segments of a road connection where the populations of the census blocks on both sides of the road are zero and, additionally, the road connection crosses at least 1,000 feet of water. Because the Census Bureau does not have access to or maintain a comprehensive land use database for the entire United States, Puerto Rico, and the Island Areas, only the aforementioned land use types, which are included in or can be derived from the Census Bureau's TIGER database, will be used when identifying exempted territory.

qualifying blocks) being added to the initial core.

3. Territory that is added to the initial core by means of a hop connection becomes part of the adjusted initial core. The Census Bureau then determines if there is additional qualifying territory that can be added to the adjusted initial core. All measurements of distance and contiguity to the core are made from the adjusted initial core, not from the original initial core. The Census Bureau continues to add qualifying territory by means of a hop connection, modifies the adjusted initial core to include the added territory, and continues to add more qualifying territory via a hop connection, until no additional territory qualifies to be added via a hop connection.

C. After completing the process that adds all territory to an initial core that can be added via hop connections, those cores that have a population of 1,500 or more, now termed ''interim cores,'' continue the delineation process by adding qualifying territory via a ''jump'' connection [7].

The determination of jumps starts with the interim core that has the greatest population and continues in descending order of population size of each interim core. Starting from the edge of the interim core, the Census Bureau identifies a road connection of greater than 0.5 mile and no more than 2.5 miles across land that is not classified as ''exempted'' territory, and that consists of one or more nonqualifying census blocks that connect the interim core to contiguous qualifying territory based on population density, land area, and connections made using the hop criteria.

1. The territory being added to the interim core using a jump connection, including the connecting census block(s), qualifying census BG(s), and census block(s) that have a population density of at least 500 ppsm, and any enclave blocks within the connecting block(s) or territory with qualifying density, must:

a. Have a combined overall population density of at least 500 ppsm, or

b. Have a population of 1,000 or more in the qualifying territory being added.

2. When adding qualifying territory to the interim core using a jump connection, the Census Bureau tests the five shortest road connections and:

a. Selects the shortest qualifying road connection that does not exceed 2.5 miles across land that is not classified as ''exempted,'' and

b. Selects the connecting block(s) along that road connection that forms the highest overall population density for the entire territory (jump blocks plus qualifying blocks) being added to the interim core.

3. No additional jumps may originate from a qualifying area after the first jump in that direction unless the territory being included as a result of the jump was an interim core with a population of 50,000 or more.

D. After territory has been added to the interim core via jump connections, the Census Bureau again includes additional noncontiguous territory to the adjusted interim core using a hop connection, provided the territory qualifies as defined in the criteria associated with II.B.

E. During all phases in which qualifying territory that is discontiguous to the initial or interim cores is being added to the cores, the Census Bureau adds to the cores any qualifying territory where the hop or jump road connections pass through ''exempted'' territory.

1. Discontiguous territory is added to the cores using hop or jump connections that cross ''exempted'' territory, provided that:

a. The road connection is no greater than 5 miles between the core and the qualifying area, and

b. The road connection does not cross more than a total of 2.5 miles of territory not classified as ''exempted'' (those segments of the road connection where ''exempted'' territory is not on both sides of the road), and

c. The territory being added meets either the population density criteria or total population criteria specified in Sections II.B.1 and II.C.1.

2. The Census Bureau selects the road connection using the criteria specified in Sections II.B.2 and II.C.2.

3. The Census Bureau considers linkages over exempted territory as a hop connection when the total distance of the road segments, excluding the distance across ''exempted'' territory, does not exceed 0.5 mile, and as a jump connection when the total distance of the road segments is from 0.5 to 2.5 miles, excluding the distance across ''exempted'' territory.

F. After all territory has been added to the interim core via jump and hop connections, the Census Bureau adds whole tabulation blocks that approximate the territory of major airports, provided at least one of the blocks that represent the airport is included within or contiguous with the interim core.

G. The Census Bureau then adds to the interim cores territory that constitutes enclaves, provided that:

1. The territory is contiguous, surrounded only by land, and consists of census BGs and census blocks that qualify for inclusion in the interim core, and

a. The area of the enclave is not greater than 5 square miles, or

b. All area of the enclave is more than a straight-line distance of 2.5 miles from a land block that is not part of the interim core, or

2. The territory is contiguous, surrounded by both land consisting of census BGs and census blocks that qualify for inclusion in the interim core, and water, and the linear contiguity of the enclave to the land that is within the interim core is greater than the linear contiguity of the enclave to the water.

H. The Census Bureau then inspects the interim cores and, where necessary, splits the interim cores into separate interim cores for purposes of identifying individual urban areas, following the criteria specified in Section III.

I. Upon completing the separation of interim cores, the Census Bureau completes the delineation of urban areas by identifying and adding territory that qualifies as ''indentations.''

1. The Census Bureau examines and qualifies only those potential indentation areas that are within the same interim core, not between separate interim cores.

2. Starting from the outermost part of the potential indentation, the Census Bureau will define a ''closure qualification line,'' defined as a straight line no more than 1 mile in length, that extends from one point along the edge of the interim core across area that is not within the interim core to another point along the edge of the interim core, with both points on land.

3. The Census Bureau then determines if there are any tabulation blocks that have at least 75 percent of their area within the territory formed between the closure qualification line and the interim core.

4. If there are no blocks that have 75 percent or more of their area within that territory, the potential indentation does not qualify to be added to the interim core.

5. If there are any blocks that have 75 percent or more of their area within the territory formed between the closure qualification line and the interim core, the total area of those blocks that meet or exceed the 75-percent criterion is compared to the area of a circle, the diameter of which is the length of the closure qualification line.

[7] All adjusted initial cores of less than 1,500 population are not selected to continue the delineation of a separate urban area; however, these core areas still are eligible for inclusion in an urban area using subsequent criteria and procedures.

6. Those territories under review that have at least four times the area of the circle qualify as an indentation, and the Census Bureau will add the entire area of all those blocks to the interim core.

7. If the collective area of the indentation blocks is less than four times the area of the circle, the Census Bureau defines a different closure qualification line, if possible, and continues the testing and qualification of the potential indentation until it determines if the potential indentation qualifies or fails.

J. As a result of the urban area delineation process, an incorporated place [8] or census designated place (CDP) [9] may be partially within and partially outside an urban area. Any place that is split by an urban area boundary is referred to as an extended place.

III. Splitting UAs

The Census Bureau uses the definition of metropolitan areas (MAs), which include metropolitan statistical areas (MSAs), consolidated metropolitan statistical areas (CMSAs), and primary metropolitan statistical areas (PMSAs), in effect for Census 2000 (those MAs established by the Office of Management and Budget on June 30, 1999) to determine when to define separate contiguous UAs. (Note: UCs are never split to recognize MA boundaries.) After delineating the boundary of each UA, the Census Bureau will examine the relationship between that UA and any MSA, CMSA, or PMSA, using the following criteria to determine if the UA should be split and, if so, where the boundary should be located between the resulting separate UAs.

A. UA Split Criteria When There Are Separate MAs

The Census Bureau splits an initial UA that contains at least 50,000 people in two or more separate MAs when the following conditions exist:

1. The UA has at least 50,000 people in each of at least two different MSAs or PMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at a location near the MSA or PMSA boundary along which their area of contiguity is less than 3 miles.

2. The UA has at least 50,000 people in each of at least two different CMSAs, and the distance along which their areas are contiguous is less than 3 miles. The split will occur at the CMSA boundary.

B. UA Split Criteria Within the Same MA or County

The Census Bureau splits an initial UA within the same MA, or within a county that is not in an MA, when the following conditions exist:

1. The only connection linking or causing contiguity between areas, each of which has an initial core population of at least 50,000, includes either a hop or jump connection, or

2. The connection between areas, each of which has an initial core population of at least 50,000, is not greater than a point-to-point connection.

In both cases, the split will occur at the point-to-point connection, or at both ends of the hop or jump connection that initially linked the areas into a single UA.

IV. Urban Area Title Criteria

A. For those urban areas that contain an incorporated place that has at least 2,500 people in the urban area:

1. The urban area title includes the name of the incorporated place with the most population within the urban area.

2. As many as two additional incorporated place names may be part of the urban area title, provided that:

a. The incorporated place's urban area population exceeds 250,000 people, or

b. The incorporated place has both an urban area population of at least 2,500, and its urban area population includes at least 2/3 of the population in the most populous incorporated place in the urban area.

B. If the urban area does not contain an incorporated place that has at least 2,500 people in the urban area, the urban area title includes the single entity name [10] that occurs first from the following list:

1. The nonmilitary CDP having the largest population in the urban area, provided its population in the urban area is at least 2,500.

2. The incorporated place having the largest population in the urban area.

3. The nonmilitary CDP having the largest population in the urban area.

4. The military CDP having the largest population in the urban area.

5. The governmental MCD [11] having the largest population in the urban area.

6. A local name recognized for the area by the United States Geological Survey's Geographic Names Information System, with preference given to post office names recognized by the United States Postal Service (USPS).

C. The criterion for the sequence of place names in the urban area title consists of the qualifying names in descending order of their official population in the urban area. (If two or more entities that qualify to have their names included in the urban area title have exactly the same population, the total population of each is used to determine the sequence of names; or, if no population data are available, as in Section IV.B.6., the entity names will be listed alphabetically.)

D. The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity into which the urban area extends.

1. The order of the state names is the same as the order of the related place names in the urban area title.

2. For urban areas that extend into a state(s) in which no incorporated place, CDP, or MCD name is part of the urban area title, the name(s) of this state(s) is included in the urban area title after the name of the state(s) that includes a place or MCD having its name in the urban area title, in descending order of the state's Census 2000 population within the urban area.

E. If a single place or MCD qualifies as the title of more than one urban area, the largest urban area will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and a compass directional (North, South, East, or West) as the smaller urban area relates in direction to the larger urban area. For example, if Allenville is used to title the largest urban area, a smaller urban area also using Allenville in the title that lies south of the larger urban area is titled Allenville South.

F. If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an incorporated place, CDP, or MCD that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the

[8] An incorporated place is a governmental unit designated as a city, town (except in New England and Wisconsin), village, city and borough, municipality, or borough (except in New York and Alaska); the term also includes all consolidated cities.

[9] A CDP is a statistical equivalent of an incorporated place and represents a locally defined named area. CDPs are called communidades and zonas urbanas in Puerto Rico.

[10] If two or three of the entities being considered for an urban area title have exactly the same population in the urban area, the title will include both (or all three) entity names in the title. If four or more entities being considered for an urban area title have exactly the same population, the total population of each entity (as oppose to its urban population) will determine the three names to be included in the title.

[11] An MCD is a legal subdivision of a county or statistically equivalent entity. Governmental MCDs exist in Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin.

duplicate place or MCD name for each urban area. If there is no incorporated place, CDP, or MCD name in the urban area title, the name of the county having the greatest population residing in the urban area will be appended to the title. For example, Springfield (Ames County), OH, and Springfield (Jefferson County), OH.

V. Urban Area Code Criteria

The Census Bureau assigns a 5-digit numeric code to each urban area. The code is based on a national alphabetic sequence of all urban area names, and is sequenced by state code or state and county code when urban area names are duplicated.

VI. Urban Area Central Place Criteria

The Census Bureau identifies one or more central places for each urban area (if an incorporated place or CDP exists within the urban area) using the following criteria:

A. Any incorporated place or CDP that has its name in the title of the urban area, and

B. Any other incorporated place or CDP that has a population of 50,000 or more within the urban area.

VII. Urban and Rural Classification

The Census Bureau classifies as urban all population and territory within the boundaries of urban areas.[12] Conversely, the Census Bureau classifies as rural all population and territory that are not within any urban area.

The Census Bureau does not attempt to classify all bodies of water as being either urban or rural. Those bodies of water that appear in the Census Bureau's TIGER database as area features are included in urban areas only if the water body is included in a land BG or census block classified as urban, or if the water body serves as a connection when performing a hop or a jump. The urban and rural classification is not definitive for other bodies of water because the Census Bureau's definition is not intended to limit other classifications of urban and rural when applied to water area.

Dated: February 27, 2002.

William G. Barron, Jr.,

Acting Director, Bureau of the Census.

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BILLING CODE 3510–07–P

[12] The Census Bureau's TIGER database is a centerline file; that is, the line representing each feature (such as a road or a stream that has a very small area) follows the center line of the feature. This criterion is not intended to preclude other application from including the entire area of a feature that the Census Bureau has used as the boundary between urban and rural territory as being either entirely urban or entirely rural.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, Brandon Farlander, and Robert Bolling, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1102, (202) 482–0182, and (202) 482–3434, respectively.

The 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's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Amendment of Final Determination

On February 4, 2002, the Department of Commerce (''the Department'') issued its final determination and found that ARG windshields from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735(a) of the Tariff Act. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 6482 (February 12, 2002) (Final Determination).

On February 14, 2002, respondents Fuyao Glass Industry Group Company, Ltd. (''FYG'') and Xinyi Automotive Glass (Shenzhen) Co., Ltd. (''Xinyi''), and Petitioners timely filed ministerial error allegations, pursuant to 19 CFR 351.224(c)(2). On February 19, 2002, respondent FYG and Petitioners timely filed rebuttal comments on the alleged ministerial errors.

The Department is amending the Final Determination in the antidumping investigation of ARG windshields from the PRC for FYG, Xinyi, Shenzhen Benxun Auto–Glass Co., Ltd. (''Benxun''), Changchun Pilkington Safety Glass Co., Ltd. (''Changchun''), Guilin Pilkington Safety Glass Co., Ltd. (''Guilin''), Wuhan Yaohua Pilkington Safety Glass Co., Ltd. (''Wuhan''), and TCG International (''TCGI'').

Scope of the Investigation

As addressed in the final determination, interested parties requested that the Department clarify whether automotive replacement glass windshields (''ARG'') windshields for buses, farm and heavy machinery are included in the scope of this investigation. Based on the information received, we clarified that ARG windshields for buses, farm and heavy machinery are included in the scope of this investigation. For further discussion, please see the Issues and Decision Memorandum for the Scope Clarification for the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China: July 1, 2000 through December 31, 2001 from Edward C. Yang, Director, Office 9 to Joseph A. Spetrini, Deputy Assistant Secretary, AD/CVD Enforcement Group III, dated January 24, 2002.

The products covered by this investigation are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (i.e., two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (e.g., passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Ministerial Error

A ministerial error is defined in section 351.224(f) of our regulations as

''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Section 351.224(e) of our regulations provides that we ''will analyze any comments received and, if appropriate . . . correct any ministerial error by amending the final determination. . . .'' After reviewing interested parties' allegations we have determined, in accordance with 19 CFR 351.224, that the Final Determination includes ministerial errors discussed below.

FYG's Allegation of Ministerial Errors

Updated Market Economy Prices

Comment 1: FYG alleges that the Department made a ministerial error by using outdated market price values for ink, silver and mirror buttons and using a surrogate value for solder even though FYG reported market economy purchases of solder. FYG maintains that the Department failed to apply the updated market economy values for these inputs, as reported in FYG's November 16, 2001 submission.

Petitioners did not provide rebuttal comments.

Department's Position: We agree with FYG. Following the Preliminary Determination, FYG provided updated market economy values to the Department which the Department inadvertently failed to use for the Final Determination. It is the Department's practice to use the most updated factor value information available. For the amended final determination, we used updated market economy prices for the inputs ink, silver, mirror buttons and solder. See Analysis Memo for the Amended Final Determination of Automotive Replacement Glass (''ARG'') Windshields from the People's Republic of China: Xinyi Automobile Glass (Shenzhen) Co., Ltd. (''Xinyi'') and Fuyao Glass Industry Group Co., Ltd. (''FYG'') (Amended Final Analysis Memo) from Brandon Farlander and Stephen Bailey to Robert Bolling dated March 6, 2002.

Xinyi's Allegations of Ministerial Errors

Incorrect Margin Calculation Results

Comment 2: Xinyi argues that it calculated a margin using all relevant documents provided by the Department issued for the Final Determination and that the margin Xinyi calculated is fifty–five one–hundredths of a percent lower than the margin calculation generated by the Department. Xinyi argues that the final margin should be 3.15 percent as compared to 3.70 percent as calculated by the Department in its Final Determination.

Petitioners argue that Xinyi's ministerial error submission does not fulfill the conditions necessary for correction of ministerial errors contained in section 351.224 of the regulations. Petitioners argue that Xinyi did not identify any error of omission or commission in its request, which is required according to section 351.224(4)(d). Petitioners argue that it is Xinyi's responsibility, and not the Department's, to identify any errors in the Final Determination.

Department's Position: We disagree with Xinyi. Xinyi has not alleged an error, specific or otherwise, by the Department in the Department's calculation of Xinyi's margin that would fall within the meaning of 19 CFR 351.224(f). Xinyi argues that, because it obtained different margin results then those calculated by the Department, the Department's margin calculations must contain clerical errors. Xinyi has provided no official record evidence that the Department has made a clerical error in Xinyi's margin calculation program or has Xinyi provided an appropriate correction pursuant to the requirements of 19 CFR 351.224(d).

Aberrational Indian Import Statistics Data

Comment 3: Xinyi argues that the Department incorrectly included aberrational Indian Import Statistics data for colored float glass imports from the United Arab Emirates in September 2000, aberrational values for colored float glass imports from Belgium in September and December 2000, and aberrational values for colored float glass imports from Taiwan in August and December 2000. Xinyi argues that the import data from these countries and the values for the specific months listed above are aberrationally high when compared to the average colored float glass surrogate value calculated by the Department.

Petitioners argue that Xinyi's claims that certain Indian Import Statistics data are aberrationally high is a new substantive methodological argument. Petitioners contend that this new argument is subject to comment and rebuttal by interested parties to the investigation and to a final determination by the Department. Additionally, Petitioners argue that Xinyi had ample opportunities to argue that there were aberrations in the Indian Import Statistics data, but did not do so.

Department Position: We disagree with Xinyi that this is a ministerial error. The Department included Indian imports from Belgium, Taiwan, and the United Arab Emirates as set forth in Attachment 4 of the Factor Valuation Memorandum for the Preliminary Determination. This remained unchanged for the Final Determination. Therefore, the allegation is not a ministerial error pursuant to 19 CFR 351.224(f).

Petitioner's Allegations of Ministerial Errors for FYG

Colored Float Glass Surrogate Value from the Indian Import Statistics

Comment 4: Petitioners allege that the Department made a ministerial error by failing to apply the Indian surrogate value used for colored float glass, exclusive of Thailand and Korea. Citing to the Department's Factors of Production Valuation Memorandum for the Final Determination (Factor Value Memo), Petitioners argue that the Department determined in the Final Determination to exclude Thai and Korean prices for all inputs in its surrogate value calculations and also in determining market economy purchases. Petitioners maintain that the Department's failure to apply the revised Indian surrogate value for the colored float glass resulted in an understatement of the value of a certain type of windshield. Because the type of windshield is business proprietary information, see the Amended Final Analysis Memo for a further discussion of this issue.

FYG points out that the windshield in question is comprised of two types of float glass. FYG argues, therefore, that Petitioners' methodology of using a weighted–average of only one value for the windshield is distortive.

Department's Position: We agree with Petitioners. In the Final Determination, the value of colored float glass, the second pane of glass used for the windshield in question, was derived by the Department using FYG's market economy purchases. However, the Department inadvertently failed to exclude market economy purchases from Thailand and Korea from FYG's market economy purchases of colored float glass. As the Department stated in Comment 1 of the final Issues and Decision Memorandum, it would disregard prices that the Department has reason to believe or suspect are distorted by subsidies, including FYG's market economy purchases from Thailand and Korea. See Final Determination, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. When market economy purchases of colored float glass from Thailand and

Korea are excluded, the Department must then use Indian Import Statistics to value colored float glass because FYG did not purchase colored float glass from other market economy countries. Therefore, for the amended final determination, we will use the Indian surrogate value for colored glass less purchases of Thai and Korean float glass. See Amended Final Analysis Memo.

International Freight Container Rate

Comment 5: Petitioners argue that the Department erred in the Final Determination in its calculation of ocean freight by using a freight rate for a 20–foot container instead of a freight rate for a 40–foot container, which is the container size used by FYG in transporting subject merchandise. Citing to the Factor Value Memo, Petitioners maintain that the Department rejected, in part, FYG's methodology for freight and used a freight rate provided by the Federal Maritime Commission. Petitioners contend that the Department used a basic freight rate for a 20–foot shipping container, to which was added a fuel surcharge and destination delivery charge. Petitioners assert that their October 29, 2001 Surrogate Values Submission provided evidence on the record to value a 40–foot shipping container. Petitioners further contend that the Department should either: (1) match the particular ocean rate to the closest port of entry for each shipment; or (2) apply an average of the ocean rates for all ports through which the non–market economy (''NME'') shipments entered for which surrogate ocean freight is being assigned.

FYG agrees with Petitioners that the Department incorrectly used a 20–foot container rate when the Department should have used a 40–foot container rate to value ocean shipping. However, FYG argues that Petitioners' suggested ocean freight value was rejected by the Department for the final determination. FYG suggests that the Department use the actual freight rates paid for the ocean segment of the overall transportation charge, which are reported in Exhibit 19–A of FYG's verification report. See Memorandum from Stephen Bailey, Sarah Ellerman, case analysts and Emily Lawson, Office of Chief Counsel through James C. Doyle, Program Manager to the File: Verification of Sales and Factors of FYG in the Antidumping Duty Investigation of Automotive Replacement Glass Windshields from the People's Republic of China (FYG Verification Report) dated December 19, 2001, Exhibit19–A. FYG also suggests the Department convert the 20–foot container charge to a 40–foot container charge by using a conversion rate presented in their October 29, 2001 submission.

Department's Position: The Department agrees that this is a ministerial error. In our analysis memorandum for FYG, the Department stated that it would value shipping containers based on a length of 40 feet but instead valued it on a 20–foot container rate. See Analysis for the Final Determination of Automotive Replacement Glass Windshields (''ARG'') from the People's Republic of China: Fuyao Glass Industry Group Co., Ltd., (''FYG'') (February 1, 2002) (FYG's Final Analysis Memo). In order for the Department to correct this error (i.e., obtain a 40–foot shipping container base rate), we must adjust the 20–foot base container rate to reflect a 40–foot base container rate. In this instance, we are using information provided by FYG to convert a 20–foot base container rate to a 40–foot base container rate to determine a surrogate value for ocean freight. By reviewing a contract between FYG and a market economy shipper, reviewed at verification, and using information provided by FYG in its October 29, 2001 submission, the Department determined that the rate charged for a 40–foot container is 33 percent higher than the rate charged for a 20–foot container. See FYG Verification Report, Exhibit 19–A. The Department has multiplied this conversion rate, 1.33, by the charge for a 20 foot container to arrive at a charge for a 40 foot container. See Amended Final Analysis Memo. FYG's methodology allows the Department to continue to use information from the Federal Maritime Commission, as used in the Final Determination. The Department did not use Petitioners' proposed correction or FYG's other proposed correction because both change the ocean freight methodology used by the Department in the Final Determination.

Wholesale Price Index Base for Domestic Inland Insurance

Comment 6: Petitioners allege that the Department made a ministerial error by using a 1992 Wholesale Price Index (''WPI'') base for data collected from the period November 1991 through April 1992 in calculating an average value in Indian rupees per metric ton value for domestic inland insurance, as opposed to using a WPI that corresponds to the period for the Indian surrogate value, which is November 1991 through April 1992. Citing the Department's Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Automotive Replacement Glass Windshields From the People's Republic of China, 66 FR 53776 (October 24, 2001) (Amended Preliminary Determination), Petitioners argue that the Department stated that it considered this a methodological error at the preliminary determination and would consider this error for the final determination. Additionally, Petitioners contend that the Department did not address this issue in the Final Determination. Furthermore, Petitioners assert that they provided International Financial Statistics (''IFS'') for the period November 1991 through April 1992 in their September 24, 2001 submission which contain all relevant IFS data necessary for the Department to calculate an accurate WPI for the period in question. Petitioners also argue that the WPI for the period November 1991 through April 1992 should be adjusted to account for the re–basing of the Indian WPI, which occurred in June 1994 and June 1999.

FYG argues that Petitioners' allegation is not a ministerial error but a methodological argument. Also, FYG also asserts that Petitioners' methodology for determining the correct inflation rate is flawed because it incorrectly adjusts the WPI to account for re–basing. FYG also argues that the correct inflation rate adjustment that it calculated results in basically the same rate used by the Department in the Final Determination.

Department's Position: We agree with Petitioners. The Department intended to correct this error in the Final Determination. See Amended Preliminary Determination at 53778. However, we inadvertently failed to make this correction in the Final Determination. Therefore, the Department is using the Indian WPI for the period November 1991 through April 1992 from IFS data. Additionally, the Department has adjusted the WPI to account for the re–basing which occurred in June 1994, by multiplying the WPI for the period November 1991 through April 1992 by 0.70, which is the percentage change in the WPI between May 1994 and August 1994. The Department has also adjusted the WPI to account for the re–basing which occurred in June 1999, by multiplying the WPI by 0.61, which is the percentage change in the WPI between May 1999 and August 1999. See Amended Final Analysis Memo.

Weight Conversion for Other Scrap Glass

Comment 7: Petitioners argue that the Department made a ministerial error by inadvertently converting a value to a kilogram basis that was already being

consumed on a kilogram basis. Citing to FYG's Verification Report at 14, Petitioners allege that FYG reported that ''Other Scrap Glass'' was reported on a kilogram basis, not in square meters as the Department assumed.

FYG argues that the Department was correct in converting a kilogram value into a meters squared value because FYG's reported consumption rate for the ''Other Scrap Glass'' offset was in meters squared.

Department's Position: We disagree with Petitioners. The Department verified that FYG reported that ''the big pieces of scrap generated from the cutting process . . . is sold on a square meter basis.'' See FYG Verification Report at 14. Therefore, for the final determination, the Department calculated a surrogate value for ''Other Scrap Glass'' by multiplying the Indian surrogate value, which is reported in kilograms, by a kilograms–to–square–meter conversion rate which is based on the amount of kilograms in a square meter of glass. See FYG's Final Analysis Memo, dated February 1, 2002.

Petitioner's Allegations of Ministerial Errors for Xinyi

Plastic Adhesives Surrogate Value from the Indian Import Statistics

Comment 8: Petitioners allege that the Department made a ministerial error by deducting the value and quantity of Switzerland's exports of plastic adhesives (rather than Thailand's value and quantity of exports) to India from the Indian Import Statistics.

Xinyi did not provide rebuttal comments.

Department's Position: We agree with Petitioners. The Department intended to deduct, from Indian Import Statistics, imports of plastic adhesives from Thailand, but instead deducted imports of plastic adhesives from Switzerland. As the Department stated in Comment 1 of the Issues and Decision Memo, we will disregard prices that we have reason to believe or suspect are distorted by subsidies, including the values from Thailand and Korea. Therefore, for the amended final determination, we will deduct Thailand's exports of plastic adhesives (rather than Switzerland's exports) to India from the Indian Import Statistics in our surrogate value calculation for plastic adhesives. See Amended Final Analysis Memo.

Petitioner's Allegations of Ministerial Errors for FYG and Xinyi

Adhesive Sheets (Tape) Calculation Error

Comment 9: Petitioners allege that the Department made a ministerial error by including two minus signs when deducting Korean imports of adhesive sheets (tape) from the quantity and value of Indian Import Statistics. Petitioners argue that this error resulted in an understatement of the value of adhesive sheets (tape).

FYG agrees with Petitioners that the Department incorrectly included a double minus sign in its calculation sheet which resulted in counting the Indian imports of Korean adhesive sheets (tape) twice in the surrogate value calculation. However, FYG argues that the per unit surrogate value provided by the Petitioners is not correct.

Department's Position: We agree with Petitioners and FYG that this is a ministerial error. The Department intended to deduct, from Indian Import Statistics, imports of adhesive sheets from Korea. However, the Department double counted imports of adhesive sheets from Korea by inadvertently including two minus signs in the calculation sheet, which resulted in Korean imports being added twice instead of being deducted. As stated in Comment 8, the Department intended to disregard prices from Korea. The Department agrees with FYG that Petitioners' per unit surrogate value, while properly deducting Korean imports of adhesive sheets from Indian Import Statistics, is incorrect due to addition errors. Therefore, for the amended final determination, we will remove one minus sign in the calculation sheet for Korean exports of adhesive sheets (tape) to correct for this error. See Amended Final Analysis Memo.

Amended Final Determination

In accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of ARG from the PRC to reflect the correction of the above–cited ministerial errors. The revised final weighted–average dumping margins are as follows:

Exporter/Manufacturer	Original Weighted Average Margin Percent for Final	Revised Weighted Average Margin Percent
FYG	9.67	11.80
Xinyi	3.70	3.71
Benxun	8.22	9.84
Changchun	8.22	9.84
Guilin	8.22	9.84
Wuhan	8.22	9.84
TCGI	8.22	9.84
China–Wide	124.50	124.50

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the United States Customs Service (''Customs'') to continue suspending liquidation on all imports of the subject merchandise from the PRC. Customs shall require a cash deposit or the posting of a bond equal to the weighted–average amount by which normal value exceeds the export price as indicated in the chart above. These suspension–of–liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission of our amended final determination.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

March 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6290 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832, A–122–840, A–428–832, A–560–815, A–201–830, A–841–805, A–274–804, A–823–812]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle (Brazil, Canada, Mexico, and Trinidad and Tobago), Robert James (Germany), Donna Kinsella (Indonesia), Dana Mermelstein (Moldova), and James Doyle (Ukraine) at (202) 482–0650, (202) 482–0649, (202) 482–0194, (202) 482–1391, and (202) 482–0159, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing further the preliminary determinations in the antidumping duty investigations of Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

The deadline for issuing the preliminary determinations in these investigations is now April 2, 2002.

On January 22, 2002, the Department postponed the deadline for issuing the preliminary determinations in these investigations by 30 days (i.e., until March 13, 2002). See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 3877 (January, 28, 2002). On March 4, 2002, Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, petitioners), requested an additional 20–day postponement of the preliminary determinations in these investigations, in accordance with section 351.205(b)(2) of the Department's regulations. Therefore, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended, and section 351.205(e) of the regulations, and absent any compelling reason to deny the request, the Department is postponing the deadline for issuing these determinations (i.e., until April 2, 2002).

March 7, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6291 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–806)

Silicon Metal From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review.

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482- 5831 or Thomas Futtner at (202) 482–3814, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

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 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 time limit for the preliminary determination to a maximum of 365 days and 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 August 30, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on Silicon Metal from Brazil, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 1, 2002.

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 July 31, 2002. See Decision Memorandum from Holly A. Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce 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.

March 7, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–6289 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–401–806)

Stainless Steel Wire Rod From Sweden: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On October 26, 2001, in response to a September 28, 2001, request made by Fagersta Stainless AB, a producer/exporter of stainless steel wire rod from Sweden, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2000 to August 31, 2001. Because Fagersta Stainless AB has withdrawn its request for review, the Department of Commerce is

rescinding this review in accordance with 19 CFR 351.213(d)(1).

DATES: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department ofCommerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202)482–1280.

SUPPLEMENTARY INFORMATION: 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 of Commerce's (''the Department's'') regulations refer to 19 CFR part 351 (2001).

Background

On September 15, 1998, the Department published an antidumping duty order onstainless steel wire rod from Sweden (63 FR 49329). On September 28, 2001, Fagersta Stainless AB (''Fagersta''), a producer/exporter of the subject merchandise, requested an administrative review of the antidumping duty order on stainless steel wire rod from Sweden covering the period of September 1, 2000, through August 31, 2000. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on October 26, 2001 (66 FR 54195). On February 13, 2002, Fagersta, the sole requester of this review, withdrew its request for review.

Rescission of Review

Pursuant to our regulations, the Department will rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' See 19 CFR 351.213(d)(1). This section further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. See 19 CFR 351.213(d)(1). Although the interested party's withdrawal of its request for review was not within the 90–day time limit, there were no objections to the withdrawal from the petitioner, and the Department has no compelling reason to deny the request. (See February 25, 2002, Memorandum to the File.) As a result, we are rescinding this administrative review. The Department will issue appropriate assessment instructions to the Customs Service.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

March 7, 2002

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–6292 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–816]

Inquiry Into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping and Countervailing Duty Laws: Notice of Hearing

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of hearing.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Becky Erkul or Jim Nunno, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1277 or (202) 482–0783.

SUMMARY: The Department of Commerce is holding a public hearing to solicit views on the issue of the status of the Russian Federation as a non-market economy country under the antidumping and countervailing duty laws. The hearing will be held at 9 a.m. on March 27, 2002, in Room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Hearing presentations should be limited to no more than ten minutes to allow for possible questions from the Chair and the panel. Additional time for oral presentations may be granted as time and the number of participants permit. Parties wishing to testify orally at the hearing must provide written notification of their intention, and indicate the amount of time they will need to make their presentation, no later than 5 p.m., March 22, 2002, to Faryar Shirzad, Assistant Secretary for Import Administration; Subject: Public Hearings on Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the Antidumping and Countervailing Duty Laws; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) if applicable, any request for an extension of the time limitation on the oral presentation. In addition, please send a copy of this notification via facsimile to Becky Erkul at (202) 482–2308.

Dated: March 11, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–6317 Filed 3–12–02; 3:56 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010813205–2043–02]

RIN 0648–XA74

NOAA Ocean Exploration Initiative; Correction

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Technical Amendment to the Notice from NOAA's Ocean Exploration Program for FY 2002; Announcement to Solicit Proposals.

SUMMARY: NOAA amends the notice regarding the NOAA Office of Ocean Exploration (OE) proposal solicitation published in the **Federal Register** on September 4, 2001. The amendment will modify the language regarding the number of reviews required for OE's independent peer mail review process. This action is being taken due to the receipt of an insufficient number of responses from pre-selected peer reviewers.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, NOAA Office of Ocean Exploration, Bldg.SSMC3, 1315 East-West Highway, Silver Spring, MD 20901, (301) 713–9444 ext. 155, *margot.bohan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NOAA Office of Ocean Exploration

published a notice on September 4, 2001, describing the Ocean Exploration Program and soliciting proposals in support of its mission (66 FR 46260). The program description, funding guidance, submission procedures, evaluation criteria, selection process, and background are in that notice and are not repeated here. The original notice's independent peer mail review procedure defined a requirement for receipt of 3 mail-in reviews before panel review. This requirement is beyond the agency's control and ability to attain within the time available to commence the 2002 field season. The Office hereby revises the mail-in review requirements (page 46262, column 3, section XII, first sentence) to read as follows: ''Proposals will be evaluated by an independent peer mail review, i.e., each proposal will be reviewed, by *at least two* qualified scientific and/or technical peers * * *''.

Applications under this solicitation will be subjected to both a mail review and a panel review.

Program authority: 33 U.S.C. 883d; (CFDA No. 11.460)—Special Oceanic and Atmospheric Projects.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–6250 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031102A]

North Pacific Fishery Management Council Public Meeting

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

ACTION: Notification of public meeting.

SUMMARY: NMFS and the NPFMC will hold a workshop March 25—26, 2002, to discuss effects of fishing on habitat, mitigation tools and fishery descriptions. The NPFMC will hold an essential fish habitat (EFH) committee meeting on March 27, 2002.

DATES: The workshop will be on Monday, March 25, 2002, from 1 p.m. to 5 p.m. and from 8 a.m. to 5 p.m. on Tuesday, March 26, 2002. The EFH committee will meet from 8 a.m. to 5 p.m. on Wednesday, March 27, 2002.

ADDRESSES: The workshop and committee meeting will be in Seattle, WA, in Building 9, at the National Oceanic and Atmospheric Administration, Western Regional Center, 7600 Sand Point Way, N.E.

Questions should be addressed to NMFS, Habitat Conservation Division, ATTN: Cindy Hartmann, 709 West 9th, Suite 801, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov; or Cathy Coon, NPFMC, (907) 271–2809, e-mail: Cathy.Coon@noaa.gov. To facilitate security clearance at the NOAA facility the public is requested to contact Cindy by March 22, 2002.

SUPPLEMENTARY INFORMATION:

Background

The focus of the workshop will be a discussion of the effects of fishing on EFH including the following: (1) A discussion of the criteria on what is a minimal and what is a temporary impact on EFH; (2) Review of the scientific studies on gear impacts pertinent to Alaska fisheries; (3) Discussion of a set of tools for mitigating adverse impacts and to what situations they apply; (4) Description of Alaska fisheries. The discussion of criteria for a minimal and temporary impact, review of scientific studies on gear impacts pertinent to Alaska fisheries and an initial discussion of mitigation tools and to what situations they apply is planned for Monday afternoon. On Tuesday, participants will break into four workgroups to revise fishery descriptions, discuss potential adverse effects of their specific fisheries and discuss mitigation tools and their application to their fisheries.

For further information about the EFH supplemental environmental impact statement (SEIS), see the notice of intent to prepare an SEIS published in the Proposed Rules section of the **Federal Register** (66 FR 30396, June 6, 2001). For further information on the preliminary alternative approaches for the designation of EFH and habitat areas of particular concern (HAPC) see 67 FR 1325, January 10, 2002.

On March 27, 2002, the EFH Committee meets to: review fishery descriptions; discuss potential mitigation tools from each subgroup and any other group products; develop committee recommendations for the April NPFMC meeting; and plan for future EFH Committee tasks and meetings.

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare an SEIS for the EFH fishery management plan amendments. The function of the committee is to serve as a steering committee in facilitating input to NMFS on the SEIS for EFH submitted by the industry, conservation community, Council, and general public and the involvement of the NPFMC in the SEIS. The Committee will work to provide input as appropriate, and submit periodic updates to the Council on the environmental impact statement for EFH. Further information on the EFH Committee can be found on the NPFMC web site at: http://www.fakr.noaa.gov/npfmc/Committees/EFH/efh.htm.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

Dated: March 11, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6182 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030802A]

Endangered Species; Permits

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

ACTION: Receipt of an application for a research and enhancement permit (1368).

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received an application for a research/enhancement permit from Dr. John Hunter, of the NMFS Southwest Fisheries Science Center of the (SFSC).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 15, 2002.

ADDRESSES: Written comments on the new application should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10 (a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Mollusks

Endangered White Abalone (*Haliotis sorenseni*)

Application 1368

The applicant proposes to breed and reintroduce white abalone in southern California. The applicant wants to collect up to 50 white abalone per year for five years in order to breed, grow out and reintroduce the progeny to the wild. Wild abalone will be collected using ROVs and divers. The animals will be transported to the laboratory and induced to spawn using H2O2 or the thermal shock method. The progeny will be grown to 15–100mm before introduction. Precautions will be taken to avoid disease and inbreeding.

Dated: March 11, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6311 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012302D]

Marine Mammals; File No. 751–1614–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the Ocean Alliance/Whale Conservation Institute, 191 Weston Road, Lincoln, Massachusetts 01773 [Dr. Celine Godard, Principal Investigator] has been issued a permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research.

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On June 8, 2001, notice was published in the **Federal Register** (66 FR 30885) that a request for a scientific research permit to take 13 species of odontocete whale and eight species of baleen whale for purposes of scientific research had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: March 11, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–6310 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030102D]

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2002 Bank-specific Harvest Guidelines

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

ACTION: Notification of no harvest guideline for crustaceans.

SUMMARY: NMFS announces that annual harvest guidelines for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) will not be issued for the year 2002.

ADDRESSES: Copies of background material pertaining to this action, which is identical to the action taken in 2001, may be obtained from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2937.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region, 50 CFR 660.50(b)(2), NMFS is required to publish the harvest guidelines for lobster Permit Area 1 around the NWHI. Although the lobster stock is not overfished, the NWHI lobster fishery has been closed since 2000: (a) as a precautionary measure to prevent overfishing of the lobster resources; (b) in compliance with an order of the U.S. District Court for the District of Hawaii to keep the crustacean fisheries closed until an environmental impact statement and a biological opinion have been prepared for the crustacean fisheries in the western Pacific region; and (c) consistent with Executive Orders 13178 and 13196, issued in December 2000 and January 2001, respectively, that appear to close indefinitely the NWHI crustacean fishery.

NMFS announces that it will not be publishing any harvest guideline for this fishery for the year 2002 and no harvest of NWHI lobster resources will be allowed. NMFS intends to conduct biological research on the status of NWHI lobster resources and to examine the resulting data for indications as to the appropriate direction for future fishery management actions.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 7, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–6183 Filed 3–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability Missile Defense Agency Ground-Based Midcourse Defense Validation Of Operational Concept Environmental Assessment

AGENCY: Missile Defense Agency

ACTION: Notice of availability

SUMMARY: The Missile Defense Agency (MDA) (formerly the Ballistic Missile Defense Organization) announces the availability of the Ground-Based Midcourse Defense (GMD) Validation of Operational Concept (VOC) Environmental Assessment (EA). The EA assesses the potential impacts of construction and test activities at GMD VOC test sites. The proposed action includes construction and operational testing of six ground-based interceptor (GBI) silos and support facilities, In-Flight Interceptor Communication System Data Terminals (IDTs), and Defense Satellite Communication System (DSCS) earth terminals in central Alaska; an IDT and DSCS earth terminal at Eareckson Air Station (AS), Alaska; construction of a missile transfer facility at Eielson Air Force Base (AFB), Alaska; use of the existing COBRA DANE Radar, with upgraded hardware and software and interior modifications, at Eareckson AS; interior modifications and hardware and software upgrades to the Early Warning Radar at Beale AFB, California; and Battle Management, Command and Control [BMC2] nodes at one or more of Peterson AFB, Cheyenne Mountain Complex and Shriever AFB in Colorado, Eareckson AS, Alaska, Beale AFB California, and contractor facilities in Alabama and California.

Fort Greely, Alaska was considered as the preferred alternative for the six GBI silos and support facilities and associated BMC3 including one IDT, one DSCS earth terminal, a BMC2 execution node and installation of terrestrial fiber optic cable. Clear Air Force Station, Alaska is being considered as an alternative location to Fort Greely, Alaska as the GBI silo and support facilities location.

The no-action alternative was also considered. Under the no-action alternative, MDA would not proceed with construction and testing to support validation of the GMD operational concept through ground-based testing. Selection of the no-action alternative would not allow the operationally realistic testing needed to further develop the GMD element of the Midcourse Defense Segment.

Comments: Public comments on the EA must be received by April 13, 2002. Written comments or a request for a copy of the EA should be directed to: U.S. Army Space and Missile Defense Command, ATTN: Mr. David Hasley, SMDC–EN–V, P.O. Box 1500, Huntsville, AL 35807–3801.

As the proposed action includes multiple locations, some of which are under the administrative control of the United States Army and some of which are under the administrative control of the United States Air Force, the MDA has used both Army Regulation 200–2 and Air Force Instruction 32–7061 in preparing the EA and Finding of No Significant Impact (FNSI). An unsigned FNSI will be distributed with the final EA. The FNSI will be signed after a 30-day public review period, and the proposed action could be implemented unless the MDA determines that information presented during the 30-day public review period reveals an unassessed potential for significant impacts on the environment. Interested parties can also review the unsigned FNSI, EA, and referenced NMD Deployment EIS on the internet at: *www.acq.osd.mil/bmdo/bmdolink/html/newrel.html#envir.ANC* or at the following locations:

University of Alaska, Anchorage
Consortium Library
3211 Providence Drive
Anchorage, AK 99508

Alaska Resources Library & Information Services
3150 C Street, Suite 100
Anchorage, AK 99503

Delta Junction Library
2288 Deborah Street
Delta Junction, AK 99737

Anderson School Library
1st Avenue
Anderson, AK 99744

Alaska State Library 344 W. 3rd. Avenue, Suite 125
Anchorage, AK 99501

Fairbanks North Star Borough
Public Library
Noel Wien Library
1215 Cowles Street
Fairbanks, AK 99701–4313

University of Alaska, Fairbanks
Elmer E. Rasmuson Library
PO Box 756800
Fairbanks, AK 99775–6800

Barbo Branch Library
10321 Live Oak Blvd.
Live Oak, CA 95953

Beale Air Force Base
Military Library
Marysville, CA 95903

Sutter County Library
750 Forbes Avenue
Yuba City, CA 95991

Yuba City Library
303 2nd Street
Marysville, CA 95901

Yuba College Library
Yuba College
Marysville, CA 95901

Falmouth Public Library Reference Section
123 Katherine Lee Bates Rd
Falmouth, MA 02540

Mashpee Public Library
Steeple Street,
Mashpee Common
Mashpee, MA 02649

Sandwich Public Library
142 Main Street
Sandwich, MA 02563

U.S. Coast Guard Library
Building 502
Otis ANGB, MA 02542

Cape Cod Community College Library
2240 Iyanough Rd.
West Barnstable, MA 02668–1599

Defense Technical Information Center
8725 John J. Kingman Road, Suite 0944
Ft. Belvoir, VA 22060–6218

Dated: March 12, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–6429 Filed 3–13–02; 1:41 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Sources and Collection Management Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at McDill AFB. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5, 2002.

ADDRESSES: McDill Air Force Base, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6276 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Prediction and Confirmation Tools Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet at Barksdale Air Force Base, Eglin Air Force Base, and Hurlburt Field. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 5–7, 2002.

ADDRESSES: Barksdale AFB, LA, Eglin AFB, FL, and Hurlburt Field, FL.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6277 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Operational Architecture Panel of the Predictive Battlespace Awareness to Improve Military Effectiveness Study will meet Langley Air Force Base. The purpose of this meeting is to allow the panel of this CSAF-directed study to continue the ''data gathering'' phase of the ongoing study efforts. The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (10) and (4) thereof.

DATES: March 7–8, 2002.

ADDRESSES: Langley Air Force Base, VA.

FOR FURTHER INFORMATION CONTACT: HQ USAF Scientific Advisory Board Secretariat, (703) 697–8404.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6278 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System; Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System. The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: 28 March 2002.

ADDRESSES: NSS, Skyline 3, Suite 500, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–1924.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–6221 Filed 3–14–02; 8:45 am]

BILLING CODE 5001–05–P

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendments to the Administrative Manual—Rules of Practice and Procedure Concerning Fees Associated With Responses to the Freedom of Information Act Requests

AGENCY: Delaware River Basin Commission.

SUMMARY: The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the agency's *Administrative Manual—Rules of Practice and Procedure* updating the fee schedule associated with Commission responses to Freedom of Information Act (FOIA) requests. The current schedule of fees was promulgated in 1975 and has not been updated since. Over the past quarter of a century, computer technologies have introduced new methods of recording and reproducing information that were not contemplated by the 1975 regulations, and administrative costs have increased. The proposed fee structure reflects current technology and costs. The current fees, at Section 2.8.10 of the *Administrative Manual—Rules of Practice and Procedure,* 18 CFR 401.110, and proposed amendments may be viewed on the Commission's Web site at *http://www.drbc.net.*

DATES: The public hearing will be held on Friday, May 31, 2002, during the Commission's regular business meeting, which will begin at 1:00 p.m. The meeting on May 31 must end by 3:00 p.m., but if necessary, the hearing will continue at the Commission's next scheduled business meeting until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609–883–9500 ext. 203. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated.

ADDRESSES: The public hearing will be held at Grey Towers National Historic Landmark, 151 Grey Towers Drive, Milford, PA. Directions will be posted on the Commission's Web site at *http://www.drbc.net* by April 1, 2002. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: Please contact Pamela Bush at 609–883–9500 ext. 203 with questions about the proposed amendments or the rulemaking process. Notice also is posted on the Commission's Web site, at *http://www.drbc.net.*

Dated: March 7, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–5958 Filed 3–14–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.234Q]

Projects With Industry; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Projects With Industry (PWI) program creates and expands job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process. PWI projects identify competitive job and career opportunities and the skills needed to perform those jobs, create practical settings for job readiness and training programs, and provide job placements and career advancement services.

Eligible Applicants: Employers, nonprofit agencies or organizations, designated State units, labor unions, community rehabilitation program providers, trade associations, Indian tribes, tribal organizations, and other agencies or organizations with the capacity to create and expand job and career opportunities for individuals with disabilities.

In order to ensure an equitable distribution of funds among the States as required by statute, grant awards will be made only to organizations that provide job and career opportunities for individuals with disabilities within the State in which the organization is located. Only organizations that have the ability to directly receive the grant and directly carry out the project are eligible to apply.

Only applicants that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program may apply.

SUPPLEMENTARY INFORMATION: Funds under this competition will be used to support projects in FY 2002. The Assistant Secretary may consider funding approved applications submitted in FY 2002 to support projects in future years.

The Business Leadership Network (BLN), staffed by the U.S. Department of Labor, works to promote best practices in rehabilitation and to enhance opportunities for workers who are disabled. The BLN currently has programs in 30 States, the District of Columbia, and Puerto Rico. These programs operate independently of each other and focus on meeting the specific needs of the business community and State Government. Through BLNs, participating employers, in partnership with State Governor's Committee representatives and other community services professionals, identify specific hiring requirements of employers so that referral and placement services can be customized to meet those employers' needs. Applicants applying under the PWI program are encouraged to collaborate with their local BLN, if one has been established in the State, in order to expand services and employment opportunities to project participants. We believe that strong working relationships with local BLNs will expand the employer network available to projects and, as a result, increase employment opportunities for individuals with disabilities.

Applications Available: March 15, 2002.

Deadline for Transmittal of Applications: May 31, 2002.

Deadline for Intergovernmental Review: July 30, 2002.

Estimated Available Funds: $17,478,135.

Estimated Range of Awards: $175,000-$250,000.

Estimated Average Size of Awards: $221,200.

Estimated Number of Awards: 79.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99; and (b) The regulations for this program in 34 CFR part 379.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1

Projects should demonstrate effective collaboration with the ''One-Stop''

service delivery system established under title I of the Workforce Investment Act of 1998, as amended (WIA), to assist individuals with disabilities to secure job skills training and employment opportunities in the competitive labor market. Proposed PWI service delivery models should promote the delivery of services to individuals with disabilities through local ''One-Stop'' centers. Proposed PWI service delivery models should investigate replicable innovative approaches to effective collaboration with the ''One-Stop'' service delivery system in placing individuals with disabilities into competitive employment. Applicants who wish to address this invitational priority may get further information about the ''One-Stop'' service delivery system by calling the Department of Labor (DOL) at (202) 693–2700 or visiting the DOL web site at: *www.dol.gov/dol/allcfr/Title_20/Part_662/toc.htm*

Invitational Priority 2

Projects should demonstrate the use of alternative work settings, such as flexiplace or telecommuting, to assist individuals with disabilities, especially individuals with significant disabilities, to secure job skills training and employment opportunities in the competitive labor market. Projects should investigate replicable innovative approaches in the use of alternative work settings. Projects also should demonstrate how these alternatives may increase the number of individuals with disabilities placed into competitive employment.

Invitational Priority 3

Projects should facilitate the school-to-work transition of students with disabilities. Projects should focus on placing youth with disabilities in employment with clearly defined career-path or career-advancement opportunities, or both. Projects also should investigate replicable innovative approaches that can be used to assist students in transition from school-to-work in obtaining competitive employment.

Invitational Priority 4

Projects should demonstrate how literacy services can assist PWI consumers with low literacy levels to obtain higher earnings in competitive employment. Proposed PWI service delivery models should investigate replicable innovative approaches that can be used to assist individuals to obtain higher quality jobs (e.g., jobs with higher wages and health insurance benefits). Projects should focus on enhancing collaboration between local Adult Education and Family Literacy (AEFL) programs, the primary resource for providing adult basic education (ABE) services, and Vocational Rehabilitation programs. This collaboration should include the provision of training, experience, or appropriate reasonable accommodations to AEFL or ABE programs to assist them in serving individuals with disabilities, particularly individuals with significant disabilities, and working cooperatively to share in the cost of training and placement.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the invitational priorities a competitive or absolute preference over other applications.

Competitive Preference Priority

We give preference to applications that meet the competitive preference priority in the notice of final competitive preference for this program, published in the **Federal Register** on November 22, 2000 (65 FR 70408). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that is otherwise eligible for funding under this program. The maximum score under the selection criteria for this program is 100 points; however, we will also use the following competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under this program. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA No. 84.234Q.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Kerrie Brown, Mary Jane Kane, Sonja Turner, or Lois Vaughan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3329, Switzer Building, Washington, DC 20202. Telephone: (202) 401–9707 for Kerrie Brown; (202) 205–8484 for Mary Jane Kane; (202) 205–9396 for Sonja Turner; and (202) 205–8749 for Lois Vaughan. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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Program Authority: 29 U.S.C. 795 *et seq.*

Dated: March 11, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–6214 Filed 3–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Change in notice of meeting time.

SUMMARY: Due to a change in meeting time the President's Board of Advisors on Historically Black Colleges and Universities will now meet on Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Beverly Ward at 202–502–7900 by no later than Monday, March 11, 2002.

DATE AND TIME: Tuesday, March 19, 2002 from 5:30 p.m. to 7:30 p.m. and Wednesday, March 20, 2002 from 8 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Madison Hotel, 15 & M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Ward, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 7C103, Washington, DC 20202. Telephone: (202) 401–1311.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 13256 of February 12, 2002. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on the status and future of federal agency support for Historically Black Colleges and Universities. Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K Street, NW., Suite 8099, Washington, DC 20006, from the hours of 8:30 a.m. to 5 p.m.

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Authority: 5 U.S.C. 5701–5707.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 02–6222 Filed 3–14–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–96–000]

Columbia Gas Transmission Corporation; Notice of Application

March 8, 2002.

Take notice that on February, 27, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parway, Fairfax, Virginia 22030–0146, filed in Docket No. CP02–96–000 pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by sale to Hydrocarbon Generation, Incorporated (Hydrocarbon) natural gas facilities, known as the Sheldon System, located in Wyoming County, New York, as well as the service provided through such facilities. In addition, Columbia requests that the Commission find the abandoned facilities to be gathering and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to 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).

Columbia states that on February 20, 2002, Columbia and Hydrocarbon signed a Purchase and Sale Agreement, which provides for the sale of the Sheldon System consisting of 15 miles of pipelines ranging in diameter from 4-inch to 10-inch and appurtenances. The Sheldon System was part of Columbia's former Project Penny facilities, which were developed in the mid 1970's and 1980's for the purpose of accessing production volumes to satisfy the supply needs of Columbia's customers. In Docket No. CP98–569–000, Columbia was given authorization to abandon by sale all but two parts of the Project Penny facilities, one being the Sheldon System and another which has not yet been sold. Columbia states that the Sheldon System is not connected to any part of Columbia's system. Columbia receives the volumes of local production from producers such as Hydrocarbon and the gas that is received is largely consumed by local markets. Any volumes that are not consumed are delivered to National Fuel for delivery to Columbia by displacement.

According to Columbia, the facilities will be sold for a negotiated amount of $50,000. Columbia states that it does not propose the abandonment of service to customers other than those currently served directly from the facilities. Once the facilities are acquired, Hydrocarbon intends to operate the facilities as a natural gas gatherer providing gathering and related services. According to Columbia, Hydrocarbon has agreed to assume any obligation Columbia may have to provide service to customers receiving service through the facilities, on terms and conditions acceptable to both Hydrocarbon and the customers. Therefore, Columbia states that it does not anticipate any material change to, or interruption in, the services currently being provided to customers through the facilities. Columbia states that there are no firm contracts or mainline tap consumers served from the facilities.

Any questions regarding the application should be directed to Fredric J. George, Senior Attorney, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030–0146 at (304) 357–2359.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

should, on or before March 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6245 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–97–000]

West Texas Gas Inc.; Notice of Application

March 11, 2002.

Take notice that on March 4, 2002, West Texas Gas, Inc. (WTG) filed in Docket No. CP02–97–000 an application, pursuant to Section 3 of the Natural Gas Act (NGA), Section 153, *et seq.,* of the Commission's Regulations, for a Section 3 authorization and the Presidential Permit in order to site, construct, operate, and maintain certain natural gas facilities, all as more fully described below. This filing may 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).

Specifically, WGT requests authorization to construct, operate, and maintain approximately 400 feet of 8-inch diameter pipeline (border crossing) at the International Boundary near Del Rio, Val Verde County, Texas for the delivery of up to 25,000 MMBtu per day of natural gas to Mexico. The border crossing, situated at the center of the Rio Grande River, will connect on the Mexico side with the pipeline facilities of Gas Natural Industrial, S.A de C. V. (GNI) and, on the U.S. side, with approximately nine miles of 8-inch diameter pipeline and related measurement and regulation equipment to be constructed, which will extend from WGT's existing Del Rio Lateral on its intrastate natural gas transmission system.

Any questions regarding the application should be directed to Richard D. Hatchett, Vice President, West Gas Texas, Inc., 211 North Colorado, Midland, Texas, or at (915) 682–4349.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 1, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Interventions, comments, and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6242 Filed 3–15–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Fact-Finding Investigation of Potential ManipulationDocket No. PA02–2–000 of Electric and Natural Gas Prices; Notice of Clarification of March 5, 2002 Information Request

March 11, 2002.

On March 5, 2002 (67 FR 11111, March 12, 2002), the Associate Director, Office of Markets, Tariffs and Rates, issued an information request in this proceeding directed to all jurisdictional sellers and all non-jurisdictional sellers in the West. In response to telephone inquiries received by Staff, the Associate Director clarifies that the March 5, 2002, information request does not apply to sales by qualifying facilities. The Associate Director reserves the right to issue information requests to qualifying facilities in the future in this proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6244 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–100–000, et al.]

Choctaw Gas Generation, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 8, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Choctaw Gas Generation, LLC

[Docket No. EG02–100–000]

Take notice that on March 5, 2002, Choctaw Gas Generation, LLC (Applicant), having its principal place of business at 1177 West Loop South, Suite 900, Houston, Texas 77027, 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.

Applicant states that it will own and operate a 700 MW generating facility near the city of Choctaw, Mississippi, consisting of two natural gas-fired combined-cycle combustion turbine generator units and a steam turbine generator, having a total nominal output of 700 MW. *Comment Date*: March 29, 2002.

2. Mirant Oregon, LLC

[Docket No. EG02–101–000]

Take notice that on March 6, 2002, Mirant Oregon, LLC (Mirant Oregon) 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.

Mirant Oregon proposes to own an indirect, 50 percent undivided interest in a 280 MW generating facility located in Morrow County, Oregon (Facility). All output from Mirant Oregon's interest in the Facility will be sold by Mirant Oregon exclusively at wholesale. All requisite state consent has been obtained and is reflected in Oregon Public Utility Commission Order Nos. 00–115 and 00–214 attached to the application. *Comment Date*: March 29, 2002.

3. System Energy Resources, Inc.

[Docket No. ER95–1042–006]

Take notice that on March 1, 2002, Entergy Services, Inc. (Entergy Services) as agent for System Energy Resources, Inc. (SERI), submitted for filing its response to the January 30, 2002 letter in the above-referenced docket number ER95–1042–005. *Comment Date*: March 21, 2002.

4. American Transmission Company LLC

[Docket Nos. ER01–1107–001]

Take notice that on March 1, 2002, American Transmission Company LLC (ATCLLC) tendered for filing with the Federal Energy Regulatory Commission's (Commission) January 30, 2002 letter Order an executed Revised Network Operating Agreement and an executed Second Revised Network Integration Service Agreement between ATCLLC and Dairyland Power Cooperative.

ATCLLC requests an effective date of February 13, 2002. *Comment Date*: March 21, 2002.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–438–001]

Take notice that on February 28, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing, pursuant to the Order of the Federal Energy Regulatory Commission (Commission) in Midwest Independent Transmission System Operator Inc., 98 FERC ¶ 61,051 (2002), Section 205 of the Federal Power Act (FPA), 16 USC 824d (2000) and Section 385.205 of the Commission's regulations, 18 CFR 385.205 (2001), revisions to Attachment M (Losses) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1.

The Midwest ISO has requested an effective date of March 1, 2002.

Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request. *Comment Date*: March 21, 2002.

6. Conectiv Bethlehem, Inc.

[Docket No. ER02–453–002]

Take notice that Conectiv Bethlehem, Inc., on March 4, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised page of CBI's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, to comply with a letter order issued by the Commission on January 31, 2002 in the above-captioned proceeding. *Comment Date*: March 25, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–489–001]

Take notice that on March 4, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing revised pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, pursuant to the Commission's Order in Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,087 (2002).

Pursuant to the requirements set forth in 18 CFR 385.2010 (2001), the Midwest ISO has served a copy of its compliance filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the

Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. Finally, the Midwest ISO has electronically posted its filing on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 25, 2002.

8. Michigan Electric Transmission Company

[Docket No. ER02–562–001]

Take notice that on March 4, 2002, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the February 1, 2002 order issued in this proceeding: Sub Second Revised Sheet No 140 and Substitute Original Sheet Nos. 140A and 140B.

The sheets are to be effective as of December 13, 2001. Copies of the filing were served upon those on the official service list in this proceeding.

Comment Date: March 25, 2002.

9. Southern Company Services, Inc.

[Docket No. ER02–1210–000]

Take notice that on March 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one (1) agreement for network integration transmission service between Southern Companies and Generation Energy Marketing, a department of SCS, as agent for Mississippi Power Company, under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5). Under this agreement, power will be delivered to the East Mississippi Electric Power Association's DENA Enterprise Delivery Point. This agreement is being filed in conjunction with a power sale by SCS, as agent for Mississippi Power Company, to the East Mississippi Electric Power Association under Southern Companies' Market-Based Rate Power Sales Tariff.

Comment Date: March 22, 2002.

10. Exelon Generation Company, LLC

[Docket No. ER02–1211–000]

Take notice that on March 1, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Duke Energy Trading & Marketing, LLC under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: March 22, 2002.

11. Carolina Power & Light Company

[Docket No. ER02–1212–000]

Take notice that on March 1, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between CP&L and Cogentrix Eastern Carolina, LLC (Cogentrix). The Interconnection Agreement provides for the interconnection of Cogentrix's generating facility with CP&L's transmission system.

CP&L respectfully requests that the Interconnection Agreement become effective on February 4, 2002. Copies of the filing were served upon the North Carolina Utilities Commission and the attached List of Recipients.

Comment Date: March 22, 2002.

12. Mirant Energy Trading, L.L.C.

[Docket No. ER02–1213–000]

Take notice that on March 1, 2002, Mirant Energy Trading, L.L.C. (MET) tendered for filing an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. MET requested expedited Commission consideration. MET requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or March 31, 2002. MET also filed its FERC Electric Tariff No. 1.

Comment Date: March 22, 2002.

13. Invenergy Energy Marketing LLC

[Docket No. ER02–1214–000]

Take notice that on March 1, 2002, Invenergy Energy Marketing LLC (Invenergy Marketing) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Rate Schedule FERC No. 1, Original Volume No. 1. Invenergy Marketing proposes that its Rate Schedule FERC No. 1, Original Volume No. 1 become effective upon issuance of a Commission order accepting the rate schedule for filing.

Invenergy Marketing intends to sell energy, capacity, replacement reserves, and certain ancillary services in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party. Invenergy Marketing also seeks authority to reassign transmission capacity and to resell Firm Transmission Rights.

Comment Date: March 22, 2002.

14. American Electric Power Service Corporation

[Docket No. ER02–1215–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), an Interim Qualified Scheduling Entity Service Agreement (Agreement).

AEP requests that the Agreement be made effective on March 3, 2002. Copies of the filing have been served on the party to the Agreement as well as on the Public Utility Commission of Texas.

Comment Date: March 22, 2002.

15. American Electric Power Service Corporation

[Docket No. ER02–1216–000]

Take notice that on March 1, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), seven Interim Qualified Scheduling Entity Service Agreements (Agreements).

AEP requests that the Agreements be made effective on March 3, 2002. Copies of the filing have been served on the parties to the Agreements as well as on the Public Utility Commission of Texas.

Comment Date: March 22, 2002.

16. Valero Refining Company—California

[Docket No. ER02–1217–000]

Take notice that on March 1, 2002, Valero Refining Company—California (Valero) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Valero rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Valero will construct and operate a natural gas fired, combined-cycle electric generation facility. The electric output of the facility will be used for onsite purposes, with periodic excess electric energy to be sold at wholesale. Valero is an indirect, wholly owned subsidiary of Valero Energy Corporation, a Delaware corporation.

Comment Date: March 22, 2002.

17. Duke Energy Corporation

[Docket No. ER02–1218–000]

Take notice that on March 1, 2002, Duke Energy Corporation filed a Third Revised Service Agreement No. 53 to Duke's FERC Electric Tariff Second Revised Volumn No. 4

Comment Date: March 22, 2002.

18. Bangor Hydro-Electric Company

[Docket No. ER02–1219–000]

Take notice that on March 1, 2002, Bangor Hydro-Electric Company (BHE) tendered for filing an Operation and Maintenance Agreement between BHE, Great Northern Paper, Inc. (GNP), and Great Lakes Power, Inc. (GLPI).

Copies of this filing were sent to GNP, GLPI, Maclaren Energy, Inc., the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: March 22, 2002.

19. Central Maine Power Company

[Docket No. ER02–1220–000]

Take notice that on March 4, 2002 Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Wight Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 143.

Comment Date: March 25, 2002.

20. Central Maine Power Company

[Docket No. ER02–1221–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Gardner Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 144.

Comment Date: March 25, 2002.

21. Central Maine Power Company

[Docket No. ER02–1222–000]

Take notice that on March 4, 2002, Central Maine Power Company (CMP) tendered for filing the Executed Interconnection Agreement by and between CMP and Stony Brook Hydro, designated as FERC Electric Tariff, Fifth Revised, Volume No. 3, Service Agreement No. 142.

Comment Date: March 25, 2002.

22. Central Maine Power Company

[Docket No. ER02–1223–000]

Take notice that on March 4, 2002 , Central Maine Power Company (CMP) tendered for filing unexecuted Local Network Operating Agreements (LNOAs) and unexecuted service agreements for Local Network Transmission Service (LNSA) entered into with four retail customers: Miller Hydro Group; Topsham Hydro Partners; United American Hydro, L.P.; and CHI Operations, Inc.—Mechanic Falls Hydro. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

Miller Hydro Group LNSA—Service Agreement No. 145
Miller Hydro Group LNOA—Service Agreement No. 146
United American Hydro LNSA—Service Agreement No. 147
United American Hydro LNOA—Service Agreement No. 148
CHI Operations, Inc. LNSA—Service Agreement No. 149
CHI Operations Inc. LNOA—Service Agreement No. 150
Topsham Hydro LNSA—Service Agreement No. 151
Topsham Hydro LNOA—Service Agreement No. 152.

Comment Date: March 25, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–1224–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

24. California Independent System Operator Corporation

[Docket No. ER02–1225–000]

Take notice that on March 4, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Scheduling Coordinator Agreement between the ISO and TransAlta Energy Marketing (U.S.) Inc., for acceptance by the Commission.

The ISO states that this filing has been served on TransAlta Energy Marketing (U.S.) Inc. and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective February 8, 2002.

Comment Date: March 25, 2002.

25. California Independent System Operator Corporation

[Docket No. ER02–1226–000]

Take notice that on March 4, 2002,the California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Delta Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Delta Energy Center, LLC and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective February 8, 2002.

Comment Date: March 25, 2002.

26. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1227–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Ameren Energy Marketing Company.

A copy of this filing was sent to Ameren Energy Marketing Company.

Comment Date: March 25, 2002.

27. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1228–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by CMS MS&T Michigan L.L.C.

A copy of this filing was sent to CMS MS&T Michigan L.L.C.

Comment Date: March 25, 2002.

28. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1229–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission)

Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Kansas City Power & Light Company.

A copy of this filing was sent to Kansas City Power & Light Company.

Comment Date: March 25, 2002.

29. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1230–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by NRG Power Marketing Inc.

A copy of this filing was sent to NRG Power Marketing Inc.

Comment Date: March 25, 2002.

30. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1231–000]

Take notice that on March 4, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Public Service Company of Colorado-Marketing.

A copy of this filing was sent to Public Service Company of Colorado-Marketing.

Comment Date: March 25, 2002.

31. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1232–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Southwestern Public Service Company-Marketing.

A copy of this filing was sent to Southwestern Public Service Company-Marketing.

Comment Date: March 25, 2002.

32. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1233–000]

Take notice that on March 4, 2002, pursuant to section 205 of the Federal Power Act and section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Service Agreements for the transmission service requested by Wolverine Power Supply Cooperative, Inc.

A copy of this filing was sent to Wolverine Power Supply Cooperative, Inc.

Comment Date: March 25, 2002.

33. Pinnacle West Capital Corporation

[Docket No.ER02–1234–000]

Take notice that on March 4, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a Service Agreement, Rate Schedule FERC No. 9 under PWCC's Rate Schedule FERC No. 1 for service to Central Arizona Water Conservation District (CAW).

A copy of this filing has been served on CAW.

Comment Date: March 25, 2002.

34. Central Illinois Light Company

[Docket No. ER02–1235–000]

Take notice that on March 4, 2002,Central Illinois Light Company (CILCO), tendered for filing with the Commission a Service Agreement with Corn Belt Energy Corporation under its Market Rate Power Sales Tariff.

CILCO requested an effective date of April 1, 2002. Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: March 25, 2002.

35. Illinois Power Company

[Docket No. ER02–1236–000]

Take notice that on March 4, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Termination, effective at 11:59 p.m., January 15, 2002, of the Firm Short-Term Point to Point Transmission Service Agreement and the Non-Firm Point to Point Transmission Service Agreement, entered into by Illinois Power and The Legacy Energy Group, LLC, each dated May 16, 2001 and effective on June 1, 2001, as Original Service Agreement Nos. 304 and 310, respectively, under FERC Electric Tariff Third Revised Volume 8 of Illinois Power.

Illinois Power states that the termination has been requested by the customer and agreed to by Illinois Power. Illinois Power further states that a copy of the Notice of Termination has been mailed to the customer.

Comment Date: March 25, 2002.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6241 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

March 11, 2002.

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.:* 12146–000.

c. *Date filed:* January 30, 2002, supplemented March 6, 2002.

d. *Applicant:* Paul C. Rizzo Associates, Inc.

e. *Name of Project:* St. Michael Pump Storage Project.

f. *Location:* In Adams Township, Cambria County, Pennsylvania. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Paul C. Rizzo, Paul C. Rizzo Associates, Inc., 105 Mall Boulevard, Monroeville, Pennsylvania 15146, (412) 856–9700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

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: Magalie R. Salas, 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–12146–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed rockfill dike impounding a proposed 100-acre upper reservoir, (2) a proposed upper concrete intake structure, (3) a proposed 125-foot-high, 1,000-foot-long earthen dam impounding a proposed 77-acre lower reservoir, (4) a proposed lower concrete intake structure, (5) three proposed eight-foot-diameter steel penstocks approximately 5,000 feet long, (6) a proposed powerhouse containing three pump turbines having a total installed capacity of 60 MW, (7) a proposed 1.5-mile-long, 66 kV transmission line, and (8) appurtenant facilities. The project would have an annual generation of 178.8 Gwh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above. 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.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6243 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. A mailing error

has occurred; therefore, this notice is being reissued and the deadline for filing is extended.

a. *Application Type:* Amendment of License.

b. *Project No.:* 4204–024.

c. *Date Filed:* August 8, 2001.

d. *Applicant:* City of Batesville (City).

e. *Name of Project:* White River Lock and Dam No. 1 Hydroelectric Project.

f. *Location:* The project is located on the White River, in the Town of Batesville, Independence County, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street NW, Suite 330, Washington, DC 20005. Telephone (202) 408–5400, or e-mail address: *dhclarke@GKRSE-law.com*.

i. *FERC Contact:* Any questions on this notice should be addressed to Janet Hutzel at (202) 208–2271, or e-mail address: *janet.hutzel@ferc.fed.us*.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

k. This notice was issued January 29, 2002, with a comment date of February 28, 2002, and is being reissued with an extended deadline for filing.

All documents (original and eight copies) should be filed with: Magalie R.Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–4204–024) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor 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.

Comments, motions to intervene, and protests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the ''e-Filing'' link.

l. *Description of Amendment:* The license, issued February 28, 1986, authorizes a transmission line route whereby the as yet unconstructed transmission line would interconnect with Arkansas Power and Light (now Entergy). The City of Batesville now intends to interconnect with a Southwestern Power Administration (SWPA) transmission line. The City thus proposes to (1) change the route for the unconstructed transmission line and (2) build a substation on an existing Southwestern Power Administration (SWPA) right-of-way.

The proposed 25 kV transmission line would extend along the north side of the White River westward 9.6 miles from Lock and Dam No. 1 to the proposed substation. Underground transmission line is proposed for the first 3000 ft from Lock and Dam No. 1, while the remaining line would use single pole structures.

The proposed substation would be located approximately two miles east of White River Lock and Dam No. 2 (Project No. 4660), on the north side of the White River. The 100 ft by 150 ft substation would step-up the voltage from 25 kV to 161 kV, and have a transformer rating of 17.5 kV.

SWPA is a cooperating agency in the processing of the license amendment.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

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.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (No. 4204–024) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the City of Batesville specified in item h, above.

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 representative listed in item h, above.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6246 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000,RT01–10–000, RT01–15–000, ER02–323–000,RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (RTO Cost Benefit Analysis Report); Notice of Technical Conference on Results of RTO Cost Benefit Report

March 8, 2002.

The Federal Energy Regulatory Commission (Commission) is planning to hold a technical conference at its Washington, DC, headquarters on March 25, 2002 to allow the public and all interested participants an opportunity to ask questions about the results of its RTO Cost Benefit Report. This technical conference is in additional to the regional teleconferences announced in our March 1, 2002 notice. The technical conference will be held from 10:00 am-2:00 pm EST in the Commission's Meeting Room. All previously scheduled regional teleconferences for industry and the public will still be held on March 18 and 19, 2002 .

Like the regional technical teleconferences, the March 25th technical conference is designed to assist participants in understanding the results of the RTO Cost Benefit Report and not to discuss the merits of the Commission's RTO policy. The Commission believes that this conference and the regional teleconferences will assist the participants in preparing comments on the report which are due April 9, 2002. Reply comments are still due April 23, 2002.

No telephone communication bridge will provided at this meeting. The technical conference will be transcribed

and the transcript will be placed in appropriate and related dockets. Copies of the transcripts will be available from Ace-Federal Reporters (800–336–6646 or 202–347–3700) at cost and will be available on the Commission's web site 10 days after receipt from Ace-Federal Reporters.

For further information, please contact either: William Meroney at 202–208–1069 or William.meroney@ferc.gov, Charles Whitmore at 202–208–1256 or Charles.whitmore@ferc.gov, Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6248 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P A

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000, RT01–2–000, RT01–10–000, RT01–15–000, ER02–323–000, RT01–34–000, RT01–35–000, RT01–67–000, RT01–74–000, RT01–75–000, RT01–77–000, RT01–85–000, RT01–86–000, RT01–87–000, RT01–88–000, RT01–94–000, RT01–95–000, RT01–98–000, RT01–99–000, RT01–100–000, RT01–101–000, EC01–146–000, ER01–3000–000, RT02–1–000, EL02–9–000, EC01–156–000, ER01–3154–000, and EL01–80–000]

Electricity Market Design and Structure (Cost Benefit Analysis Report); Instructions for Participating in the RTO Cost Benefit Report Teleconferences for Industry and the Public

March 8, 2002.

As described in its March 1, 2002 Notice of Regional Teleconferences and Due Dates for Comments and Reply Comments, the Commission's staff and ICF Consulting will conduct regional teleconferences with members of Industry and the Public on March 18 and 19, 2002. The purpose of the teleconferences is to discuss the results of the RTO Cost Benefit Report and assist interested persons in preparing comment on the report which are due on April 9, 2002. Reply comments are due April 23, 2002.

To participate in the teleconferences, all interested persons must call 1–888–593–9820, within 15 minutes of the scheduled time of the each teleconference. Please provide the operator with your name, the code word for the specific teleconference, and the contact name as listed below. In order to facilitate discussion, it will be more efficient if persons from one organization or group call in on one telephone line. The teleconferences will be transcribed and transcripts will be placed in the appropriate dockets.

Industry and Public Teleconferences

1. Monday, March 18—10 a.m. to 12 p.m. EST. Code Word: MIDWEST. Contact: Ed Meyers.
2. Monday, March 18—2 p.m. to 4 p.m. EST. Code Word: SOUTHEAST. Contact: Ed Meyers.
3. Tuesday, March 19—10 a.m. to 12 p.m. EST. Code Word: NORTHEAST. Contact: Ed Meyers.
4. Tuesday, March 19—2 p.m. to 4 p.m. EST. Code Word: WESTERN. Contact: Ed Meyers.

If you have questions about the teleconferences, please contact one of the persons below.

William Meroney at 202–208–1069 *William.meroney@ferc.gov.*

Charles Whitmore at 202–208–1256 *Charles.whitmore@ferc.gov.*

Federal Energy Regulatory Commission, 888 N. Capitol Street, NE., Washington DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6249 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 8, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may 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).

Docket No.	Date filed	Presenter or requester
1. CP01–176–000	03–05–02	Richard Gilda.
2. CP01–176–000	03–05–02	Barbara E. Brenner.
3. CP01–176–000	03–05–02	Michael Kaufman.
4. Project No. 2342	03–06–02	James H. Hulbert.
5. CP01–361–000	03–08–02	Yvonne Dettlaff, *et al.*
6. CP01–439–000	03–08–02	Annette Paynter.

Magalie R. Salas,

Secretary.

[FR Doc. 02–6247 Filed 3–14–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FR–FRL–6627–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001, (66 FR 27647).

Draft EISs

ERP No. D–BLM–L65391–OR Rating EC2, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR.

Summary: EPA expressed environmental concerns about lack of information on the management of noxious weeds, impacts to water and air quality and roads, and protection of tribal interests. EPA requested that these issues be fully addressed in the final EIS.

Final EISs

ERP No. F–AFS–G65076–OK, Quachita National Forest, An Amendment to the Land and Resource Management Plan, Implementation, Glover River, McCurtain County, OK.

Summary: EPA has no objection to the selection of the preferred alternative, Alternative C.

ERP No. F–AFS–J65349–UT, Griffin Springs Resource Management Project, Implementation, Commercial Timber Harvesting, Aspen Regeneration, Management Ignited Prescribed Fire and Road Work, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA continues to express environmental concerns that there was no scientific evidence presented for the use of thinning to prevent a spruce beetle epidemic and regarding the attempt to segregate travel management analysis and decisions from site-specific project decisions.

ERP No. F–NRC–J00031–UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT.

Summary: EPA continues to have environmental concerns with the emergency response procedures and the characterization of Clean Water Act Requirements. EPA requested that these concerns be addressed in the Record of Decision.

ERP No. F–USN–K11033–CA, El Toro Marine Corps Air Station Disposal and Reuse, Recommendation and Approval of an Airport Layout Plan for Civilian Airport, Funding, NPDES Permit, Orange County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–K11105–CA, Point Molate Property Naval Fuel Depot (NFD) for the Disposal and Reuse, Implementation, Fleet and Industrial Supply Center, City of Richmond, Contra Costa County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FC–NRC–A00164–00, Generic—License Renewal of Nuclear Power Plants, Supplement 5, Turkey Point Units 3 and 4 (NUREG–1437), Operating License Renewal, Biscayne Bay, Miami-Dade County, FL.

Summary: EPA continues to have environmental concerns about the project, Specifically noise impacts to nearby Biscayne National Park merit further discussion as the project progresses.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6293 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6627–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed March 4, 2002 Through March 8, 2002,

Pursuant to 40 CFR 1506.9.

EIS No. 020087, Draft EIS, FHW, CT, Groton-New London Airport, Construction of Runway 5–23 Safety Area, Permits and Approvals, Town of Groton, New London County, CT, *Comment Period Ends:* May 10, 2002, *Contact:* John Silva (781) 238–7502.

EIS No. 020088, Draft EIS, AFS, PA, Lewis Run Project, Management Strategies for Road Construction and Reconstruction, Timber Management Activities, Soil and Water Improvements, Wildlife Habitat Enhancements and Recreation Improvements, Implementation, Lewis Run Project Area, Bradford Ranger District, Allegheny National Forest, McKean County, PA, *Comment Period Ends:* April 29, 2002, *Contact:* Andrea Hille, Ext. 129 (814) 362–4613.

EIS No. 020089, Draft EIS, FHW, WV, KY, Appalachian Corridor I–66 Highway Construction, U.S. 23/119 south of Pikeville, KY eastward to the King Coal Highway southeast of Matewan, Funding and U.S. Army COE Section 404 Permits Issuance, Pike County, KY and Mingo County, WV, *Comment Period Ends:* April 29, 2002, *Contact:* Jose Sepuveda (502) 223–6764.

EIS No. 020090, Draft EIS, AFS, Mt, Bitterroot National Forest Noxious Weed Treatment Project, Ground and Aerial Herbicides Application, Mechanical, Biological and Cultural Weed Treatment and Public Awareness Measures, Implementation, Stevensville Ranger District, Bitterroot National Forest, Ravalli County, MT, *Comment Period Ends:* April 30, 2002, *Contact:* Ken Hotchkiss (406) 777–5461.

EIS No. 020091, Final EIS, COE, CA, Pine Flat Dam Fish and Wildlife Habitat Restoration Investigation, Restoration and Protection of the Ecosystem for Fish and Wildlife Resources, King River Basin, Fresno County, CA, *Wait Period Ends:* April 15, 2002, *Contact:* John Bellinger (202) 761–4831.

EIS No. 020092, Draft Supplement, FAA, FL, Fort Lauderdale-Hollywood International Airport, New Information and Changes to the Aviation Activity Forecasts Presented, Proposed Expansion of Runway 9R–2FL and other Associated Improvements, Funding, Broward County, FL, *Comment Period Ends:* April 29, 2002, *Contact:* Virginia Lee (407) 812–6331 ext 29.

EIS No. 020093, Draft EIS, FHW, NV, Boulder City/U.S. 93 Corridor Study, Study Limits are between a western boundary on U.S. 95 in the City of Henderson, where the Present Freeway ends, and an Eastern boundary on U.S. 93 approximately 4.7 miles east of downtown Boulder City, NPDES, Right-of-Way and COE Section 404 Permits, Clark County, NV, *Comment Period Ends:* May 10, 2002, *Contact:* Daryle James (775) 888–7013.

EIS No. 020094, Final EIS, FHW, IL, U.S. 34/FAP 313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and U.S. Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL, *Wait Period Ends:* May 13, 2002, *Contact:* Norman R. Stoner (217) 492–4600.

EIS No. 020095, Final EIS, AFS, NH, Loon Mountain Ski Resort Development and Expansion Project, Implementation,

Special Use Permit and NPDES Permit Issuance, White Mountain National Forest, Pemgewasset Ranger District, Grafton County, NH, *Wait Period Ends:* April 15, 2002, *Contact:* Jay Strand, Ext. 522 (802) 767–4261.

EIS No. 020096, Final EIS, AFS, ID, Curfew National Grassland Land and Resource Management Plan, Implemetation, Caribou-Targhee National Forest, Oneida County, ID, *Wait Period Ends:* April 15, 2002, *Contact:* Jerry B. Reese (208) 557–5761.

EIS No. 020097, Final EIS, FHW, MI, MI–59 Proposed Right-of-Way Preservation Project, Funding for Right-of-Way Perservation Project, Funding for Right-of-Way Acquisition, I–96 to U.S. 23, Livingston County, MI, *Wait Period Ends:* April 29, 2002, *Contact:* James A. Kirschensteiner (517) 702–1835.

EIS No. 020098, Draft Supplement, COE, IL, WI, Upper Des Plaines River, Flood Damage Reduction at Site 37, Construction of a Concrete Floodwall along Des Plaines River, Milwaukee Avenue, Willow Road, and Palatine Road in Mt. Prospect, Cook County, IL, *Comment Period Ends:* April 29, 2002, *Contact:* Keith Ryder (312) 353–6400 ext. 2020.

EIS No. 020099, Final EIS, AFS, MT, WA, ID, Programmatic EIS—Kootena, Idaho Panhandle, and Lolo National Forests, Forest Plan Amendments for Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones, ID, WA and MT, *Wait Period Ends:* April 15, 2002, *Contact:* Rob Carlin (406) 882–4451.

Amended Notices

EIS No. 020074, Final EIS, FHW, AR, TX, US 71 Highway Improvement Project, between Texarkana, (US71) Arkansas and DeQueen, Funding, Right-of-Way Approval and COE Section 404 Permit, Little River, Miller and Sevier Counties, AR and Bowie County, TX, *Wait Period Ends:* April 15, 2002, *Contact:* Randal J. Looney (501) 324–6430.

Revision of FR Notice Published on 03/01/2002: CEQ Comment Period Ending 04/01/2002 has been extended to 04/15/2002. Also Correction to Contact Name and Telephone.

Dated: March 12, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–6294 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7159–4]

Office of Emergency and Remedial Response Availability of Superfund Annual Report to Congress; Progress Toward Implementing Superfund Fiscal Year 1998

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the Agency's Progress Toward Implementing Superfund: Fiscal Year 1998, which is required by section 301(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. The Report to Congress contains information on overall progress, and includes the following categories of information specifically required by section 301(h) of CERCLA: Feasibility studies, remedial and enforcement actions; an evaluation of newly developed and feasible permanent treatment technologies; progress in reducing the number of facilities subject to review under section 121(c) of CERCLA; and an estimate of resources needed by the Federal Government to complete CERCLA's implementation. The Report also includes information required by section 105(f) of CERCLA about the participation of minority firms in Superfund contracting; and the EPA Inspector General audit report required by section 301(h)(3) of CERCLA.

ADDRESSES: Published copies of the Report may be purchased by the public from the National Technical Information Service (NTIS) at 5285 Port Royal Road, Springfield, VA, 22161 (call 703–487–4650). Electronic copies of the Report may be downloaded from EPA's Web site, *http://www.epa.gov/superfnd/oerr/accomp/index.htm#reptocong.*

FOR FURTHER INFORMATION CONTACT: David Reynolds, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or 703–603–9026 or *reynolds.david@epa.gov.*

Dated: March 7, 2002.

Michael H. Shapiro,

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

[FR Doc. 02–6274 Filed 3–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 4, 2002.

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 current 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 March 14, 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0068.

Title: Application for Consent to Assign an Experimental Authorization.

Form Number: FCC 702.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 10.

Estimated Time per Response: 0.6 hr. (36 mins.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 6 hrs.

Total Annual Costs: $500.

Needs and Uses: In November 2001, the FCC revised and reinstated FCC Form 702. The Communications Act of 1934, as amended, and 47 CFR 5.59 of FCC Rules require applications for Experimental Radio Services to submit FCC Form 702 when the legal right to

control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Form 702's revisions were the following: (1) The expiration date was deleted; (2) Section 1 (Fee Portion) was deleted; (3) questions 2, 4, 7b, 7c, 9, 10, 13–19, and 12c–26 were removed; (4) the **FOR FCC USE ONLY** fields were removed; (5) assignor's and assignee's e-mail address fields were added; (6) a field for ''FCC Registration Number (FRN)'' was added; (7) the instructions pertaining Section I (Fee Portion) were removed; (8) the ''No. of Stations'' and ''Service'' columns were deleted (9) the item numbers were changed; (10) instructions referring to FCC Forms 159 and 160 were added; (11) an Internet URL for the FCC Registration Number (FRN) was added; (12) the Experimental Radio Service address was added; (13) the courier address changed.

OMB Control Number: 3060–0072.

Title: Airborne Mobile Radio Telephone License Application.

Form Number: FCC 409.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 260.

Estimated Time per Response: 5 mins. (0.083 hrs.).

Total Annual Burden: 22 hours.

Total Annual Cost: $13,000.

Needs and Uses: Individuals who intend to become subscribers to a common carrier service use FCC Form 409 to apply for, to modify, and/or to renew their license(s) giving them authority to operate an airborne mobile radio telephone. In recent years, the number of respondents has declined dramatically.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC 854 and FCC 854R.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Non-Profit Institutions; and state, local, or tribal government.

Number of Respondents: 9,000.

Estimated Time per Response: 30 Minutes.

Total Annual Burden: 6,750 hours.

Total Annual Costs: $182,000.

Needs and Uses: Owners of wire or radio communications towers with antenna structures use FCC Form 854 to register their structures within the United States, to notify the Commission when a structure has been built, to make changes to an existing registered structure, or to notify the Commission when a structure is dismantled. 47 CFR part 17 and sections 303(q) and 503(b)(5) of the Communications Act, as amended, authorize the FCC to require the painting and/or illumination of radio towers where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. The FCC uses FCC Form 854R to notify an owner that the Commission has registered the tower structure, its modification, or the change of ownership.

OMB Control Number: 3060–0707.

Title: Over-the-Air Reception Devices.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal government; Individuals or households.

Number of Respondents: 320.

Estimated Time per Response: 2 to 6 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,240 hours.

Total Annual Costs: $144,280.

Needs and Uses: The FCC uses petitions for waivers of Section 207 rules to determine whether the state, local, or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions of the use of over-the-air reception devices.

OMB Control Number: 3060–0669.

Title: Section 76.946, Advertising of Rates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,400.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 5,200 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR 76.946 of FCC Rules, cable operators that advertise for basic service and cable programming service tiers are required to advertise rates that include all costs and fees. Cable systems that cover multiple franchise areas, having differing franchise fees or other franchise costs, different channel line-ups, or different rate structures, may advertise a complete range of fees without specific identification of the rate for each individual area. In such circumstances, the operator may advertise a ''fee plus'' rate that indicates the core rate plus the range of possible additions, depending upon the particular location of the subscriber. This requirement is to make consumers aware of all fees associated with basic service and cable programming service tier rates.

OMB Control Number: 3060–0795.

Title: Associate WTB Call Signs and Antenna Registration Numbers with Licensee's FRN.

Form Number: FCC 606.

Type of Review: Revision to a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, local, or tribal government.

Number of Respondents: 429,000.

Estimated Time per Response: 1 hour.

Total Annual Burden: 429,000 hours.

Total Annual Costs: None.

Needs and Uses: Licensees use FCC Form 606 to associate their FCC Registration Number (FRN) with their Wireless Telecommunications Bureau call signs and antenna structure registration numbers. In addition, those antenna structure tenant licensees subject to the Anti-Drug Abuse Act of 1998 must use Form 606 to register their antenna structures. The form must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration and prior to applying for an initial Wireless Telecommunications license or antenna structure registration. The Commission is revising FCC Form 606 and its instructions to remove information about the TIN registration requirements (including the title of the form) due to the implementation of the Commission Registration System (CORES) and to facilitate compliance with the Debt Collection Improvement Act of 1996 (DCIA).

OMB Control Number: 3060–0862.

Title: Handling Confidential Information, GC Docket No. 96–55.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 600.

Estimated Time per Response: 1 to 3 hours.

Total Annual Burden: 800 hours.

Total Annual Costs: $23,000.

Needs and Uses: On August 4, 1998, the FCC released *a Report and Order, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission (R&O)* in GC Docket No. 96–55. The R&O included a Model Protective Order (MPO) that is used, when appropriate, to grant limited access to information that the Commission determines should not be routinely available for public inspection. The party granted access to the confidential information materials must keep a written record of all copies made and provide this record to the submitter of the confidential materials on request. The approach was adopted to facilitate the use of confidential materials under an MPO, instead of restricting access to materials. In addition, the FCC amended 47 CFR 0.459(b) to set forth the type of information that should be included when a party submits information to the Commission for which it seeks confidential treatment. This listing of the types of information to be submitted was adopted to provide guidance to the public for confidentiality requests.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6313 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 7, 2002.

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: Persons wishing to comment on this information collection should submit comments May 14, 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 Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0243.

Title: Section 74.551, Equipment Changes.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 1 hour.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor changes that can be made without prior Commission authorization upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with FCC rules and regulations.

OMB Control No.: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 12.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 21 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 74.537 requires licensees of an aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data is used by FCC staff to insure that the temporary operation of a STL or intercity relay station will not cause interference to existing stations.

OMB Control No.: 3060–0290.

Title: Section 90.517, Report of Operation.

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: 100.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 200 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 90.517 provides developmental authorizations that are usually employed licensees who wish to test and develop new use of radiocommunications facilities. Each such developmental licensee must report upon termination of development, or application for license renewal, specific information evaluating the usefulness of previous or desired continued operation of such a system. Commission personnel use the data to evaluate the need for renewal of the applicant's authorization. This information is also used by policy-making personnel to decide the desirability of instituting rulemaking proceedings involving new technologies or new uses of the radio spectrum.

OMB Control No.: 3060–0434.

Title: Section 90.207(e)(6), Stolen Vehicle Recovery System Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 80 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Applications for base stations operating on a particular frequency shall require coordination

with the Federal Government. Applicants shall perform an analysis for each base station located with 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set out in rule section 90.20(e)(6).

OMB Control No.: 3060–0537.

Title: Section 13.217, Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 15.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 15 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Recordkeeping requirement.

Needs and Uses: Each COLEM recovering fees from examinees must maintain records of expenses and revenues, frequency of examinations administered, and examination pass rates. Records must cover the period from January 1 to December 31 of the preceding year and must be submitted as directed by the Commission. Each COLEM must retain records for 1 year and the records must be made available to the FCC upon request.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6314 Filed 3–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission is seeking comments from the shipping public on current laws, rules, and policies of the Government of the People's Republic of China that appear to have an adverse impact on U.S. shipping, and which may merit Commission attention under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988. The Commission is seeking information on the impact of new Chinese legislation on U.S. oceanborne trade, as well as the effects of that legislation on a number of existing Chinese practices and restrictions. Interested parties, including shippers, transportation intermediaries, vessel operators and others in the shipping industry, are invited to comment.

DATES: Comments due on or before June 13, 2002.

ADDRESSES: Send comments (original and 20 copies) to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5725.

FOR FURTHER INFORMATION, CONTACT: David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

This proceeding was initiated on August 12, 1998, to gather information regarding certain apparently restrictive laws, rules and regulations of the People's Republic of China (''PRC'' or ''China'') in order to determine if further Commission action under section 19 of the Merchant Marine Act, 1920 or the Foreign Shipping Practices Act of 1988 was warranted.[1] In its effort to continue to monitor the issues identified in this proceeding, the Commission, by this Notice of Inquiry is inviting affected parties to comment on the effects of recent changes in Chinese law.

The Commission has learned that the PRC recently issued a new law, ''Regulations of the PRC on the International Maritime Transportation,'' which became effective January 1, 2002,[2] and is expected very soon to promulgate implementing regulations addressing requirements for operators in international shipping generally. It appears that this new law and regulations may significantly affect the Commission's review of the potentially restrictive practices that existed prior to January 1, 2002. Therefore, through this Notice of Inquiry, and Information Demand Orders to be formulated as appropriate, the Commission seeks to ensure that it has the most accurate information with regard to these issues, so that it may in turn determine whether any current Chinese laws, rules, regulations or practices merit the initiation of a proceeding under section 19 of the Merchant Marine Act, 1920 (''Section 19''), or the Foreign Shipping Practices Act of 1988 (''FSPA'').

The Commission has received expressions of concern regarding the new Chinese legislation from several sources. These include the U.S. Government Executive Branch agencies with responsibilities affecting transportation policy and the conduct of negotiations with foreign governments as well as organizations representing shippers and ocean transportation intermediaries (''OTIs'') operating or seeking to provide shipping and shipping-related services in the U.S. trade with China.

A. Comments From Intermediaries

Concerns about the new Chinese shipping legislation were raised in a March 4, 2002 letter to Bruce J. Carlton, Acting Deputy Maritime Administrator, (with copies to the Commission) from the National Customs Brokers and Forwarders Association of America (''NCBFAA''), a trade association of ocean freight forwarders and non-vessel-operating common carriers (''NVOCCs''). NCBFAA states that ''U.S. intermediary and shipper interests will be directly and discriminatorily affected in an adverse manner.''

NCBFAA expresses specific concerns regarding the effects of Chinese law on the ability of its members to do business in China, including possibly conflicting and confusing requirements for direct ownership and control of NVOCC businesses and separate Chinese incorporation of foreign NVOCCs; the required maintenance of substantial funds in Chinese banks (rather than bonding or insurance); provisions governing the filing of rates, waiting periods for rate changes and the confidentiality of service contract rates (which may subject NVOCCs to requirements inconsistent with recently

[1] Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes and directs the Commission, inter alia, to ''make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country. * * *.''

The Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a, authorizes the Commission to investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime related services in a foreign country result in the existence of conditions that (1) adversely affect the operations of United States carriers in the United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States. If the Commission determines that such adverse conditions exist, it may take actions including limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

[2] The law is in the form of a Decree promulgated by the State Council of the PRC on December 5, 2001, signed by Prime Minister Zhu Rong Ji, which was published on December 21, 2001 and became effective on January 1, 2002.

amended U.S. laws); and the required use of vouchers prepared by Chinese tax authorities to invoice customers in China. NCBFAA identifies other matters as to which the new Chinese law is ambiguous, including whether the PRC intends to regulate rate levels and which entities will be subject to such rate regulation, and the mandatory or other status of rate-fixing conferences, discussion agreements, and capacity fixing agreements.

B. The Executive Agencies

On March 1, 2002, Maritime Administrator William G. Schubert wrote Chairman Harold J. Creel, Jr., expressing concern that the new law may restrict the operations not only of shipping companies, but also of shippers and OTIs. The Administrator further indicates that he has made these concerns known to the Chinese government, and that he has sought clarification on the law and the suspension of the effectiveness of any implementing regulations pending an opportunity to discuss the impact they may have with the Government of the PRC. The Maritime Administration has now announced that a U.S. government delegation will meet with PRC authorities in Beijing March 19–22, 2002 to obtain clarification about the meaning and impact of the Decree and any related implementing regulations.

Discussion and Request for Comments

It appears that U.S. OTIs, carriers and other providers of transportation services may face serious restrictions in obtaining the necessary licenses and permissions to do business in China. Indeed, it appears that wholly foreign-owned NVOCCs continue to be completely barred from engaging in a number of commercial activities, such as offering through transportation as an NVOCC. Other types of services may be permitted, but only if a foreign firm enters a joint venture with a Chinese entity.

The Commission is seeking to establish a clear record of what types of services U.S. NVOCCs or ocean freight forwarders, as those terms are defined by the Shipping Act of 1984, are now permitted to perform in China, what activities are prohibited, what requirements or prerequisites are imposed and what, if any, detrimental effects these requirements and prohibitions have on U.S. companies seeking to do business in China. It would be most useful for the Commission to receive comments describing, in detail, what types of ocean transportation intermediary activities are permitted under Chinese law in effect since January 1, 2002; what are prohibited; and in what situations joint ventures or similar arrangements are required.

The Commission, in order to determine how the new Chinese laws, rules, regulations, policies and/or practices will affect its consideration of whether further Commission action under section 19 or the Foreign Shipping Practices Act may be merited, is now collecting information on the following specific areas.

1. General

Individual companies' accounts of their efforts, successful or otherwise, to establish operations in China, and their dealings with Chinese authorities, would be especially useful. Any supporting documentation would be welcomed. The Commission also seeks to determine the effects on shippers of any such restrictions; that is, will the Chinese law in effect since January 1, 2002 as it is applicable to non-Chinese ocean transportation intermediaries and vessel operators, have any effects on shippers' ability to secure efficient and economical intermodal transportation services in U.S. oceanborne commerce? The Commission would welcome comments from any carrier, shipper, or other party on the details or effects of these issues.

2. Licensing Requirements

The Commission has concerns about apparent new Chinese requirements for the licensing of vessel operators, non-vessel operators, international ocean freight forwarders, shipping agency operators and ship management operators. It is not clear whether there continue to be nationality-or investment-based limitations on a company's ability to obtain certain types of transportation business licenses in China or what the criteria are by which licenses can be withheld or denied, and what, if any, appeal rights applicants enjoy. The Commission would welcome comments from any carrier, shipper, or other party that could shed light on these practices and their effects on U.S.-China oceanborne trade.

3. Branch Offices and Multimodal Transport Operations

It appears that after January 1, 2002, non-Chinese vessel operators continue to face a number of restrictions on operating and increasing the number of the branch offices they may operate in China. For the branch offices that do exist, it appears that there may continue to be serious restrictions on their operations, both in terms of the geographic area they may serve and the scope of services they may offer. A number of these may be the same as, or similar to, the restrictions faced by NVOCCs and freight forwarders in China. Apparently, there are certain narrowly prescribed business areas in which non-Chinese vessel operators are now allowed to operate; however, it remains unclear just what those are as a result of the new Chinese law that went into effect on January 1, 2002.

We are particularly concerned that there may continue to be restrictions that seriously limit vessel operators' and ocean transportation intermediaries' ability to offer multimodal transportation services in China. The Commission requires more information on such restrictions on vessel operators' and ocean transportation intermediaries' branch office or multimodal operations.

4. Rate Filing Requirements

It appears that the new Chinese legislation may require vessel operators and NVOCCs to file the rates they charge customers for carriage to and from China. Please describe the Chinese ministry or regulatory body with whom you must file these matters, how they are filed, and what types of review or analysis of the rates are made by the relevant authority. Describe whether there are any mechanisms to protect the confidentiality of service contract rates. Please also describe what action may be taken by the relevant authority upon a finding that the rate in question does not meet regulatory criteria.

5. Ocean Transportation Intermediaries

What conditions, requirements or restrictions are placed on OTI activities? [3] What types of licenses are required, and what restrictions are placed on their issuance? Who issues the necessary licenses and permissions, and what are the legal standards and procedures for granting them? What are the capital investment or deposit requirements to obtain such a license? Also, what commercial partners are available in China for joint ventures, and under what commercial conditions? If your company had already been doing OTI operations in China prior to January 1, 2002, please describe how your ability to do business in China has been affected, if at all, by the new Chinese law effective that day. Are there nationality or investment-based differences? If your company has sought a license to do these types of activities since January 1, 2002, please describe that process, including the criteria,

[3] *E.g.,* arranging inland or ocean transportation, preparing documentation and issuing bills of lading, consolidation, warehousing, cargo agency, and logistics services.

requirements and procedure for obtaining a license, whether there are any limitations on the type of license your company may obtain, and the Chinese government authority(ies) to whom applications must be submitted or from which approvals must be sought.

Now Therefore, It is ordered, that this Notice of Inquiry be published in the **Federal Register**.

By the Commission.*

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6305 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–04]

Anchor Shipping Co. v. Alianca Navegacao e Logistica LTDA.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Anchor Shipping Co. (''Complainant'') against Alianca Navegacao E Logistica Ltda. (''Alianca'').

Complainant contends that Alianca engaged in a number of activities in connection with a service contract which violated sections 10(a)(2), 10(a)(3), 10(b)(3) and 10(c)(1) of the Shipping Act of 1984 (''Shipping Act'') and injured the Complainant.

Complainant asks that Alianca be compelled to answer its charges and that the Commission issue an order commanding Alianca to cease and desist from these violations; to establish and put in force such practices the Commission determines to be lawful and reasonable; to pay Complainant $1,000,000 in reparations, with interest and attorney's fees, or such other sum as the Commission may determine to be proper as an award of reparation; and such other further order as the Commission determines proper. Complainant requests that hearing be held in Miami, FL.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 13, 2003, and the final decision of the Commission shall be issued by July 11, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–6218 Filed 3–14–02; 8:45 am]

BILLING CODE 6730–01–P

*Commissioner John A. Moran is not participating.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board –approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer–Mary M. West–Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer–Alexander T. Hunt–Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860)

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the implementation of the following report:

1. Report title: Intermittent Survey of Businesses
Agency form number: FR 1374
OMB control number: 7100–0302
Frequency: Biweekly and semiannually
Reporters: Purchasing managers, economists, or other knowledgeable individuals at business firms
Annual reporting hours: 125 hours
Estimated average hours per response: 15 minutes
Number of respondents: biweekly, 10; semiannually, 120
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. §§ 225a, 263, and 15 U.S.C. §1691b) and is given confidential treatment (5 U.S.C. 552(b)(6)).
Abstract: The proposed survey would be used by the Federal Reserve to gather information that would be specifically tailored to the Federal Reserve's policy and operational responsibilities. It is necessary to conduct the survey biweekly to keep up with the rapidly changing developments in the economy and to provide timely information to staff and Board members. Usually, the surveys would be conducted by staff economists telephoning purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The content of the questions and the businesses contacted would vary depending on changing developments in the economy.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. Report title: Notification of Foreign Branch Status
Agency form number: FR 2058
OMB control number: 7100–0069
Frequency: on occasion
Reporters: member banks, bank holding companies, Edge and agreement corporations
Annual reporting hours: 38 hours
Estimated average hours per response: 15 minutes
Number of respondents: 150
Small businesses are not affected.
General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.
Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an foreign branch. The notice requires information

on the location and extent of service provided by the branch and is filed within thirty days of the change in status. The Federal Reserve System needs the information to fulfill supervisory responsibilities specified in Regulation K, including the supervision of foreign branches of U.S. banking organizations. The information is needed in order to evaluate the organization's international exposure and to update the Federal Reserve's structure files on U.S. banking organizations.

Regulation K, ''International Banking Operations,'' sets forth the conditions under which a foreign branch may be established. According to the final rule on Regulation K, published in the **Federal Register** on October 26, 2001 (66 FR 54345), organizations must give thirty days prior notice to the Board before the establishment of branches in the first two foreign countries. For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System twelve days prior written notice. The FR K–1, ''International Application and Prior Notifications Under Subparts A and C of Regulation K'' (OMB No. 7100–0107) will be used for these notices. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

Current Actions: The revisions include adding the location of the reporting institution and the subsidiary and a few minor technical clarifications.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K

Agency form number: FR K–1

OMB control number: 7100–0107

Frequency: on occasion

Reporters: state member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations

Annual reporting hours: 695 hours

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours

Number of respondents: 39

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a), 611–631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K–1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: The changes incorporate revisions to Regulation K, published in the **Federal Register** on October 26, 2001, which became effective November 26, 2001 (66 FR 54345). Technical changes to each of the existing attachments conform with the new regulatory language. One new attachment was included for applications by U.S. banking organizations to invest in excess of 10 percent of capital and surplus in Edge corporations. This change is necessary as a result of The Economic Growth and Regulatory Paperwork Reduction Act of 1996. In addition, the Federal Reserve added certain new items, which are often requested after the application has been filed. Finally, several items that are no longer relevant have been deleted from the attachments.

3. Report title: Consolidated Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C

OMB control number: 7100–0128

Effective Date: March 31, 2002

Frequency: Quarterly

Reporters: Bank holding companies

Annual reporting hours: 252,675 hours

Estimated average hours per response: 33.98 hours

Number of respondents: 1,859

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top–tier bank holding companies that have total assets of $150 million or more and by lower–tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

Current Actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes effective with the March 31, 2002, reporting date with the following changes:

- modify certain aspects of the proposal relating to the reporting of federal funds transactions and securities resale/repurchase agreements; and
- modify Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with amended regulatory capital standards. These changes parallel the modified revisions to the March 31, 2002, Call Reports, recently adopted by the FFIEC and are discussed in further detail below.

Federal Funds Transactions and Securities Resale/Repurchase Agreements

As indicated above, the Federal Reserve originally proposed to separate the existing balance sheet (Schedule HC) items for ''Federal funds sold and securities purchased under agreements to resell'' and for ''Federal funds purchased and securities sold under agreements to repurchase'' into two asset and two liability items. This proposed change was parallel to a proposed change for the commercial bank Call Report for March 31, 2002. As proposed, the reporting of amounts as ''Federal funds sold'' (the asset item) and ''Federal funds purchased'' (the liability item) would have been based on the longstanding definition of ''federal funds transactions,'' i.e., the lending and borrowing of immediately available funds for one business day or under a continuing contract, regardless of the nature of the contract or of the collateral, if any. Under this definition, securities resale/repurchase agreements involving the receipt of immediately available funds that mature in one business day or roll over under a continuing contract are considered federal funds transactions.

As a result of comments received on the proposal for the commercial bank Call Report revisions, the FFIEC and the agencies decided to modify the original

proposal. The agencies decided to revise the definition of ''federal funds transactions.'' As revised, federal funds sold and purchased would be limited to transactions in domestic offices only and would not include:

- any securities resale/repurchase agreements,
- overnight Federal Home Loan Bank advances, or
- lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract.

Lending and borrowing transactions in foreign offices involving immediately available funds with an original maturity of one business day or under a continuing contract that are not securities resale/repurchase agreements will begin to be reported in ''Loans and leases, net of unearned income'' and ''Other borrowed money,'' respectively. The Federal Reserve decided to adopt the same modifications for the FR Y–9C.

Regulatory Capital

On November 29, 2001, the agencies published a final rule revising the regulatory capital treatment of recourse arrangements and direct credit substitutes, including residual interests and credit–enhancing interest–only strips, as well as asset–backed and mortgage–backed securities (66 FR 59613). This final rule took effect on January 1, 2002. Any transactions settled on or after that date are subject to the rule. However, for transactions settled before January 1, 2002, that result in increased capital requirements under the final rule, banks may delay the application of the final rule to those transactions until December 31, 2002. In response to this final rule and comparable changes on the commercial bank Call Reports, the Federal Reserve is revising the instructions for reporting these types of exposures in Schedule HC–R, Regulatory Capital, so that the capital calculations in this schedule are consistent with the amended regulatory capital standards.

4. Report title: Parent Company Only Financial Statements for Large Bank Holding Companies
Agency form number: FR Y–9LP
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 40,495 hours
Estimated average hours per response: 4.55 hours
Number of respondents: 2,225
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract: The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each bank holding company that files the FR Y–9C. In addition, for tiered bank holding companies, a separate FR Y–9LP must be filed for each lower tier bank holding company.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9LP, as originally described, effective with the March 31, 2002, reporting date.

5. Report title: Parent Company Only Financial Statements for Small Bank Holding Companies
Agency form number: FR Y–9SP
OMB Control number: 7100–0128
Effective Date: June 30, 2002
Frequency: Semiannual
Reporters: Bank holding companies
Annual reporting hours: 28,273 hours
Estimated average hours per response: 3.89 hours
Number of respondents: 3,634
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.
Abstract: The FR Y–9SP is a parent company only financial statement filed on a semiannual basis by one–bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9SP, as originally described, effective with the June 30, 2002, reporting date.

6. Report title: Supplement to the Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y–9CS
OMB control number: 7100–0128
Effective Date: March 31, 2002
Frequency: on occasion
Reporters: Bank holding companies
Annual reporting hours: 1,200 hours
Estimated average hours per response: 0.50 hour
Number of respondents: 600
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). The Federal Reserve considers the information on the current version of the report form confidential pursuant to the Freedom of Information Act (5 U.S.C. 554(b)(4)), except for item 4.
Abstract: The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y-9C and FR Y–9SP reports. Due to the enactment of the GLB Act in 1999, the current version of this supplement was implemented in 2000 to collect basic information about the new activities of FHCs.
Current actions: On December 21, 2001, the Board published proposed changes to this reporting form and the comment period ended on February 19, 2002 (66 FR 65964). There were no public comments received. The Board has approved the proposed changes to the FR Y–9CS, as originally described, effective with the March 31, 2002, reporting date.

Board of Governors of the Federal Reserve System, March 12, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–6306 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. R.H. Krumme Testamentary Trust, Tulsa, Oklahoma; Diane Krumme Cox, Sands Springs, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust; and Jill Krumme Burns, Tulsa, Oklahoma, both individually and as co-trustee of the R.H. Krumme Testamentary Trust, to retain voting shares of Falcon Bancorp, Inc., Anadarko, Oklahoma, and thereby retain voting shares of Anadarko Bank & Trust Company, Anadarko, Oklahoma.

Board of Governors of the Federal Reserve System, March 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–6307 Filed 3–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—02/19/2002			
20020388	deCODE genetics, Inc	MediChem Life Sciences, Inc	MediChem Life Sciences, Inc
20020417	Carl C. Icahn	Imclone Systems Incorporated	Imclone Systems Incorporated
20020420	McLaren Health Care Corporation	Bay Medical Center	Bay Medical Center
20020428	ESL Partners, L.P	AutoNation, Inc	AutoNation, Inc
20020429	The Nichido Fire and Marine Insurance Company, Limited.	The Tokio Marine and Fire Insurance Company, Ltd.	The Tokio Marine and Fire Insurance Company, Ltd
20020430	Liberty Mutual Holding Company, Inc	Liberty Mutual Fire Insurance Company.	Liberty Mutual Fire Insurance Company
20020431	Liberty Mutual Holding Company, Inc	Employers Insurance of Wausau Mutual Holding Company.	Employers Insurance of Wausau Mutual Holding Company
20020436	The 1818 Fund III, L.P	Xspedius Holding Corp	Xspedius Holding Corp
20020440	Ziff Asset Management, L.P	AutoNation, Inc	AutoNation, Inc
20020447	Nexfor, Inc	International Paper Company	International Paper Company
20020451	Cinergy Corp	Oak Mountain Acquisition Company, LLC.	Oak Mountain Products, LLC
Transactions Granted Early Termination—02/20/2002			
20020410	The Toronto-Dominion Bank	John S. Stafford, Jr	JSS Investments, L.L.C
20020438	Corvis Corporation	Dorsal Networks, Inc	Dorsal Networks, Inc
Transactions Granted Early Termination—02/26/2002			
20020404	Grupo Industrial Bimbo, S.A. de C.V. (a Mexican corp.).	W. Galen Weston	Entenmann's Inc
			Entenmann's Products, Inc
			Entenmann's Sales Company, Inc
			George Weston Bakeries, Inc
20020435	The Lubrizol Corporation	William Frost	Chemron Corporation
20020448	U.S. Unwired, Inc	Georgia PCS Management, L.L.C	Georgia PCS Management, L.L.C
20020449	EMCOR Group, Inc	Comfort Systems USA, Inc	CSUSA Holdings L.L.C
20020450	Forbo Holding AG	Dainippon Ink and Chemicals, Incorporated.	Reichhold, Inc
20020452	SmartForce Public Limited Company	Centra Software, Inc	Centra Software, Inc
20020453	O. Bruton Smith	Donald E. Massey	Arngar, Inc
			Capitol Cadillac Corp
			Crest Cadillac Corp
			Donald Massey Buick Inc
			Donald Massey Cadillac Inc
			Massey Cadillac, Inc
			Massey Cadillac, Incorporated
			Massey Chevrolet, Inc
			Massey-Cadillac-Oldsmobile, Ltd
20020454	First Reserve Fund IX, L.P	Frank Vallentine Novak, Jr	Welding Services, Inc
20020455	First Reserve Fund IX, L.P	Philip Nelson Hulsizer	Welding Services, Inc
20020456	Berkshire Hathaway Inc	Carl M. Bouckaert and Marie T. Bouckaert.	Beaulieu Group, LLC

Trans #	Acquiring	Acquired	Entities
20020458	First Horizon Pharmaceutical Corporation.	AstraZeneca plc	South Richmond Chemical, LLC AstraZeneca UK Limited
20020460	US Unwired Inc	IWO Holdings, Inc	IWO Holdings, Inc
20020463	Exxon Mobil Corporation	Solutia Inc	Advanced Elastomer Systems, L.P
20020470	JAKKS Pacific, Inc	Toymax International, Inc	Toymax International, Inc
20020472	Giant Industries Inc	BP, p.l.c	BP Corporation North America Inc
20020478	Deutsche Post AG	DHL International Limited	DHL International Limited
Transactions Granted Early Termination—02/28/2002			
20020434	Cablevision Systems Corporation	Loral Space & Communications Ltd	R/L DBS Company L.L.C
20020457	Keane, Inc	Arlington Capital Partners, L.P	SignalTree Solutions Holdings, Inc
20020459	Kvaerner ASA	Kjell Inge Rokke	Aker Oil & Gas Holding AS
20020461	Spectrum Equity Investors IV, L.P	Broadwing, Inc	Cincinnati Bell Director Inc
20020468	Joseph M. & Marie H. Field	Jeffrey H. Smulyan	Emmis Radio License Corporation Emmis Radio Corporation

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives.

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–6253 Filed 3–14–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

Proposed Collection Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, Office of Acquisition Policy will submit to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the Preparation, Submission, and Negotiation of Subcontracting Plans. This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, Submission, and Negotiation of Subcontracting Plans requires all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions:

(1) When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans),

(2) When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1,

(3) The acquisition is not a commercial item acquisition, and

(4) The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether the information collection generated by the GSAR Clause, Preparation, Submission, and Negotiation of Subcontracting Plans is necessary for small business/subcontracting plans; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* May 14, 2002.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Office of Acquisition Policy (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting that the Office of Management and Budget (OMB) review and approve information collection, 3090–0252, concerning the Preparation, Subcommission, and Negotiation of Subcontracting Plans. This provision requires a contractor (except other than small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions:

When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans), when award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1, the acquisition is not a commercial item acquisition, and the acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Annual responses: 1.

Average hours per response: 12.

Burden hours: 12,240.

Obtaining copies of proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans.

Dated: March 8, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–6197 Filed 3–14–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. State Studies on TANF Caseload—NEW—The Assistant Secretary for Planning and Evaluation has developed a common TANF beneficiary survey instrument to be administered by five states and the District of Columbia through cooperative agreements. This data collection will provide information on the characteristics, barriers to employment and service needs of the TANF caseload. *Respondents:* Individuals; *Number of Respondents:* 6,640; *Average Burden per Response:* .66 hours; *Total Burden:* 4,378 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: February 28, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–6191 Filed 3–14–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974: Revision to Existing System of Records

AGENCY: Child Care Subsidy Program, Office of the Assistant Secretary for Administration and Management, Office of the Secretary, HHS.

ACTION: Notice of revision to an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Department of Health and Human Services (HHS) is publishing a notice of the revision of an existing system of records, 09–09–2000, child Care Subsidy Program. The revised system will collect family income data from employees in the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR), as well as the Health Resources and Services Administration, the Food and Drug Administration (FDA), the Program Support Center (PSC), the Office of the Secretary (OS), the Administration on Aging (AoA), and the Substance Abuse and Mental Health Services Administration (SAMHSA) who are already covered by this system, for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: This revision does not revise the routine uses for this system. This amendment will be effective without further notice on the day of its publication unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Child Care Subsidy Program Administrator, Office of Human Resources, Office of the Assistant Secretary for Administration and Management, U.S. Department of Health and Human Services, Room 536–E, 200 Independence Ave., SW., Washington, DC 20201. The telephone number is 202–690–6191.

SUPPLEMENTARY INFORMATION: The current Notice of System of Records covered only employees of OS, AoA, HRSA, SAMHSA, FDA and the PSC. Since that time, CDC/ATSDR has established a child care subsidy program for its employees. This amendment expands coverage of the Child Care Subsidy Program Records to include employees in CDC/ATSDR who are eligible for this program. The notice is published below in its entirety, as amended.

Dated: March 6, 2002.

Roy L. Tucker,

Acting Deputy Assistant Secretary for Human Resources.

09–90–0200

SYSTEM NAME:

Child Care Subsidy Program Records (HHS).

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are located throughout HHS in offices of agency child care program administrators and in offices of contract employees engaged to administer the subsidy programs. Since there are several sites around the country, contact the appropriate System Manager listed in Appendix A for more details about specific locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the Administration on Aging (AoA), Office of the Secretary (OS), Substance Abuse and Mental Health Services Administration (SAMHSA), Food and Drug Administration (FDA), Program Support Center (PSC), Health Resources and Services Administration (HRSA) and the Centers for Disease Control and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) in the Department of Health and Human Services (HHS), who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issues, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 630 of Pub. L. 107–67 (November 12, 2001) and Executive Order 9397 (November 22, 1943).

PURPOSE(S):

To establish and verify HHS employees' eligibility for child care subsidies in order for HHS to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records where collected.

3. HHS intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of HHS if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of Health and Human Services is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

The records are retrieved by name and may also be cross-referenced to Social Security Number.

SAFEGUARDS:

—Authorized Users: Only HHS personnel working on this project and personnel employed by HHS contractors to work on this project are authorized users as designated by the system manager.
—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.
—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.
—Technical Safeguards: Electronic records are protected by use of passwords.
—Implementations Guidelines: HHS Chapter 45–13 of the General Administration Manual, ''Safeguarding Records Contained in Systems of Records and the HHS Automated Information System Security Program Handbook, Information Resources Management Manual.''

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESSES:

The records of individuals applying for and receiving child care subsidies are managed by System Managers at the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may submit a request with a notarized signature on whether the system contains records about them to the local System Manager.

RECORD ACCESS PROCEDURES:

Request from individuals for access to their records should be addressed to the local System Manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is provided by HHS employees who apply for child care subsidies. Furnishing of the information is voluntary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

Appendix A

1. For employees of the Office of the Secretary and the Administration on Aging, nationwide, contact:

Child Care Subsidy Program Coordinator, PSC Work/Life Center, Room 1250, 330 C Street, SW., Washington, DC 20201

2. For employees of the Substance Abuse and Mental Health Services Administration, contact:

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857

3. For employees of the Food and Drug Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Office of Human Resources and Management Services, Food and Drug Administration—HFA—410, 5600 Fishers Lane, Rockville, Maryland 20857

4. For employees of the Program Support Center, contact:

Work & Family Coordinator, Program Support Center, Room 1250, 330 C Street SW., Washington, DC 20201

5. For employees of the Health Resources and Services Administration, nationwide, contact:

Child Care Subsidy Program Coordinator, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–25, Rockville, MD 20857

6. For Employees of the Centers of Disease Contract and Agency for Toxic Substances and Disease Registry, nationwide, contact:

Work Family Program Specialist, Centers for Disease Control and Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724

[FR Doc. 02–6192 Filed 3–14–02; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 1, 2002, through February 1, 2004.

For further information, contact Julie Fishman, Acting Executive Secretary, Advisory Committee to the Director, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., (D–23), Atlanta, GA 30333, telephone 404/639–7080 or fax 404/639–7171.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 11, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–6223 Filed 3–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N–0042]

RIN 0910–AA01

Anticaries Drug Products for Over-the-Counter Human Use; Use of Intraoral Appliance Models for Compliance With Biological Testing Requirements; Request for Information and Comments; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 12, 2002, the comment period on the notice requesting information and comments on the use of intraoral appliance (IOA) models as a substitute for the animal caries reduction biological test required by the monograph for over-the-counter (OTC) anticaries drug products to demonstrate the availability of fluoride in OTC dentifrice formulations. The notice was published in the **Federal Register** of October 15, 2001 (66 FR 52418). FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the use of IOA models. The comment period for this information closed on January 14, 2002.

DATES: Submit written or electronic comments by July 12, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Robert L. Sherman, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 2001 (66 FR 52418), FDA published a notice requesting information and comments regarding use of the IOA test in lieu of animal caries studies to demonstrate the effectiveness of new fluoride formulations. FDA issued this notice to gather information concerning IOA models and whether and how they can be used in lieu of the animal caries models in meeting the biological testing requirements for OTC anticaries drug products. The agency has determined that it is appropriate to address these issues in a public forum where experts can debate the usefulness and acceptability of alternate biological testing methods such as the IOA model. The agency anticipates that this information-gathering process will be followed by an advisory committee meeting at which the various models and the appropriate statistical analyses will be discussed.

On November 14, 2001, the Joint Anticaries Task Group (the Task Group) of the Consumer Healthcare Products Association, a trade association of manufacturers of nonprescription drugs and dietary supplements, and the Cosmetic, Toiletry, and Fragrance Association, a trade association of manufacturers of personal care products, requested a 180-day extension in which to file comments and new information (Ref. 1). The request stated that the closing date for the original comment period would not allow the Task Group to utilize the results of its ongoing research in its response to FDA, resulting in important information being omitted from the agency's consideration. In addition, the Task Group noted that the agency's request raises complicated questions concerning statistical approaches that could potentially impact statistical methodology utilized for current biological testing requirements for fluoride dentifrices. The Task Group also stated that manufacturers need sufficient time to assess the potential impact that the agency's statistical questions may have on manufacturing practices, as well as research and product development.

FDA has carefully considered the request and acknowledges the complicated issues concerning statistical approaches used to evaluate IOA testing and their potential affect on current biological testing requirements of the anticaries monograph. Manufacturers and the Task Group may require additional time to obtain and review information to fully respond to the agency's request. FDA considers an extension of time for comments in this case to be in the public interest. Accordingly, the comment period is reopened to July 12, 2002.

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this notice by July 12, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT11, Docket No. 80N–0042.

Dated: March 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–6181 Filed 3–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April:

Name: Council on Graduate Medical Education (COGME).

Date and Time: April 10, 2002, 8:30 a.m.–5 p.m., April 11, 2002, 8 a.m.–12 p.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

Agenda: The agenda for April 10 will include: Welcome and opening comments from the Chair and Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of ''Views on the Adequacy of the Physician Supply'' and a presentation on ''Physician Workforce Models of the Bureau of Health Professions.'' The afternoon agenda includes a panel on ''Physician Preparedness to Meet Emerging Public Health Needs.''

The Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for April 11 will include reports from the three workgroup chairs. There will be a discussion of COGME's 2002 Summary Report, plans for future work, and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: March 8, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–6225 Filed 3–14–02; 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: Projects for Assistance in Transition From Homelessness (PATH) Annual Report—(0930–0205, extension)

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for extension of the current approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions. The estimated annual burden for these reporting requirements is summarized in the table that follows.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
States—automated	55	1	26	1,430
States—hard copy	1	1	28	28
Local provider agencies—automated	398	1	31	12,338
Local provider agencies—hard copy	1	1	24	24
Total	455			13,820

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: March 8, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–6224 Filed 3–14–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 8, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–6027 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; United Auburn Indian Community of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California on February 5, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On February 5, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 49.21 acres, more or less, of land into trust for the United Auburn Indian Community of California pursuant to Section 1300I of the Auburn Indian Restoration Act of October 31, 1994, 25 U.S.C. 1300I (1994). The Secretary shall acquire title in the name of the United States in trust for the United Auburn Indian Community of California for the following parcel of land described below no sooner than 30 days after the date of this notice.

That portion of Parcel ''B'' described in the Resolution to Approve a Minor Boundary Line Adjustment recorded June 27, 1997, as Instrument No. 97–0037123, Official Records of Placer County, located in Section 33, Township 12 North, Range 6 East, Mount Diablo Meridian, Placer County, California, as shown on the Record of Survey filed in Book 9 of Surveys, Page 19, Placer County Records, described as follows:

Beginning at the southeasterly corner of said Parcel ''B,'' thence along the boundary of said Parcel ''B'' the following three courses and distances: (1) North 00°31′40″ East 616.00 feet; (2) South 89°53′59″ West 285.00 feet; and (3) North 00°13′49″ East 186.41 feet; thence, leaving said boundary, South 89°53′59″ West 150.00 feet; thence South 00°06′01″ East 100.00 feet; thence South 89°53′59″ West 300.00 feet; thence North 00°06′01″ West 100.00 feet; thence South 89°53′59″ West 2018.08 feet; thence South 00°13′49″ West 812.49 feet to a point on the southerly boundary of said Parcel ''B'', thence along the southerly boundary of said parcel ''B'' the following two courses and distances: (1) North 89°48′20″ East 1652.05 feet; and (2) North 89°30′51″ East 1097.92 feet to the point of beginning, containing 49.21 acres, more or less. APN 021–280–063.

Dated: March 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–6315 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–1269]

Public Land Order No. 7516; Revocation of Oil Shale Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order and a Public Land Order insofar as they affect the lands in the State of Colorado withdrawn for protection of oil shale values. This action will open approximately 900,000 acres of public lands to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5327, as amended, and Public Land Order No. 4522, as amended, which withdrew oil shale deposits and the public lands containing such deposits for the protection of oil shale and associated

values are hereby revoked insofar as they affect all of the lands in the State of Colorado within the following Townships:

Sixth Principal Meridian

T. 3 N., R. 98 W., Tps. 2 N., Rs, 98, 99, and 100 W.; Tps. 1 N., Rs. 95, 96, 97, 98, 99, and 100 W.; Tps. 1 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 2 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 3 S., Rs. 94, 95, 96, 97, 98, 99, and 100 W.; Tps. 4 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 5 S., Rs. 93, 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 6 S., Rs. 94, 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 7 S., Rs. 95, 96, 97, 98, 99, 100, and 101 W.; Tps. 8 S., Rs. 99 and 100 W.

The areas described aggregate approximately 900,000 acres in Moffat, Rio Blanco, Garfield, and Mesa Counties.

2. At 9 a.m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 15, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a. m. on April 15, 2002, the lands identified in Paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands identified in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 27, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–6233 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–060–1430–ET; NMNM 23614]

Public Land Order No. 7517; Extension of Public Land Order No. 6182; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6182 for an additional 20-year period. This extension is necessary to continue the protection of the land for use as training site by the New Mexico Army National Guard.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6182 (47 FR 9842, March 8, 1982), which withdrew land for use as a training site by the New Mexico Army National Guard, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6182 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6232 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–044–1430–ET; OKNM 36236]

Public Land Order No. 7518; Extension of Public Land Order No. 6183; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6183 for an additional 20-year period. This extension is necessary to continue the protection of the land for use by the Department of the Army for military purposes at Fort Sill, Oklahoma.

EFFECTIVE DATE: March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 505–438–7593.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 6183 (47 FR 9842, March 8, 1982), which withdrew land from use by the Department of the Army, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6183 will expire March 7, 2022, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: February 28, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–6231 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Nevada, INT–DES 01–43]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Colorado River in the Lower Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public comment period extension.

SUMMARY: The Bureau of Reclamation (Reclamation) published a notice of availability of and public hearing for a draft environmental impact statement (EIS) on the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions in the **Federal Register**, (67 FR 1988), on January 15, 2002, requesting comments on the adequacy of the draft EIS. This notice extends the original comment period, as identified below in the **DATES** section.

DATES: The comment period for receiving comments on the draft EIS has been extended from March 12, 2002, to March 26, 2002.

ADDRESSES: Send written comments to Mr. Bruce Ellis, Chief, Environmental Resources Management Division, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169; fax number (602) 216–4006.

A copy of the draft EIS is available upon request from Ms. Janice Kjesbo, Bureau of Reclamation, Phoenix Area Office (PXAO–1500), PO Box 81169, Phoenix, AZ 85069–1169, telephone (602) 216–3864, faxogram (602) 216–4006. A copy of the draft EIS is also available for public inspection and review at the libraries listed under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: Reclamation has issued a draft EIS on the proposed execution of an Implementation Agreement (IA) that would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies to implement a proposed Quantification Settlement Agreement (QSA). (The QSA is an agreement in principle among several southern California water agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. The QSA provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.) The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species.

Copies of the draft EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111.

Written comments received by Reclamation become part of the public record associated with this action. Accordingly, Reclamation makes these comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 11, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–6284 Filed 3–14–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–446]

Certain Ink Jet Print Cartridges and Components Thereof; Notice of Commission Decision to Review-in-Part an Initial Determination That Finds a Violation of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (ID) of the presiding administrative law judge (ALJ) that finds a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3094. 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.ustic.gov).

Copies of the public version 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.

SUPPLEMENTARY INFORMATION: On January 19, 2001, the Commission instituted this investigation based on a complaint filed by Hewlett-Packard Company (''HP''), alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain inkjet print cartridges and components thereof by reason of infringement of U.S. Letters Patent 4,827,294; 4,635,073; 4,680,859; 4,872,027; 4,992,802; and 5,409,134; 66 FR 7783 (January 25, 2001). The following five firms were

named as respondents: Microjet Technology Co., Ltd. of Taipei, Taiwan; Printer Essentials of Reno, Nevada; Price-Less Inkjet Cartridge Company of Port Charlotte, Florida; Cartridge Hut and Paperwork Plus of Sun City, California; and ABCCo.net, Inc. of Port Charlotte, Florida.

Based on joint stipulations and proposed consent orders, the ALJ issued IDs terminating the investigation as to Printer Essentials (Order No. 7, dated May 11, 2001) and as to Cartridge Hut (Order No. 15, dated October 12, 2001). These IDs became Commission final determinations, pursuant to 19 CFR 210.42(h)(3).

On August 21, 2001, the ALJ issued an ID (Order No. 12) granting HP's motion for summary determination on the economic prong of the domestic industry requirement for all patents at issue. This ID became a Commission final determination, pursuant to 19 CFR 210.42(h)(3).

On October 24, 2001, HP filed a motion to terminate the investigation as to its infringement allegations based on claim 5 of U.S. Letters Patent 4,635,073, claim 2 of U.S. Letters Patent 4,827,294 and claims 12–14 of U.S. Letters Patent 5,409,134. On November 15, 2001, the ALJ issued an ID (Order No. 17) terminating the investigation as to the patent claims that were the subject of HP's motion. These IDs were not reviewed by the Commission, and thus became the determinations of the Commission, pursuant to 19 CFR 210.42(h)(3).

The ALJ issued his final ID, along with a recommended determination on remedy and bonding, on January 25, 2002, concluding that there was a violation of section 337, based on his findings that (a) the accused devices infringe claims of five of the six patents at issue, U.S. Letters Patent 4,827,294, 4,680,859, 4,872,027, 4,992,802 and 5,409,134; and (b) that a domestic industry exists with respect to each of these patents. The ALJ found no infringement of U.S. Letter Patent 4,635,073, and he found that HP had not satisfied the technical prong of the domestic industry requirement with respect to this patent.

On February 14, 2002, complainant HP and the Commission investigative attorney (''IA'') petitioned for review of parts of the ID concerning the '073 patent. No responses to these petitions for review were filed.

Having examined the record in this investigation, including the ID, and the petitions for review, the Commission has determined to review:

(1) The ID's construction of the asserted claim of the '073 patent;

(2) The ID's finding of no infringement with respect to the '073 patent; and

(3) The ID's findings with respect to the technical prong of the domestic industry requirement with respect to the '073 patent.

The Commission has determined not to review the remainder of the ID. The Commission does not request further briefing on the issues that it has determined to review.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to this investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than 14 days from the date of issuance of this notice. Response submissions must be filed no later than seven days after the deadline for filing the main submissions. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.42–45 of the Commission's rules of practice and procedure (19 CFR 210.42–45).

Issued: March 12, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6316 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Preliminary)]

Silicon Metal From Russia

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–991 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of silicon metal, provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 22, 2002. The Commission's views are due at Commerce within five business days thereafter, or by April 29, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179/ *ffischer@usitc.gov),* Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. 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:

Background.—This investigation is being instituted in response to a petition filed on March 7, 2002, by Globe Metallurgical Inc., Cleveland, OH; SIMCALA, Inc., Mt. Meigs, AL; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (I.U.E.–C.W.A, AFL–CIO, C.L.C., Local 693), Selma, AL; the Paper, Allied-Industrial Chemical and Energy Workers International Union (Local 5–89), Boomer, WV; and the United Steel Workers of America (AFL–CIO, Local 9436), Niagara Falls, NY.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 26, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 / *ffischer@usitc.gov*) not later than March 22, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 2, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 11, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–6193 Filed 3–14–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–006]

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 19, 2002 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–922 (Final) (Automotive Replacement Glass Windshields from China)—briefing and

vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 28, 2002.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 12, 2002

By order of the Commission:

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–6460 Filed 3–13–02; 2:46 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 258–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Commissary Accounts Record System, JUSTICE/BOP–006'', last published on September 30, 1977 (42 FR 53288, 53294). JUSTICE/BOP–006 has been retitled the ''Inmate Trust Fund Accounts and Commissary Record System'' and will become effective 60 days from the date of publication.

The new title reflects the addition of information on vendors who provide supplies to institution commissaries.

In addition to edits which have been made to better describe the system and/or improve its clarity, the Bureau proposes to modify the system as follows:

(1) By further expanding the categories of individuals covered by the system to include all individuals placed directly under the custody of the Director of the Bureau and persons who send and/or receive funds to/from inmates.

(2) By providing additional authorities for the maintenance of the expanded categories of records.

(3) By expanding the categories of records in the system to include system-generated reports.

(4) By adding a statement on the purpose of this system.

(5) By reorganizing the routine use section to group similar routine uses together, to re-designate certain routine uses, to better describe, clarify or expand certain routine uses, and to add new routine uses.

(6) By expanding the policies and practices for storage, retrieval, access, retention and disposal of records in the system to reflect technological advances and new agency practices.

(7) By redesignating the system manager from the Chief of Management and Information Systems to the Chief of the Trust Fund Branch in the Administration Division.

(8) By adding exemptions from (e)(1) and (e)(5) of the Privacy Act for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be provided a 30 day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: February 28, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/BOP–006

SYSTEM NAME:

Inmate Trust Fund Accounts and Commissary Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) facilities, or at any location operated by a contractor authorized to provide computer, financial and/or correctional services to the Bureau. A list of Bureau facilities may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons, vendors who supply products to institution commissaries, and persons who send or receive funds to/from inmates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Financial data on individuals currently or formerly under custody; (2) personal identification data for individuals covered by this system; (3) vendor lists and linked product information; and (4) system generated reports, such as Inmate Balance Reports, Transaction Input Listings, Inmate Sales Receipts, and Stock Status Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under authority of 18 U.S.C. 3621, 4042, and 5003, and 31 U.S.C. 1321.

PURPOSE(S):

The purpose of this system is to track trust fund accounts of current and former inmates, including all payments in and out of these accounts, to provide accounting of inmate trust fund balances for purposes of verifying pauper status under 28 U.S.C. 1915, and to maintain information on all vendors who supply products to institution commissaries to facilitate ordering of commissary products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To officers and employees of the Department of Justice who have a need for the information in the performance of their official duties;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear for purposes of verifying pauper status under 28 U.S.C. 1915, or when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations

which require information concerning the suitability or eligibility of an individual for a license or permit;

(e) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(f) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(g) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(h) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(i) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records; and

(j) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media, including the Federal Prison Point of Sale (FPPOS) System, in Bureau and contractor facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, Compact Discs (CDs), magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data of the persons covered by the system, including name and address, inmate register number, and/or system-generated vendor number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau and contractor personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Inmate financial data in the system of records is retained for six years from the date of transaction, and system-generated reports are retained for as long as they are needed. Computerized records are destroyed by degaussing; documentary records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Trust Fund Branch, Administration Division, Federal Bureau of Prisons, 320 First Street NW., Room 5005, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked ''Privacy Act Request.'' This system is exempt, under 5 U.S.C. 552a (j) from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by individuals currently or formerly under custody, persons sending or receiving funds to/from inmates, vendors supplying products to institution commissaries, Department of Justice and contractor employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6203 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 256–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled ''Inmate Physical and Mental Health Record System, JUSTICE/BOP–007''. This system, which was last published on September 28, 1978, (43 FR 44676, 44735), is now being modified and will become effective May 14, 2002.

As previously published, the system included only those persons who were committed to the custody of the Attorney General and thereby to the Bureau of Prisons under 18 U.S.C. 4003, 4042 and 4082. The Bureau is modifying the system to include all additional individuals who are committed directly to the custody of the Bureau of Prisons, pursuant to the additional authority of 18 U.S.C. 3621, 5003 (state inmates) and inmates from the District of Columbia, pursuant to Section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 740). The authority of 18 U.S.C. 4014 is also added to authorize the maintenance and disclosure of records relating to HIV testing. The Bureau has also added a statement on the purpose of this system.

The list of records in this system has been expanded to include drug testing and DNA samples and analysis.

The section on routine uses has been reorganized and expanded. New routine uses have been added to permit release of information to former employees, a court or administrative body, the General Services Administration for record management inspections and to prevent immediate loss of life or serious bodily injury in emergency situations, such as an inmate escape. Another new routine use assists the Bureau in complying with recent laws requiring limited, specific disclosures of

information concerning infectious diseases.

Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The Bureau has re-designated the system manager from the Chief of Management and Information Systems to the Assistant Director, Health Services Division. The Bureau has also clarified record access procedures.

The authorities for exemptions from certain Privacy Act provisions have been specified. Exemptions from subsections (e)(1) and (e)(5) have been added for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be given a 30-day period in which to comment.

The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by April 15, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the modified system is provided below.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: February 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/BOP–007

SYSTEM NAME:

Inmate Physical and Mental Health Record System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) or at any location operated by a contractor authorized to provide correctional, medical, and/or computer service to the Bureau. A list of Bureau system locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Identification data, including name, inmate register number, date of birth, Social Security number, FBI number, drug testing and DNA samples and analysis; (2) medical and dental history and examinations (past and present), including diagnosis and treatment notes, records, and pharmaceutical information; (3) medical information concerning deaths of inmates; (4) offense information, including Pre-sentence Reports; (5) designations of inmates from parent facilities to medical facilities, including date and type of referral; (6) pre-certifications authorizing inmates to receive care at local medical facilities, including authorized and actual length of stay, and all associated cost information; (7) mental health and drug abuse information, including interview, testing data, and progress or observation notes, generated and maintained by Bureau staff; (8) mental health and drug abuse information generated outside the Bureau by other corrections agencies and health care providers such as surgical clinics, mental hospitals, private therapists, etc.; (9) urine surveillance reports of drug program participants; (10) automated data, including Electronic Signatures, Sensitive Medical Data (SMD), Medical Duty Status (MDS), and Diagnosis Group (DGN); and (11) information concerning infectious diseases, including HIV and Tuberculosis (TB) testing and treatment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4014, 4042, 4082, 4241 et seq., 5003, and section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997.

PURPOSE(S):

This system assists the Bureau in providing appropriate health care to persons in the custody of the Bureau. It provides for the maintenance and release of records concerning the medical, mental and dental health of persons in the Bureau's custody.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(b) To community health care professionals, including physicians, psychiatrists, psychologists, state and federal medical facility personnel, who are providing treatment for a pre-existing condition to former federal inmates;

(c) To federal, state, local, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory proceedings;

(d) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or (2) any Department or Bureau employee in his or her official capacity, or (3) any Department or Bureau employee in his or her individual capacity where the Department has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(e) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(f) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(h) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(i) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury; and

(j) For information relating to infectious diseases, as follows:

(1) To state health departments and/or the Center for Disease Control, pursuant to state and/or federal laws requiring notice of cases of reportable infectious diseases;

(2) To the United States Probation Office in the district where an inmate is being released from Bureau custody on parole, placement in a community-based program, furlough, or full-term release, when the inmate is known to be HIV positive or under treatment for exposure to or active Tuberculosis (TB);

(3) To the Director of a Community Corrections Center (halfway house) receiving an inmate from Bureau custody when the inmate is known to be HIV positive or under treatment for exposure to or active TB;

(4) To the physician/provider of a Bureau or non-Bureau staff, or other person exposed to a blood-born pathogen while lawfully present in a Bureau facility, for the purpose of providing prophylaxis or other treatment and counseling; and

(k) Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, Compact Discs (CDs), floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders, microfilm and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data, including last name and inmate register number, and/or the inmate's social security number and/or FBI number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of thirty (30) years after expiration of the sentence. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Health Services Division, Federal Bureau of Prisons; 320 First Street NW., Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked ''Privacy Act request.'' This system is exempt, under 5 U.S.C. 552a(j), from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Records are generated by: (1) Individuals currently or formerly under Bureau custody; (2) Bureau of Prisons staff; (3) community health care providers, including individuals, hospitals and/or other professionals involved in the medical, mental, and dental care of inmates and/or former inmates; and (4) other federal and/or state, local or tribal agencies, including those preparing or providing information on pre-sentence reports.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–6205 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Application for Naturalization; Form N–400.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 14, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form N–400. Business Process and Reengineering Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or households. The information collected is used by the INS to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to response:* 700,000 responses at 6 hours and 8 minutes (6.13) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,291,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 11, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–6213 Filed 3–14–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV

Wisconsin
WIO020046 (MAR. 15, 2002)
WIO020047 (MAR. 15, 2002)
WIO020048 (MAR. 15, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (MAR. 1, 2002)
NJ020003 (MAR. 1, 2002)

Volume II:

Maryland
MD020002 (MAR. 1, 2002)
MD020037 (MAR. 1, 2002)
MD020042 (MAR. 2, 2002)
MD020048 (MAR. 1, 2002)
MD020057 (MAR. 1, 2002)

Volume III

Alabama
AL020008 (MAR. 1, 2002)

Volume IV

Illinois
IL020001 (MAR. 1, 2002)
IL020002 (MAR. 1, 2002)
IL020003 (MAR. 1, 2002)
IL020007 (MAR. 1, 2002)
IL020012 (MAR. 1, 2002)
IL020013 (MAR. 1, 2002)
IL020014 (MAR. 1, 2002)
IL020015 (MAR. 1, 2002)
IL020016 (MAR. 1, 2002)

IL020017 (MAR. 1, 2002)
IL020019 (MAR. 1, 2002)
IL020021 (MAR. 1, 2002)
IL020025 (MAR. 1, 2002)
IL020026 (MAR. 1, 2002)
IL020028 (MAR. 1, 2002)
IL020033 (MAR. 1, 2002)
IL020034 (MAR. 1, 2002)
IL020036 (MAR. 1, 2002)
IL020040 (MAR. 1, 2002)
IL020041 (MAR. 1, 2002)
IL020044 (MAR. 1, 2002)
IL020056 (MAR. 1, 2002)
IL020058 (MAR. 1, 2002)
IL020060 (MAR. 1, 2002)
IL020062 (MAR. 1, 2002)
IL020063 (MAR. 1, 2002)
IL020064 (MAR. 1, 2002)
IL020067 (MAR. 1, 2002)
IL020068 (MAR. 1, 2002)

Indiana
IN020001 (MAR. 1, 2002)
IN020002 (MAR. 1, 2002)
IN020004 (MAR. 1, 2002)
IN020005 (MAR. 1, 2002)
IN020006 (MAR. 1, 2002)
IN020017 (MAR. 1, 2002)
IN020021 (MAR. 1, 2002)

Michigan
MI020002 (MAR. 1, 2002)
MI020005 (MAR. 1, 2002)
MI020007 (MAR. 1, 2002)
MI020013 (MAR. 1, 2002)
MI020028 (MAR. 1, 2002)
MI020030 (MAR. 1, 2002)
MI020062 (MAR. 1, 2002)
MI020063 (MAR. 1, 2002)
MI020073 (MAR. 1, 2002)
MI020077 (MAR. 1, 2002)
MI020078 (MAR. 1, 2002)
MI020083 (MAR. 1, 2002)

Wisconsin
WI020001 (MAR. 1, 2002)
WI020002 (MAR. 1, 2002)
WI020003 (MAR. 1, 2002)
WI020004 (MAR. 1, 2002)
WI020005 (MAR. 1, 2002)
WI020009 (MAR. 1, 2002)
WI020030 (MAR. 1, 2002)

Volume V

Arkansas
AR020023 (MAR. 1, 2002)

Volume VI

Oregon
OR020002 (MAR. 1, 2002)
OR020003 (MAR. 1, 2002)
OR020004 (MAR. 1, 2002)

Washington
WA020001 (MAR. 1, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during this year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of March 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–6044 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Current Population Survey (CPS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before May 14, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for nearly 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of data on total employment and unemployment, with the monthly unemployment rate obtained through this survey being regarded as one of the most important economic indicators. Moreover, the survey also yields data on the basic status and characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which the various components of the American population are participating in the economic life of the Nation and with what success.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, consistent with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race and ethnic origin, marital status, family composition, educational level, and other characteristics. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on the general trends in employment and unemployment. Information of this type can be obtained only through

demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. They provide a measurement of total employment, including farm work, self-employment and unpaid family work, while the other surveys are generally restricted to the nonagricultural wage and salary sector. The CPS provides data on all jobseekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from other surveys are usually devoid of demographic information.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Current Population Survey (CPS).

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Affected Public: Households.

Total Respondents: 57,000 per month.

Frequency: Monthly.

Total Responses: 684,000.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 79,800 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of March, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–6235 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. D & F Deep Mine Buck Drift

[Docket No. M–2002–001–C]

D & F Deep Mine Buck Drift, RD #1, Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment; requirements for permissibility) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment within 150 feet of the pillar line. The petitioner states that the non-permissible equipment would include drags and battery locomotives due in part to the method of mining used in pitching anthracite mines and the alternative evaluation of the mine air quality for methane on an hourly basis during operation. The petitioner further states that one gas test result would be recorded in the on-shift examination record and equipment operation will be suspended when methane concentration at the equipment reaches 0.5 percent CH_4, either during operation or when found during a pre-shift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Canyon Fuel Company, LLC

[Docket No. M–2002–002–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of a nominal voltage of longwall power circuits not to exceed 4,160 volts to supply power to permissible longwall mining equipment. The petitioner has listed specific terms and conditions in this petition that would be followed when implementing the proposed alternative method. The petitioner states that its present longwall voltage is 2,400-volts, but due to increased horsepower necessary to operate the longwall, the operating voltage must be increased. The petitioner asserts that a diminished safety factor exists as the short circuit interrupting rating limits of the available 2,400-volt breaker are approached and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Knott County Mining Company

[Docket No. M–2002–003–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mallet Branch Mine (I.D. No. 15–18393) located in Knott County, Kentucky. The petitioner proposes to use contactors to obtain undervoltage protection instead of using circuit breakers. The petitioner states that all qualified persons who perform work on the equipment and circuits will receive training in safe maintenance procedures as well as the terms and conditions of the proposed decision and order. The training will occur before

implementing the proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Perry County Coal Company

[Docket No. M–2002–004–C]

Perry County Coal Company, 1845 South Hwy, 15, P.O. Box 5001, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its HZ4–1 Mine (I.D. No. 15–02085) located in Perry County, Kentucky. The petitioner proposes to establish evaluation check points to measure the quality and quantity of air in certain areas of the return air course. This is necessary due to hazardous roof and rib conditions impeding passage. The petitioner states that the check points will be established at locations that will allow effective evaluation of ventilation in the affected areas and will be examined by a certified person. These measuring stations will be maintained in safe conditions at all times. Further, conditions at the stations will be recorded in a book or on a date board located at each measuring station with the date, time and results of the measurements. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Cannelton Industries, Inc.

[Docket No. M–2002–005–C]

Cannelton Industries, Inc., P.O. Box 88, Mammoth, West Virginia 25132 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Shadrick Mine (I.D. No. 46–08159) and its Mine #130 (I.D. No. 46–06051) both located in Kanawha County, West Virginia. The petitioner proposes to use a spring-loaded device on battery plug connectors on mobile battery-powered machines in lieu of a padlock to prevent the plug connector from accidentally disengaging while under load. The petitioner states that a warning tag that states ''Do Not Disengage Under Load'', will be installed on all battery plug connectors and that instructions on the safe practices and provisions for complying with its proposed alternative method will be provided to all persons who operate or maintain the battery-powered machines. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

6. Point Mining, Inc.

[Docket No. M–2002–006–C]

Point Mining, Inc., 197 Branch Road, Belle, West Virginia 25015 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Point Mining Number 4 Mine (I.D. No. 46–08437) located in Kanawha County, West Virginia. The petitioner proposes to use a threaded ring and a spring-loaded device on battery plug connectors on mobile battery-powered machines instead of a padlock to prevent the plug connector from accidentally disengaging while under load, and provide instructions to all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with its proposed alternative method. The petitioner asserts that the existing standard would result in a diminution of safety to the miners.

7. OCI Wyoming, L.P.

[Docket No. M–2002–001–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a 12 to 18 volt battery powered cordless drill manufactured by Black & Decker, DeWalt, Makita, Milwaukee or Hilti, or use similar battery powered drills for an indefinite period of time, in or beyond the last open crosscut. The drills would be used to drill spad holes for surveying and to install rock mechanics stations. The petitioner asserts that the alternative method of using a cordless drill would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. OCI Wyoming, L.P.

[Docket No. M–2002–002–M]

OCI Wyoming, L.P., P.O. Box 513, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its Big Island Mine and Refinery (I.D. No. 48–00154) located in Sweetwater County, Wyoming. The petitioner proposes to use a Topcon GTS Series Electronic Total Station surveying instrument or similar surveying instrument in or beyond the last open crosscut to traverse for mine expansion and obtain elevations in support of on-going geologic and rock mechanics modeling. The petitioner states that the Topcon GTS is mounted with an intrinsically sealed 9.6 volt battery and that the use of the Topcon GTS would eliminate labor intensive ventilation modifications and allow for more accurate surveying of abandoned panels. The petitioner asserts that the alternative method of using the Topcon would not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 15, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 12th day of March 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–6236 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0228(2002)]

Forging Machines Standard; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements specified by its Forging Machines Standard (29 CFR 1910.218). The paperwork provisions of the Standard specify requirements for developing and maintaining inspection records. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition.

DATES: Submit written comments on or before May 14, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0228(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Forging Machines Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222, or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* and select *''Information Collection Requests.''*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Forging Machines Standard (*i.e.,* ''the Standard'') specifies two paperwork requirements. The following section describes who use the information collected under each requirement, as well as how they use it.

Information of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and keep a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, thereby assuring that they will operate properly and safely, and prevent impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information requirements specified by the Forging Machines Standard (29 CFR 1910.218). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Forging Machine Standard (29 CFR 1910.218).

OMB Number: 1218–0228..

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 27,700.

Frequency of Recordkeeping: Biweekly.

Average Time per Response: Twenty minutes (.33 hour) to inspect a forging machine and its guard or point-of-operation protection, and to prepare, maintain, and disclose the inspection certification record.

Total Annual Hours Requested: 244,868.

Total Annual Costs (O&M): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on March 8, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–6216 Filed 3–14–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request, Learning Opportunities Grant Application Form

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collectinos of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of the needs assessment of end-users in library and museum digitization projects funded through the Institute of Museum and Library Services.

A copy of the proposed inforamtion collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 14, 2002.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Mary Estelle Kennelly, Director Office of Museum Programs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 610, Washington, DC 20506. Fax: 202–606–0010 or by e-mail *mkennely@imls.gov* Fax or e-mail preferred.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. Learning Opportunities Grants will be a one year transitional program as IMLS refines and refocuses its current General Operating Support grant program to better meet the changing needs of the public.

Agency: Institute of Museum and Library Services.

Title: Learning Opportunities Grant Application

OMB Number: n/a.

Agency Number: 3137.

Frequency: One time.

Affected Public: Museums.

Number of Respondents: 500.

Estimated Time Per Respondent: 9 hours.

Total Burden Hours: 4500 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Office of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. E-mail *mbittner@imls.gov* fax (202) 606–8591. E-mail of fax preferred.

Dated: March 12, 2002.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 02–6237 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice; the first notice was published at 66 FR 64889 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. comments regarding these information collections are best assured to having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Louis Stokes Alliance for Minority Participation (LSAMP) Program.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Louis Stokes Alliance for Minority participation (LSAMP) Program. The goal of this program is to increase the number of interested, academically qualified minority students receiving baccalaureate degrees in science, technology, engineering and math (STEM), continuing to graduate school to attain a STEM graduate degree, and entering the STEM workforce. The program makes awards to alliances, which are composed of institutional partnerships (e.g., with two- and four-year higher education institutions, business, research labs, and local, state, and federal agencies). LSAMP projects fund students, offer a range of student support services, and undertake systemic reform of undergraduate education in STEM (particularly curricular improvement and faculty professional development). This mixed-methods study will gather data through telephone interviews with project staff, a survey questionnaire of program graduates, and in person interviews with faculty, staff, and students at three selected case study sites. The process evaluation component of this study will identify strategies that accelerate or inhibit the attainment of project goals, strategies employed to promote linkages among Alliance partners, and the manner in which the LSAMP model has evolved since its inception. The impact evaluation component of this study will examine program impact on institutions of higher education in promoting diversity in STEM, and participant career outcomes.

2. Expected Respondents

The expected respondents are project directors and/or managers of all 27 projects; LSAMP graduates who received program funding and who earned STEM baccalaureate degrees between 1992 and 1997; and, faculty, staff, and student participants at the three selected case study sites.

3. Burden on the Public

The total elements for this collection are 308 burden hours for a maximum of 795 participants annually, assuming a 90-100% response rate. The average annual reporting burden is under 1 hour per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the LSAMP Program.

Dated: March 11, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–6283 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: April 3, 2002, 9 a.m.–5:30 p.m. and April 4, 9 a.m.–2:30 p.m.

Place: Stafford II Annex, Room 555, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

April 3

AM

Panel Discussion: Building a Diverse Workforce in Environmental Science, Engineering, Education, and Technology

Update on NSF Activities

PM

General Discussion of Outline/Draft Decadal Plan

Modifications of Outline/Draft Decadal Plan: Small Group Meetings

April 4

AM

Meeting with Director: (Tentative)

Approval of Specific Modifications to Outline/Draft Decadal Plan

PM

Trends and Opportunities in Research & Education: Tom Graedel

Plans for Vetting and Publication of Decadal Plan and Wrap-up

Dated: March 12, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–6282 Filed 3–14–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; 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 G, for Facility Operating License Nos. DPR–52 and DPR–68, issued to Tennessee Valley Authority (TVA, the licensee), for operation of the Browns Ferry Plant, located in Limestone county Alabama. 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 TVA to apply the methodologies of the American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T [Pressure-Temperature] Limit Curves for ASME B&PV [Boiler and Pressure Vessel] Code, Section XI, Division 1,'' for the Browns Ferry Plant reactor vessel circumferential welds.

The proposed action is in accordance with the licensee's application dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002.

The Need for the Proposed Action

Appendix G of 10 CFR part 50, requires that P–T limits be established for reactor pressure vessels during normal operating and hydrostatic pressure or leak-testing conditions. Specifically, 10 CFR part 50, Appendix G, states that ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G further specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

To address the provisions of amendments to the Technical Specifications P–T limits, the licensee requested in its submittals that the staff exempt Browns Ferry Units 2 and 3 from the application of the specific requirements of 10 CFR part 50, Appendix G, and permit the use of ASME Code Case N–640. Code Case N–640 permits the use of an alternate reference fracture toughness for reactor vessel materials in determining P–T limits.

Application of the methodology specified in Appendix G to Section XI of the ASME Code for the development of facility P–T limits may not be necessary to meet the underlying purpose of the regulations, which is to protect the reactor coolant pressure boundary from brittle fracture. To satisfy this purpose, the staff had previously required the use of the conservative assumptions in Appendix G to 10 CFR part 50, because the conservatism was initially necessary due to the limited knowledge of the fracture toughness of reactor pressure vessel (RPV) materials at that time. Since 1974, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness resulting from the application of this ASME Code Case would greatly exceed the margin of safety required to protect the public and safety from potential RPV failures. Exemptions to employ an alternative to the methodology specified in Appendix G to Section XI of the ASME Code which result in the development of less conservative P–T limits may be granted by the NRC staff. The use of ASME Code Case N–640 represents one of these alternatives.

Licensees may request the use of alternative methodologies which continue to meet the underlying intent of the regulations for many reasons. Regarding Browns Ferry Plant, application of the specific requirements of Appendix G to Section XI of the ASME Code would result in the need for the licensee to maintain an unnecessarily high vessel temperature during pressure testing which would have an adverse impact on personnel safety because of the corresponding higher temperatures which would exist inside containment as leakage

walkdown inspections are conducted. Further, less restrictive P–T limit curves based on the application of ASME Code Case N–640 will enhance overall plant safety by minimizing challenges to operators during pressure testing, heatup, cooldown, and normal power operation. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulations will continue to be served.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the use of the alternative analysis methods to support the revision of the RPV P–T limits for the Browns Ferry Plant, Units 2 and 3.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not 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 NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the 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

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Browns Ferry Plant, Units 2 and 3, dated April 1975.

Agencies and Persons Consulted

On February 28, 2002, the staff consulted with the Alabama State official, Kirk Whatley, of the Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 17, 2001, as supplemented by letters dated December 14, 2001, and February 6, 2002. 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 Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* 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 to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of March 2002.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–6229 Filed 3–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest assumptions for multiemployer plan valuations following mass withdrawal under the Pension Benefit Guaranty Corporation's regulation on Duties of Plan Sponsor Following Mass Withdrawal (part 4281). These assumptions are published elsewhere but are referenced in this notice for the convenience of the public. This notice also informs the public that announcement of the required interest rate for determining the variable-rate premium under the PBGC's regulation on Premium Rates is being deferred. The PBGC plans to announce the required interest rate well before the variable-rate premium is due. Interest rates are published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in April 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). Until recently, that yield figure was reported in Federal Reserve Statistical Release H.15.

The Treasury Department has suspended issuance of 30-year Treasury securities and, effective February 18, 2002, ceased supplying the Federal Reserve board with an estimate of the annual yield on 30-year Treasury securities for publication in Statistical Release H.15. As a result of these changes, the PBGC is consulting with the Treasury Department on how best to determine the required interest rate. As soon as the PBGC determines the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in

March 2002, it will inform the public of the rate. This will be well before the variable-rate premium for premium payment years beginning in March 2002 is due.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in April 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 12th day of March 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–6428 Filed 3–14–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reinstatement of a Revised Information Collection: Nonforeign Area Cost-of-Living Allowance; Price and Background Surveys

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of two previously-approved information collections for which approval has expired. OPM uses the two information collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances (COLAs) for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price surveys will be conducted in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area. The background surveys will be conducted in these same areas and according to the same schedule, but on a more limited basis.

The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLAs) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the allowance areas. COLAs are based on differences in living costs in the allowance areas compared with living costs in the Washington, DC, area. The background survey is used to improve the COLA methodology and to plan the price surveys and determine such things as the appropriateness of items, services, and businesses selected for survey.

OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. Approximately 2,200 establishments will be contacted in the price survey, and approximately 30 establishments will be contacted in the background survey. Participation in the surveys is voluntary.

OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 257 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 5 hours.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358; fax: (202) 418–3251; or e-mail: *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Submit comments on or before April 15, 2002.

ADDRESSES: Send or deliver comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, fax: (202) 606–4264, or e-mail: *cola@opm.gov.*

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM published notice of its intention to request a reinstatement of the price and background surveys in the **Federal Register** on October 17, 2001 (66 FR 52813). OPM received one comment in response to the notice. The commenter noted that a sentence in the Summary section of the notice could be interpreted to mean that OPM will conduct surveys annually in selected COLA areas. We agree that the sentence could be misinterpreted, and wish to clarify that OPM will not conduct price surveys annually in any COLA area. As stated in the Supplementary Information section of the notice, OPM will conduct the price surveys in each COLA area on a rotating basis once every 3 years and annually in the Washington, DC, area.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–6200 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Federal Long Term Care Insurance Program Early Enrollment

AGENCY: Office of Personnel Management.

ACTION: Notice of Federal Long Term Care Insurance Early Enrollment.

SUMMARY: The Office of Personnel Management, in conjunction with LTC Partners, is announcing an early enrollment for eligible persons to submit applications for enrollment in the Federal Long Term Care Insurance Program. LTC Partners is an organization formed by the John Hancock and Metropolitan Life Insurance Companies to provide long term care insurance to eligible persons under this Program.

DATES: Early enrollment will run from March 25 through May 15, 2002.

FOR FURTHER INFORMATION CONTACT: You may call 1–800–LTC–FEDS (1–800–582–3337) or visit *www.ltcfeds.com* for information on applying during early enrollment.

SUPPLEMENTARY INFORMATION: The Federal Long Term Care Insurance Program early enrollment is an opportunity for eligible persons to submit applications for enrollment before the open season begins on July 1, 2002. Early enrollment is designed for persons who are already knowledgeable about long term care insurance and do not need the extensive educational campaign that LTC Partners will undertake before and during the open season.

In our contacts with potential applicants ever since the Program was announced, we realized that there were

a significant number of persons who were very familiar with the various aspects of long term care insurance, and wanted to purchase the insurance as soon as possible. We decided to provide an early enrollment opportunity for this group of applicants, so they would not have to wait until the open season to apply for coverage.

The specific provisions of early enrollment are as follows:

Eligible persons: Persons eligible for early enrollment are those specified in the Federal Long Term Care Insurance law (5 U.S.C. 9002) as eligible for coverage. The eligible groups are Federal civilian employees and annuitants; members of the uniformed services; retired members of the uniformed services; their spouses and adult children; and the parents, stepparents, and parents-in-law of employees and members of the uniformed services. There will be no difference in eligibility requirements between the early enrollment period and the open season.

Underwriting requirements: Federal civilian employees, members of the uniformed services, and their spouses will be required to submit applications with short form underwriting. The short form contains several questions regarding health status.

All other eligible persons will be required to submit applications with long form, or full, underwriting. If you are subject to full underwriting, you must answer more questions about your health status. It may also include a review of medical records and/or a personal interview.

Benefits available: Under early enrollment, a limited number of benefit options will be available. Benefit levels will be described in printed material provided by LTC Partners and on their Web site at *www.ltcfeds.com.* More options will be made available during the open season that begins in July. You will be able to change to a different benefit level during that open season if you wish, and still retain your ''billing age'' from early enrollment.

Billing age: Premiums are based on your age at the time LTC Partners receives your application for coverage (your ''billing age''). Billing age rules will be different for the open season.

Premiums: Premiums vary depending on your age and the level of coverage you choose. Premiums will be provided by LTC Partners in print material and on their Web site at *www.ltcfeds.com.*

During early enrollment, premiums may be paid in one of two ways. You may request direct billing for premiums, or you may have premiums automatically deducted from a bank account. Payroll deductions will not be available until the open season. You may switch to payroll deductions at any time after they become available.

Effective date: The effective date of an enrollee's coverage under early enrollment is the later of May 1, 2002, or the first day of the month that is on or after the date LTC Partners approves your application for coverage.

Authority: 5 U.S.C. 9008.

Kay Coles James,

Director.

[FR Doc. 02–6198 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Teresa Floyd, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–2309.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Kay Coles James,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Paul T. Conway—Chair,
William E. Flynn,
Richard A. Ferris,
John C. Gartland,
Teresa M. Jenkins,
Kathleen M. McGettigan,
Mark A. Robbins,
Ronald P. Sanders.

[FR Doc. 02–6199 Filed 3–14–02; 8:45 am]

BILLING CODE 6325–39–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25457; 812–12706]

LaSalle Funding LLC; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

Summary of Application: Applicant, LaSalle Funding LLC (''LaSalle Funding''), seeks an order to permit LaSalle Funding to sell securities and use the proceeds to finance the business activities of certain companies controlled by its parent company, ABN AMRO Bank N.V. (''Bank'').

Filing Dates: The application was filed on December 3, 2002 and amended on March 11, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2002, and should be accompanied by proof of service on 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 135 South LaSalle Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. The ABN AMRO group (''ABN AMRO Group''), which consists of Bank,

Bank's parent company ABN AMRO Holding N.V. (''Holdings'') and subsidiaries of Holdings, offers a wide range of commercial and investment banking products and services on a global basis. Holdings and its subsidiaries, on a worldwide basis, are extensively regulated in The Netherlands by the Dutch Central Bank. ABN AMRO Group is one of the largest banking groups in the world with total consolidated assets, as of December 31, 2000, of EUR 543.2 billion.

2. LaSalle Funding, a Delaware limited liability company, is an indirect wholly owned subsidiary of Bank. LaSalle Funding was established to engage in financing activities and to provide financing to LaSalle Bank, National Association (''LaSalle Bank'') and to other companies controlled by Bank within the meaning of rule 3a–5(b)(3) under the Act and after giving effect to the requested order (such companies, together with LaSalle Bank, collectively, the ''Controlled Companies''). LaSalle Funding proposes to issue in the United States up to $2.5 billion of debt securities (''Notes'') with maturities expected to range from nine months to 30 years pursuant to an effective ''shelf'' registration statement under the Securities Act of 1933 (''1933 Act''). LaSalle Funding may also offer other debt securities in the United States pursuant to a registration statement or an applicable exemption from registration under the 1933 Act.

3. The Notes and any other issuance of debt securities by LaSalle Funding will be guaranteed unconditionally by Bank with a guarantee that meets the requirements of rule 3a–5(a) (''Guarantee''). In accordance with rule 3a–5(a)(5), at least 85% of any cash or cash equivalents raised by LaSalle Funding will be invested in or loaned to Controlled Companies as soon as practicable, but in no event later than six months after LaSalle Funding's receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6), all investments by LaSalle Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the 1933 Act.

4. In connection with LaSalle Funding's offering of securities guaranteed by Bank, Bank will submit to the jurisdiction of any State or Federal court located in the Borough of Manhattan in the City of New York and will appoint an agent to accept any process which may be served in any action based upon Bank's obligations to LaSalle Funding as described in the application. Such consent to jurisdiction and such appointment of an agent to accept service of process will be irrevocable until all amounts due and to become due with respect to securities issued by LaSalle Funding as described in the application have been paid.

Applicant's Legal Analysis

1. LaSalle Funding requests relief under section 6(c) of the Act for an exemption under 6(c) of the Act from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of the Controlled Companies do not, or are not expected to, fit within the definition of ''companies controlled by the parent company'' because they derive their non-investment company status from section 3(c) of the Act. LaSalle Funding states that neither LaSalle Bank, nor any other Controlled Company excluded under section 3(c), nor Bank will engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. LaSalle Funding submits that its exemptive request meets the standards set out in section 6(c).

Applicant's Condition

LaSalle Funding agrees that any order issued on the application shall be subject to the following condition:

LaSalle Funding will comply with all of the provisions of rule 3a-5 under the Act, except paragraph (b)(3)(i) to the extent that LaSalle Funding will be permitted to invest in or make loans to entities that do not meet that portion of the definition of ''company controlled by the parent company'' solely because they are corporations, partnerships and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (3), (4), (5), (6) or (7) of the Act, provided that any such entity:

(i) If excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as a means of avoiding regulation under the Act;

(ii) If excluded from the definition of investment company pursuant to section 3(c)(5) of the Act, will fall within section 3(c)(5)(A) or 3(c)(5)(B) solely by reason of its holding of accounts receivable of either its own customers or of the customers of other Bank subsidiaries, or by reasons of loans made by it to such subsidiaries or customers; and

(iii) If excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in (ii) above).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6254 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25456; 812–12771]

The Catholic Funds, Inc., et al.; Notice of Application

March 11, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit the proposed reorganizations of the following series of The Catholic Funds, Inc. (''CFI''): The Catholic Equity Income Fund (''Equity Income Fund'') with and into The Catholic Equity Fund (''New Equity Fund''); The Catholic Large-Cap Growth Fund (''Large-Cap Growth Fund'') with

and into the New Equity Fund; and The Catholic Disciplined Capital Appreciation Fund (''Capital Appreciation Fund'' and, together with the Equity Income Fund and the Capital Appreciation Fund, the ''Existing Funds'') with and into the New Equity Fund. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: CFI and Catholic Financial Services Corporation (''CFSC'').

Filing Dates: The application was filed on February 4, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 1, 2002, and should be accompanied by proof of service on applicants, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Fredrick G. Lautz, Esq., Quarles & Brady LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. CFI, a Maryland corporation, is registered under the Act as an open-end management investment company and currently offers several series, including the Existing Funds (and together with the New Equity Fund, the ''Funds''). The New Equity Fund is a newly designated series of CFI. CFSC, a Wisconsin corporation, is registered under the Investment Advisers Act of 1940 and is the investment adviser to the Funds. As of December 31, 2001, Catholic Knights and Catholic Order of Foresters, both of which are non-profit organizations, each owned beneficially and of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of each Existing Fund.

2. On February 14, 2002, the board of directors of CFI (''Board''), including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), unanimously approved separate Agreements and Plans of Reorganization and Liquidation (each, a ''Plan''), whereby each of the Existing Funds would be consolidated with and into the New Equity Fund. In each of these reorganization transactions (a ''Reorganization''), the relevant Existing Fund would transfer substantially all of its assets, net of its liabilities, to the New Equity Fund in exchange solely for shares of the New Equity Fund. In each Reorganization, shareholders of the relevant Existing Fund will receive shares of the New Equity Fund having an aggregate net asset value equal to the aggregate net asset value of the Existing Fund's shares. The value of the assets of each Fund will be determined in the manner set forth in each Fund's then-current prospectus and statement of additional information. Immediately after the exchange, each Existing Fund would liquidate and distribute the shares of the New Equity Fund received in the exchange to its shareholders pro rata.

3. Applicants state that the Board has determined that the investment objective, program and policies of the Funds are sufficiently similar to make an investment in the New Equity Fund an appropriate substitute investment for shareholders of the Existing Funds. Each Existing Fund offers one class of shares, Class A, and the New Equity Fund will offer three classes of shares, only one of which, Class A, will be issued in the Reorganizations. In connection with the Reorganizations, shareholders of each Existing Fund will receive the corresponding Class A shares of the New Equity Fund. No sales charge will be imposed on shares of The New Equity Fund issued to shareholders of the Existing Funds in the Reorganizations. CSFC has committed to pay all costs incurred by an Existing Fund in connection with each Reorganization.

4. The Board, including a majority of the Independent Directors, determined that the Reorganizations are in the best interests of the New Equity Fund and the Existing Funds and that the interests of the shareholders of the Existing Funds would not be diluted by the Reorganizations. In approving the Reorganizations, the Board considered various factors, including, among others: (a) The investment objectives and policies of the Existing Funds and the New Equity Fund; (b) the terms and conditions of each Plan; (c) the tax-free nature of the Reorganizations; and (d) the expense ratios of the Existing Funds and the New Equity Fund.

5. The consummation of each Reorganization is subject to a number of conditions, including, among others: (a) Approval of the Plan by the affirmative vote of a majority of the outstanding voting securities of the relevant Existing Fund; (b) receipt by CFI of an opinion from its legal counsel that the relevant Reorganization will not result in recognition of income, gain or loss for federal income tax purposes by the New Equity Fund, the relevant Existing Fund or the shareholders of the relevant Existing Fund, and (c) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan also provides that, prior to completion of the Reorganization to which it relates, the relevant Existing Fund shall have declared and paid dividends and other distributions, effectively distributing to its shareholders substantially all investment company taxable income and all net capital gains for all taxable years ending on or before the date of the relevant Reorganization. Each Plan may be terminated by the Board. Applicants agree not to make any material changes to a Plan that would affect the application without prior approval of the Commission or its staff.

6. CFI began mailing definitive proxy statements/prospectuses for each of the three separate Reorganizations on March 1, 2002. The definitive proxy statements/prospectuses were filed with the Commission on March 6, 2002. Special meetings of shareholders of each of the Existing Funds are scheduled for April 2, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among others: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more

of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Section 2(a)(9) of the 1940 Act defines ''control'' in part to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of any company shall be presumed to control such company.''

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Existing Funds and the New Equity Fund may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Each Existing Fund and the New Equity Fund may be deemed affiliated persons since they are under the common control of CFSC. Additionally, the Existing Funds may be deemed affiliated persons since they are under the common control of Catholic Knights, which beneficially owns more than 25% of the outstanding voting securities of each Existing Fund.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Reorganizations will be based on the relative net asset values of the Existing Funds and New Equity Fund's shares. Applicants also state that the investment objective and policies of the Funds are substantially similar. Applicants state that the Board, including the Independent Directors, has made the requisite determinations that the participation of each Existing Fund in the respective Reorganization is in the best interests of each Existing Fund and the New Equity Fund and that such participation will not dilute the interests of the existing shareholders of each Existing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6255 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 18, 2002: A closed meeting will be held on Tuesday, March 19, 2002 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled for Tuesday, March 19, 2002, will be: Opinion; litigation matter; formal order of private investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

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: March 12, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–6318 Filed 3–12–02; 4:12 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45532; File No. SR–OPRA–2002–01]

Options Price Reporting Authority; Notice of Filing of a Proposal To Establish Terms Governing the Provision by OPRA of a Best Bid and Offer for Each of the Options Series Included in OPRA's Market Data Service, and Governing Its Use by Vendors

March 11, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 26, 2002, the Options Price Reporting Authority (''OPRA''),[2] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The amendment would add to the OPRA Plan terms governing the provision by OPRA of a best bid and offer (''BBO'') for each of the options series included in OPRA's market data service, and governing the use of the BBO by vendors. The Commission is publishing this notice to solicit comments on the proposed amendment from interested persons.

I. Description and Purpose of the Amendment

The proposed amendment would establish in the OPRA Plan, and in BBO Guidelines that would be a part of the OPRA Plan, terms governing the provision by OPRA of a consolidated BBO service that would show the best

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange. The New York Stock Exchange is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

bid and offer for each options series that is included in OPRA's market data service. The BBO for a given options series would show the number of contracts included in the best bid and best offer for that series subject to a minimum of ten contracts, and would identify the exchange where the best bid is being quoted and where the best offer is being quoted. In accordance with the proposed OPRA Plan amendment, OPRA vendors would be required to include only the consolidated BBO for any series of options included in the market data they provide to their customers (together with last sale reports for each such series of options), instead of having to show all bids and offers in all markets for each such series as they are currently required to do.

Under the proposed OPRA Plan amendment, the BBO for any series of options would be the highest bid and the lowest offer currently being quoted on any of OPRA's participant exchanges. In the case of options traded on two or more participant exchanges, if the same best bid or offer is quoted on more than one exchange, the exchange that is quoting at that price for the largest number of options contracts would be identified as the exchange that is quoting the best bid or offer, and if the same best bid or offer for the same number of options contracts is quoted on more than one exchange, the exchange that was first in time to quote that bid or offer for that number of contracts would be identified as the BBO. Thus, the BBO would be prioritized, in order, on the basis of price, size, and time.

The proposed BBO Guidelines provide that the minimum price increment for purposes of the BBO is no less than five cents, and that the minimum size increment for purposes of the BBO is no less than ten contracts.[3] This means that in order to displace the current BBO by improving the price at which an options series is quoted, the price improvement must be at least five cents per contract, and in order to displace the current BBO by increasing the number of contracts covered by a quote at the same price as the current BBO, the new bid or offer must be for at least ten contracts more than the current BBO. This would not preclude markets from entering bids and offers that improve the current BBO by less than five cents (to the extent such quotes may be permitted under applicable exchange rules) or that increase the number of contracts by less than ten. However, in order to displace the disseminated BBO, the price or size improvement must equal or exceed these minimums.

The adoption by OPRA of these minimum price and size increments occurred after OPRA received input from its vendors and subscribers, who view a BBO service that would enable OPRA to offer a meaningful options market data service as a significant benefit. Additionally, OPRA believes that the proposed BBO would require significantly less data processing and transmission capacity on the part of vendors and subscribers than is required by OPRA's full market data service. In this respect, OPRA anticipates that the BBO service would mitigate the huge increase in message traffic represented by OPRA's full service over the past several years, and the concomitant increase in the capacity required of vendors' and subscribers' systems in order to handle the full service. By proposing minimum price and size increments for purposes of the BBO at five cents and ten contracts respectively, OPRA believes that it has attempted to strike a balance between the need to show meaningful price and size improvement, and the need to keep the capacity demands of the BBO service at a level that is significantly less than the capacity demands of OPRA's full service.

OPRA states that its full market data service would continue to include all disseminated bids and offers from all of OPRA's participant exchanges and this information would continue to be available to vendors of, and subscribers to, the full service. OPRA believes that since major vendors may be expected to continue to offer the full OPRA service, and since most if not all broker-dealer subscribers would likely continue to subscribe to the full service in order to be able to fulfill their best execution obligations to customers, broker-dealers would have access to the same complete market data as they do today. For this reason, OPRA believes that the new BBO service should be viewed as an alternative to the full service for those persons who do not require the full service, and who therefore do not need to maintain the large systems needed to handle the full service.

The text of the amendment is set forth below. Text additions are in italics, deletions are in brackets:

III. Definitions

* * * * *

(g) ''Quotation information'' means bids, offers, or related information pertaining to quotations in eligible securities, *including information consisting of the BBO (as defined below) for eligible securities.*

* * * * *

(s) ''BBO'' (''Best Bid and Offer'') means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the parties, as determined and disseminated by OPRA in accordance with ''BBO Guidelines'' adopted by the parties. The adoption of the initial BBO Guidelines shall require the approval of all of the parties; thereafter the BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the parties, subject in all cases to being filed with and approved by the Commission.

* * * * *

V. Collection and Dissemination of Options Last Sale Reports and Quotation Information

* * * * *

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of *consolidated options information,* on fair and reasonable terms over a network or networks to vendors, subscribers and other approved persons. [Last sale reports and quotation] *Such* information [with respect to eligible securities] shall [be disseminated only through the OPRA System,] *include consolidated last sale reports and consolidated quotation information for all series of options for which the parties are required to provide current market information to OPRA in accordance with paragraphs (a)–(b) of this Section V. Not later than _____ 2002,*[4] *or upon the earlier completion of modifications to the OPRA System necessary to enable the System to carry the BBO, such information shall also include* [and only] *the BBO for all* such [reports] *series of options. Once the BBO is available through the OPRA System, OPRA may offer a complete options market data service consisting of the BBO combined with consolidated last sale reports and quotation information, or OPRA may offer a limited service consisting of the BBO combined with consolidated last sale reports only while separately continuing to offer last sale*

[3] The minimum price variation for option quotes under the rules of OPRA's participant exchanges is currently five cents for options trading under $3.00 per share per option contract; *See, e.g.,* American Stock Exchange Rule 952.

[4] OPRA represents that it will specify the date when the BBO service will be in production by the filing of a subsequent amendment to this proposal. *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2002.

reports and complete quotation information. Only such consolidated market information and *related* information, together with other information that satisfies the conditions of paragraph (iv) of this Section V(c) or is approved by OPRA, shall be disseminated through the System.

* * * * *

VII. Vendors, Subscribers and Other Approved Persons

* * * * *

(b) Agreements. Agreements for the furnishing of options [last sale reports and/or quotation] information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved vendors, subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of last sale reports and quotation information, or it may offer last sale reports and quotation information together in a single contract. A*s provided in Section V(c), upon the availability of a BBO through the OPRA System OPRA may contract separately for last sale reports combined with the BBO, or it may offer last sale reports, quotation information and the BBO together in a single contract.* OPRA may *also* contract separately for access to information and facilities pertaining to FCO securities or index option securities.

Agreements with vendors shall provide that last sale reports and quotation information may be received by vendors only for the purpose of (A) developing a data base that enables the vendor to respond to inquiries from interrogation devices or other devices located in the office of approved subscribers that are capable of displaying last sale reports of transactions in, and/or quotations for, eligible securities as they occur; (B) reporting changes in last sale reports and quotation information through display devices located in the office of approved subscribers; and (C) providing last sale reports and/or quotation information to approved subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, vendor agreements shall include provisions relating to the following:

(i) There shall be uniform specifications governing the manner in which last sale reports and quotation information are transmitted by or on behalf of OPRA to vendors. Such specifications may be different for different categories of eligible securities;

(ii) There shall be standards governing the services provided by vendors to subscribers which shall require that such services facilitate dissemination of last sale reports and quotation information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(iii) Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of last sale reports or quotation information shall be capable of displaying all such reports or information regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market *, provided, however, that agreements with vendors may provide that the requirements of this paragraph (b)(iii) will be deemed to be satisfied if a vendor's market data service includes last sale reports together with the BBO, or last sale reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.*

All agreements entered into between the parties and persons receiving last sale reports and/or quotation information shall provide that the respective reports and information covered thereunder remain the property of the respective party on or in whose market the reported transaction or quotation took place, and all contracts shall be executed, and the fees collectable thereunder shall be billed and collected, on behalf of all parties, except that OPRA may provide for certain contracts pertaining exclusively to FCO securities or index option securities to be executed, and certain fees pertaining to such eligible securities to be billed and collected, on behalf of those parties that provide a market in such eligible securities.

* * * * *

Options Price Reporting Authority

BBO Guidelines

Section V(c)(i) of the OPRA Plan provides for the dissemination by OPRA of, among other things, a consolidated BBO. Section III(s) of the OPRA Plan defines the BBO as the highest bid and lowest offer for a series of options available in one or more of the options markets maintained by the parties, as determined in accordance with ''BBO Guidelines'' adopted by the parties to the Plan. The BBO Guidelines as currently in effect are as follows:

1. Price/Time Priority. The BBO is determined on the basis of the best price (highest bid and lowest offer) quoted first in time by a market, provided that in order to displace the current best bid or offer, a quote must improve the current quote by no less than five cents.

2. Size Included in BBO. The BBO will include the actual size of the included bid and offer, subject to a minimum size of 10 contracts. A bid or offer at the same price as the current BBO but for a size larger than the current BBO by no less than ten contracts will displace the current BBO.

3. Market Identifier. The BBO as disseminated by OPRA will include identification of the market quoting the best bid or best offer comprising the BBO in accordance with these Guidelines.

4. Crossed or Locked Markets. Crossed or locked markets may be shown as the BBO.

5. Excluded Quotes. Whenever quotes in a market are identified by that market as not being firm, those quotes will be excluded for purposes of determining the BBO. In addition, if, based on information provided by an exchange, the OPRA Processor determines that the exchange is experiencing system problems resulting in the unreliability of its quotes, the Processor will exclude those quotes from the BBO determination until it determines that these problems have been resolved.

II. Implementation of Plan Amendment

OPRA believes that its BBO service will be implemented upon the approval of the proposed OPRA Plan amendment (including its proposed BBO Guidelines) and promptly as practicable upon completion by OPRA's processor of the systems modifications necessary for its implementation. According to OPRA, its processor, the Securities Industry Automation Corporation (''SIAC''), is not now in a position to estimate when that work may be completed, since that depends upon certain technical decisions that have not yet been made by OPRA. However, OPRA has represented to the Commission that once SIAC is able to provide such an estimate, OPRA will amend this filing to include the latest date when the BBO service will go into production.[5] In addition, the introduction of OPRA's BBO service

[5] *Id.*

will likely necessitate certain changes to OPRA's forms of Vendor Agreement and Subscriber Agreements to make them conform to the revised requirements of the Plan, and perhaps to OPRA's fee structure. OPRA intends to file any such proposed amended agreements and fee changes with the Commission in one or more separate filings that may need to become effective prior to the implementation of the BBO service.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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 the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–01 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6256 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45527; File No. SR–EMCC–2002–02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Conforming Rule Changes Resulting From the Integration With The Depository Trust and Clearing Corporation

March 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 1, 2002, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by EMCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend EMCC's rules to conform the rules to recent changes EMCC made to its by-laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 25, 2001, the Commission approved EMCC's integration with The Depository Trust and Clearing Corporation (''DTCC'') whereby EMCC became a subsidiary of DTCC (''Integration Filing'').[3] As part of the integration, (i) EMCC's Class A shareholders were to be offered the right to exchange their EMCC shares for DTCC common shares, (ii) the EMCC shares held by EMCC's trade association shareholders were to be repurchased and cancelled, and (iii) EMCC's certificate of incorporation and by-laws were to be revised to provide for a corporate governance structure consistent with its integration into the DTCC organization. The integration, including the exchange offer, trade association share repurchases, and amendment of EMCC's governing documents, was completed as of January 1, 2002, and on that date EMCC became a subsidiary of DTCC.

When EMCC's by-laws were amended, the reference to ''participant directors'' was deleted because that term was no longer relevant in the new corporate governance structure. A conforming change should also have been made to EMCC's rules in the Integration Filing but was inadvertently omitted. Also, because EMCC users are now given the opportunity to buy shares of DTCC at periodic intervals under the new structure, the obligation to become an EMCC shareholder as part of an applicant's initial membership requirements should have been omitted from EMCC's by-laws.

Accordingly, Rule 1 (''Definitions'') and Rule 31 (''Hearing Procedures'') are being amended to delete the definitions of ''participant director.'' Rule 1 is also being amended to delete the definition of ''ISMA,'' which was a ''participant director.'' EMCC Rule 2 (''Members'') is being amended to delete the requirement that applicants for membership become EMCC shareholders.

EMCC believes that the proposed rule change is consistent with the requirements of the section 17A of the Act[4] and the rules and regulations thereunder because it permits EMCC's rules to be consistent with its current corporate governance structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Securities Exchange Act Release No. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001).

[4] 15 U.S.C. 78q–1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(C)[5] of the Act, which requires that the rules of a clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. In approving the Integration Filing, the Commission found that the proposed rule change was consistent with section 17A(b)(3)(C). Because this proposed rule change merely makes changes to EMCC's rules to conform them to the changes made in the Integration Filing, the Commission also finds this proposed rule change to be consistent with section 17A(b)(3)(C).

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow EMCC to immediately conform its rule to its current corporate governance structure which should help to avoid confusion among participants.

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, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6069. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR-EMCC–2002–02 and should be submitted by April 5, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC–2002–02) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6264 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–U

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45522; File No. SR–ISE–2002–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to the Status of Market Makers

March 8, 2002.

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 February 11, 2002, 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

The ISE proposes to amend its rules to clarify that its market makers are specialists for all purposes under the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The term ''specialist'' includes any market maker deemed to be or treated as a specialist for purposes of the Act by an exchange.[3] The purpose of this proposed rule change is to specify in the Exchange's rules that ISE market makers are deemed to be specialists under the Act.

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5)[5] in particular, in that it is designed, among other things, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to

[3] *See, e.g.,* Exchange Act Release No. 17574 (Feb. 25, 1981), 46 FR 15134 (Mar. 4, 1981). *See also* Rule 8.1 of the Chicago Board Options Exchange; Rule 958.01(a) of the American Stock Exchange; Rule 1014.01 of the Philadelphia Stock Exchange; and Rule 6.32 of the Pacific Exchange.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after February 11, 2002, the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A)(iii)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE–2002–04 and should be submitted by April 5, 2002.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6258 Filed 3–14–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45529; File No. SR–ISE–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange LLC Proposal to Restructure From a Limited Liability Company to a Corporation

March 8, 2002.

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 January 11, 2002, 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. Amendment No. 1 was filed on March 5, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The International Securities Exchange LLC (''Old ISE'') proposes to restructure from a limited liability company to a corporation, New ISE, (with the on-going business of both Old ISE and New ISE referred to collectively as ''ISE'' or the ''Exchange'') and to ''demutualize'' by separating the equity interest in the Exchange from members' trading rights. The text of the proposed rule change consists of: (1) A new Certificate of Incorporation; (2) a new Constitution; and (3) amendments to the Exchange's Rules. In addition, the Exchange has adopted the following interpretation of its Rules:

> Upon reorganization, the Exchange would be a Delaware corporation. Pursuant to Paragraph (a)(ii) of section II of the Exchange's Certificate of Incorporation, the holders of the Exchange's Class A Common Stock ''would be entitled to receive, when and if declared by the Board of Directors, out of the assets of [New ISE] which are by law available therefor, dividends payable either in cash, in stock or otherwise.'' The Exchange states its policy is that any revenues it receives from regulatory fees or regulatory penalties: would be segregated; would be applied to fund the legal, regulatory and surveillance operations of the Exchange; and would not be used to pay dividends to the holders of the Class A Common Stock.

The text of the proposed rule change is available for inspection at the Office of the Secretary, the ISE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov*).

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

The ISE is currently structured as a limited liability company (''LLC''), in which memberships encompass both trading rights and equity ownership. The Exchange states that the purpose of this proposed rule change is to restructure the company into a corporation, in which trading rights are separated from equity ownership. Except as specified below, the Exchange represents that these changes do not

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 4, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange expanded the concentration limits regarding ownership of the Class A Common Stock of its proposed corporation, International Securities Exchange, Inc. (''New ISE''). Specifically, the Exchange amended the proposed rule change to include a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Exchange states that its Board of Directors (''Board'') would be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: members; their affiliates; or persons subject to a statutory disqualification. In addition, Amendment No. 1 specifies that any ''poison pill'' New ISE adopts will be subject to prior Commission approval.

affect the manner of the Exchange's operations or governance structure. The three documents that would accomplish the restructuring and demutualization of the Exchange, and that encompass this rule change, are as follows:

- Certificate of Incorporation: This is the basic corporate document and replaces Old ISE's current LLC Operating Agreement.
- Constitution and By-Laws: This document replaces Old ISE's Constitution.
- Amended rules: These proposed rule changes reflect the changes to the Certificate and Constitution. Most changes are non-substantive and reflect changes to ''membership'' terminology required by the demutualization. In particular, the applicability of various rules to ''owners'' of shares and to ''Members'' of the Exchange, which are broker-dealers that have been approved to exercise trading privileges on the Exchange, has been clarified.

Overview of the Restructuring and Demutualization

The Exchange would convert into a Delaware stockholder corporation through a merger of Old ISE with New ISE, its newly-formed subsidiary; the members of Old ISE would become stockholders of New ISE. Memberships in Old ISE would convert into shares of New ISE Class A Common Stock, par value $.01 per share (the ''Class A Common Stock''), and shares of New ISE Class B Common Stock, par value $.01 per share (the ''Class B Common Stock''). Other than the nominal par value of the Class B Common Stock, the Class A Common Stock would constitute all of the equity in New ISE. New ISE may issue classes of preferred stock in the future, the terms of which would be defined by the Board and filed with the Commission for approval.

The Class B Common Stock would confer upon holders trading privileges and specified voting rights associated with the memberships in Old ISE. The Class B shares would be issued in three series corresponding with the existing membership types. Each series of Class B Common Stock would confer the same trading privileges associated with the membership interest that is converted into such series, and would be distributed as follows:

- Each Class A Membership Interest (Primary Market Maker (''PMM'') Members) would receive one share of Class B Common Stock, Series B–1 (the ''Series B–1 Stock'');
- Each Class B Membership Interest (Competitive Market Maker (''CMM'') Members) would receive one share of Class B Common Stock, Series B–2 (the ''Series B–2 Stock''); and
- Each Class C Membership Interest (Electronic Access Members (''EAM'')) would receive one share of Class B Common Stock, Series B–3 (the ''Series B–3 Stock'').

Description of New ISE Stock

Class B Common Stock

As discussed below, the holders of the Class B Common Stock would have the right to elect six members of New ISE's Board of Directors. In addition, Series B–1 Stock holders and Series B–2 Stock holders would have voting rights with respect to actions affecting the number of issued shares of Series B–1 Stock and Series B–2 Stock (the ''Core Rights''). A vote with respect to a Core Right would require the majority approval of the Series B–1 holders, voting as a separate class, and the Series B–2 holders, voting as a separate class. This replicates the voting provisions of Old ISE.

A holder of Class B Common Stock, together with any affiliate, may not own more than 20% of Series B–1 Stock or Series B–2 Stock. ISE Founders [4] would have a temporary exemption, not to extend past May 26, 2010, from the ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B–1 Stock or 20% of the Series B–2 Stock.

The holders of Class B Common Stock would not have the right to receive any dividends. Upon liquidation of New ISE, holders of each series of Class B Common Stock would be entitled to receive a liquidation amount equal to the par value of the shares of Class B Common Stock ($0.01 per share). The shares of Series B–1 and B–2 Common Stock may be transferred only with approval of the Exchange, as is currently required with respect to PMM and CMM memberships. As with current EAM memberships, the shares of Series B–3 Stock would be non-transferable. In the event an EAM withdraws from trading, New ISE would buy back its share of B–3 Stock at par value.

Class A Common Stock

As discussed below, the holders of shares of Class A Common Stock would have the right to elect nine members of the Board of Directors of New ISE. The holders of the Class A Common Stock also would have the right to vote on any matter that requires a vote of the stockholders of New ISE, other than votes with respect to the Core Rights. Upon liquidation of New ISE, the holders of Class B Common Stock receive the par value of their stock and the holders of Class A Common Stock receive all residual amounts, subject to the rights of any classes of preferred shares.

If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, may approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under section 3(a)(3) of the Act,[5] if the Board determines that such an exemption generally would be consistent with the New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

The holders of shares of Class A Common Stock would be entitled to receive dividends, when and if declared by the Board of Directors. Prior to its registration as a national securities exchange, the ISE adopted an interpretation restricting the ISE from paying dividends out of revenues received from regulatory fees or regulatory penalties.[6] The ISE proposes a similar interpretation to apply the same restrictions to New ISE.

Election of Board of Directors

The size and composition of the Board of Directors of New ISE would remain the same following the demutualization. The Board would be comprised of 15 directors, and initially would consist of the current Board of Old ISE. In future elections, the holders of the Class B Common Stock would elect six directors: Two directors elected by the holders of Series B–1 Stock; two directors elected by the holders of Series B–2 Stock; and two directors elected by the holders of Series B–3 Stock.

[4] As defined in the New ISE Constitution, the term ''Founder'' means a person or entity that purchased the former Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such memberships.

[5] 15 U.S.C. 78c(a)(3).

[6] File No. 10–127, Amendment No. 2 (Letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 17, 2000).

The holders of the Class A Common Stock would elect nine directors: Eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. As opposed to the current structure, PMMs, CMMs, and EAMs would have the right to vote for the non-industry directors only to the extent they own Class A Common Stock. The Exchange believes that retaining members' rights to elect six directors fully complies with the statutory requirement that the ISE ''assure a fair representation of its members in the selection of its directors. * * *.''[7]

Currently, the Exchange has a single nominating committee, consisting of both industry and non-industry members, that nominates all candidates for election to the Board. Consistent with the new election structure, a nominating committee consisting of representatives of holders of the Series B Common Stock would select the nominees for Series B directors, and the non-industry directors on the Board would select the nominees for non-industry directors. Holders of the appropriate classes of common stock also would be able to nominate rival candidates for the Board.

Trading Privileges on the Exchange

The holders of each series of Class B Common Stock would have the same trading privileges they currently hold as PMMs, CMMs, and EAMs. The proposed rules of New ISE do not change any trading privileges. According to the Exchange, virtually all of the proposed changes are intended simply to conform the rules to the new Certificate of Incorporation and Constitution.

Transfer of Memberships

In filing number SR–ISE–2001–24, the Exchange proposed changes to the process by which members could transfer memberships. Concurrently with submitting the current filing, the ISE is withdrawing SR–ISE–2001–24 and including the substantive provisions of that filing in the Rules of New ISE. These changes update the Exchange's rules relating to the sale, transfer, and lease of market maker memberships. In particular, these changes eliminate the bid/offer system of selling these memberships and eliminate the claims process and deposit requirements for sales, transfer, and leases.[8]

Current ISE Rules provide that market maker memberships generally must be sold through a bid and offer system. Given its experience to date, the Exchange believes that the bid/offer system is not compatible with the unique structure of its market maker memberships. The PMM and CMM memberships are assigned to particular bins. In contrast to memberships on other exchanges, these memberships are not fungible with memberships outside those bins. In addition, there are relatively few memberships within each bin (1 PMM and 10 CMMs), rendering a bid/offer system limited to bin and class impractical. The Exchange proposes instead to allow members to negotiate their own purchases and sales, subject to the purchase or transfer agreement being filed with, and approved by, the Exchange. As a convenience, the Exchange would maintain a ''bulletin board'' for members to list memberships for sale, but use of that facility would be voluntary.

Currently, the Rules require the Exchange to hold proceeds from sales made pursuant to the bid/offer system for 20 days, during which time claims against the proceeds may be made. Similarly, under the lease provisions contained in the Exchange's current rules, a deposit is required prior to the lease becoming effective, to be applied at the beginning and the end of the lease term to satisfy the claims process. The Exchange proposes to remove the claims process and deposit requirements. These modifications would eliminate a significant administrative burden on the Exchange, Clearing Members, and other members that is a byproduct of the current membership claims process. As exists currently, Members can still pursue claims against other Members through the arbitration process.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such 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–2002–01 and should be submitted by April 5, 2002.

[7] Section 6(b)(3) of the Act. 15 U.S.C. 78f(b)(3).

[8] The Exchange also proposes to change the terminology used in these Rules to reflect the fact that the sale or transfer of market maker trading rights will be accomplished by the sale or transfer of the appropriate share of Series B–1 or Series B–2 Class B Common Stock.

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6260 Filed 3–14–02; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45531; File No. SR–NASD–2002–05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval to Proposed Rule Change Relating to Revisions to Form U–4 and Form U–5

March 11, 2002.

On January 9, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or the ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change revising the Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') and Uniform Termination Notice for Securities Industry Registration (''Form U–5'') (collectively, the ''Forms''). On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.[4] On February 28, 2002, NASD Regulation submitted Amendment No. 3 to the proposed rule change.[5]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7, 2002.[6] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder,[7] and, in particular, the requirements of Section 15A of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[9] Section 15A(b)(6)[10] requires, among other things, that the NASD's rules be 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.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the Investment Adviser Registration Depository (''IARD'') system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not use the CRD or IARD systems; clarifying certain items that have been a source of confusion for Web CRD users; and updating the Form U–4 to add examination and registration categories that were not previously included. The proposed rule change also amends NASD IM–8310–2, Release of Disciplinary Information, to refer to the newly numbered Item 14 of the Form U–4.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–NASD–2002–05) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated January 22, 2002 (''Amendment No. 1'').

[4] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated January 31, 2002 (''Amendment No. 2'').

[5] *See* letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated February 27, 2002 (''Amendment No. 3''). In Amendment No. 3, NASD Regulation made various technical corrections to the proposed language changes to Form U–4 and Form U–5.

[6] *See* Securities Exchange Act Release No. 45385 (February 1, 2002), 67 FR 5862.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6259 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45521; File No. SR–NYSE–99–51]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Order Tracking by Exchange Members and Member Organizations

March 8, 2002.

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 February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.[4] On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.[5] The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation (''Division''), Commission, dated May 22, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange deleted the phrase ''or execution'' from proposed Rule 132B(a)(1)(C) as unnecessary for application of the Rule.

[4] *See* Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposed to: (1) amend Rule 123 by adding proposed paragraph (f) which would set forth the details required to be recorded of each execution report, including a unique order identifier, and (2) amend Rule 132.30 by deleting 132.30(10), which would have required a unique order identifier be added to the data elements in post trade processing. The Exchange represents that this change will ensure that a unique order identifier will be attached throughout the life of an order, thus simplifying the tracking process.

[5] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 (''Amendment No. 3''). In Amendment No. 3, the Exchange explained that it did not believe that it was cost-effective to store all order tracking data collected from members on a daily basis, and

Continued

proposed rule change was published, as amended, on January 30, 2002.[6] The Commission is publishing this notice to solicit comments on Amendment No. 4 to File No. SR–NYSE–99–51 from interested persons.

I.Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendments to NYSE Rule 132, and the proposed adoption of NYSE Rules 132A, B and C on order tracking. In Amendment No. 4 to the proposed rule change, the Exchange proposes that the requirement that copies of execution reports be entered into an Exchange database be implemented within 6 months, instead of 15 months (as originally proposed), after Commission approval of the filing.

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or ''FESC'') [7] and proposed requirements for the electronic capture of orders at the point of receipt (order tracking system, or ''OTS'').[8] The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing. As originally filed in SR–NYSE–99–51, the proposed rule change consisted of amendment of Exchange Rule 132, and adoption of new Rules 132A, B and C on order tracking. These new rules require the recording of details of orders in Exchange listed securities by members and member organizations.

Amendment No. 1 effected a minor change to proposed NYSE Rule 132(B).[9] Amendment No. 2 proposed amendments to NYSE Rules 123 and 132 to require that members and member organizations provide a drop copy of the report of execution to FESC, with the unique order identifier linking the execution report to the original order, rather than requiring that the order identifier be submitted as part of audit trail post-trade processing.[10] Amendment No. 3 discussed the Exchange's position that data be submitted to the Exchange on an ''as requested'' basis rather than daily as a matter of routine under NYSE Rule 132C.[11]

As originally proposed in File No. SR-NYSE–99–51, the implementation date for the entire rule change and amendments would occur fifteen (15) months after Commission approval, if such approval is granted. The Exchange now proposes to amend this time frame with respect to the drop copy of execution reports requirement *only* (as described in Amendment No. 2 to the proposed rule change) to a shorter time frame, namely six (6) months after Commission approval of the filing. The Exchange believes that this is feasible since the system architecture for the Exchange database (FESC) is already in place. This six-month time frame should allow sufficient time for members and member organizations to do programming and training so that execution reports can be captured and drop-copied into the Exchange database. In addition, the Exchange believes that the phasing-in of the requirements will give members and member organizations time to better plan for full implementation of the rule changes proposed in File No. SR-NYSE–99–51.

2. Statutory Basis

The Exchange believes that the basis under the Act for Amendment No. 4 to this proposed rule change is the requirement under section 6(b)(5)[12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes that this amendment to the proposed rule change will enhance the Exchange's tools to effectively surveil its market. The Exchange notes that the proposed rule change fulfills an undertaking contained in an order issued by the Commission relating to the Exchange's regulatory responsibilities.[13] Specifically, the Order directed the Exchange to ''design and implement * * * an audit trail sufficient to enable the NYSE to reconstruct its market promptly. * * *'' The Order called for ''an accurate, time-sequenced record of orders * * *'' throughout an order's life, from receipt through execution or cancellation and for synchronization of clocks used in connection with the audit trail of orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

clarified that therefore members would be required to submit data to the NYSE on an ''as requested'' basis rather than daily as a matter of routine. The Exchange also represented that the data collected would be used solely for regulatory purposes, and that it would not use data received from its members pursuant to the proposed rules to gain a competitive advantage over another self-regulatory organization or broker-dealer. Lastly, the Exchange explained what it considered order origination and time of receipt of an order.

[6] *See* Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

[8] *See* note 6, *supra.*

[9] *See* note 3, *supra.*

[10] *See* note 4, *supra.*

[11] *See* note 5, *supra.*

[12] 15 U.S.C. 78f(b)(5).

[13] *See* In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999); Administrative Proceeding File No. 3–9925 (''the Order'').

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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to Amendment No. 4 of File No. SR–NYSE–99–51 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6262 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45534; File No. SR–OCC–2001–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the By-Laws

March 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on December 19, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend certain sections of Article IV and Article VI of OCC's By-Laws to correct minor errors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this rule change is to correct technical errors in Article IV of OCC's By-Laws that deals with officers. There are two principal errors that OCC desires to correct. First, in 1980, when Chapter XII of OCC's Rules was amended to eliminate the authority of the Chairman and the President to prescribe penalties for rule violations, Article IV of the By-Laws should have also been amended to eliminate references to that authority in Section 6 (''Chairman of the Board'') and Section 8 (''President'').

Second, in 1997, when Article IV was amended to create the office of Management Vice Chairman, OCC's stated intent was to remove the Member Vice Chairman from the line of succession.[3] However, language that should have been deleted in order to implement that intent was inadvertently left in. As a result, there are now mutually inconsistent By-Laws providing that in the absence or disability of the Chairman, the Management Vice Chairman and the Member Vice Chairman each succeed to the powers of the Chairman.

A secondary purpose of this rule change is to make minor corrections to Section 15 and 16 of Article VI of the By-Laws. Those corrections are to delete material that should have been deleted when references to market baskets were removed from the By-Laws and Rules.[4]

The proposed rule change is consistent with Section 17A of the Act because it provides consistency within OCC's by-laws.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and Rule 19b–4(f)(1)[6] thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Prior to that time, the By-Laws provided that Member Vice Chairman would succeed to the power of the Chairman in the absence or disability of the President and all the Vice Presidents. Securities Exchange Act Release No. 39420 (December 10, 1997), 62 FR 66167 (December 17, 1997) [File No. SR-OCC–97–08].

[4] Securities Exchange Act Release No. 41222 (March 29, 1999), 64 FR 16772 (April 6, 1999) [File No. SR–OCC–99–03].

[5] 5 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC–2001–18 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6257 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45523; File No. SR–Phlx–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt an Application Fee for Equity Trading Permits

March 8, 2002.

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 February 11, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on March 1, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to apply a $200 Application Fee to applicants for Equity Trading Permits (''ETPs'') who, at the time application is made, are not Exchange members or foreign currency options (''FCO'') participants. The Exchange states that it would not charge the $200 ETP Application Fee to ETP applicants who, at the time the application is made, are Exchange members or FCO participants. The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23 which provides for ETPs.[4] The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to amend the Exchange's Schedule of Dues, Fees and Charges, to establish that a $200 ETP Application Fee will be charged to applicants for ETPs who, at the time application is made, are not Exchange members or FCO participants.[5] The Exchange proposes this new ETP application fee to defray the Exchange's administrative costs of review and processing such applications.

Exchange Rule 23(b) provides that ETP holders must meet all qualifications that are required for membership in the Exchange. It provides that applications must be approved by the Exchange, and that applicants who are not Exchange members must be admitted by the Exchange. Exchange Rule 23(b) also states that the admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and that the decision to grant or deny an application for admission will be made by the Admissions Committee. The Exchange noted in its filing proposing Exchange Rule 23, that ETP applicants who are members of the Exchange when they apply for an ETP will have already received a favorable admissions determination by the Exchange's Admissions Committee when they became a member. Consequently, they will not be charged the ETP Application Fee. The Exchange now proposes that a $200 ETP Application Fee apply to ETP applicants who are not members or FCO participants at the time of application in order to defray the administrative costs associated with processing applications made by individuals who have not previously been evaluated by the Exchange as applicants for membership or FCO participation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the $200 ETP Application Fee is reasonable and equitable, because it is charged to all ETP applicants who are not members or FCO participants.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[8] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that application of the $200 ETP Application Fee to ETP applicants who are not members or FCO participants when they apply will defray administrative costs involved in the review and processing of an ETP application when made by an individual with respect to whom this has not previously been done in the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 1, 2002, the Exchange filed a new Form 19b–4, which replaces and supercedes the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR–Phlx–00–02 and SR–Phlx–00–03).

[5] The Exchange has separately filed pursuant to section 19(b)(3)(A) of the Act, SR–Phlx–2002–10, a proposed rule change amending Appendix A to its Schedule of Dues, Fees and Charges to establish fees applicable to ETP holders and ETP organizations. *See* Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001) (SR–Phlx–2001–01). That filing does not address the $200 ETP Application Fee that is proposed here. The Exchange now files this proposed rule change pursuant to section 19(b)(2) of the Act.

[6] 15 U.S.C 78f(b).

[7] 15 U.S.C 78f(b)4.

[8] 15 U.S.C 78f(b)(5).

context of an application for a membership or FCO participation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and Rule 19b–4(f)(2) hereunder.[10] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–12 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6263 Filed 3–14–02; 8:45 am]

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[9] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45533; File No. SR–SCCP–2002–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communications Networks

March 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 17, 2002, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends SCCP's pilot program for an additional one year period thereby continuing to implement the existing SCCP fee waivers for SCCP participants for trades executed on the Philadelphia Stock Exchange, Inc. (''Phlx'') for Electronic Communications Networks (''ECNs'').[2] The current pilot program expired on January 23, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP previously filed with the Commission a proposed rule change to adopt a fee schedule for ECNs.[4] Pursuant to that proposed rule change, SCCP waived certain dues, fees, and charges, including trade recording fees, value fees, and treasury transaction charges but not account fees, research fees, computer transmission/tape charges, or miscellaneous charges on its fee schedule.[5] The fee schedule was to operate as a pilot program for one year. It was intended that after the initial pilot period, the ECN would be eligible for the SCCP fee schedule rates for ECNs only if the ECN achieved certain average daily equity volume on the Phlx.[6] At this time, SCCP proposes to continue to implement the existing fee schedule for ECNs, as described above, without imposing volume requirements.

This rule change affects ECN trades not related to such ECN acting as a Phlx specialist or floor broker. Thus, an ECN may incur specialist or floor brokerage transaction fees if it acts in that capacity. Currently, no ECN operates from Phlx's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the Phlx equity trading floor, it could be subject to various SCCP fees respecting

[1] 15 U.S.C. 78s(b)(1).

[2] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker and permits such orders to be executed against in whole or in part except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times or any system operated by or on behalf of an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal other than riskless principal.

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release No. 45145 (December 10, 2001), 66 FR 65017 (December 17, 2001) (SR–SCCP–2001–01).

[5] Certain provisions of the SCCP fee schedule do not apply to ECNs because they apply to specialists and/or relate to margin financing, such as specialist discount, margin account interest, P&L statement charges and buy-ins.

[6] The average daily equity volume requirements on the Phlx were initially at least 5,000 trades and 5,000,000 shares in the twelfth month after the ECN first became subject to the ECN fee schedule.

its non-ECN floor operation.[7] In addition, an ECN's transactions as a floor broker would be subject to the applicable SCCP fee as would any ECN's specialist trades. Even if the ECN is acting as a floor broker or specialist with respect to some trades, those trades for which it is not acting as a floor broker or specialist, but rather as an ECN, would be subject only to the monthly and not other transaction charges.

The proposed rule change extends SCCP's existing fee schedule for ECNs for an additional one year period in order to have the opportunity to fully review and evaluate the overall structure of the ECN program, including whether to impose volume threshold requirements.

SCCP believes that its current ECN fee schedule provides competitive fees with appropriate incentives thus proving a reasonable method to attract large order flow providers such as ECNs to Phlx and SCCP. Additional order flow should enhance liquidity and improve Phlx's, and therefore SCCP's, competitive position in equity trading and clearing.

SCCP believes that its proposal to extend its current pilot program for one year, thereby continuing to implement the existing SCCP fee waivers described above for ECNs, is consistent with section 17A(b)(3)(D) of the Act[8] because it provides for the equitable allocation of reasonable dues, fees, and other charges. SCCP believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to Phlx. Specifically, SCCP points out that ECNs operate a unique electronic agency business similar to a securities exchange as opposed to directly executing orders for their own customers as principal or agent.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–2002–02 and should be submitted by April 5, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–6261 Filed 3–14–02; 8:45 am]

BILLING CODE 8010–01–P

[7] For example, an ECN acting as a specialist would be subject to the trade recording fee for specialist trades matching with PACE trades.

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b-4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys in accordance with E.O. 12862.

No: N/A.

Frequency: On Occasion.

Description of Respondents: SBA Customers.

Responses: 33,115.

Annual Burden: 2,760.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–6187 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 15, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Loan Closing Forms.
No's: 159, 160, 160A.
Frequency: On Occasion.
Description of Respondents: 7(a) Participants.
Responses: 60,000.
Annual Burden: 15,000.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 02–6188 Filed 3–14–02; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3397]

State of New York

Jefferson County and the contiguous counties of Lewis, Oswego and St. Lawrence in the State of New York constitute a disaster area as a result of a fire that occurred in the Village of Carthage on March 2, 2002. The fire destroyed nine buildings containing a number of rental units and businesses. Applications for loans for physical damage may be filed until the close of business on May 7, 2002 and for economic injury until the close of business on December 9, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 339705 and for economic injury the number is 9O7700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 8, 2002.

Hector V. Barreto,
Administrator.
[FR Doc. 02–6189 Filed 3–14–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed

Aviation Proceedings, Agreements filed during the week ending March 1, 2002. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11696.
Date Filed: February 25, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0136, dated 26 February 2002, Mail Vote 208—TC23 Europe-South East Asia, Resolution 078i, PEX Fares from Europe to South East Asia via EH, FE, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11697.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 SATL–EUR 0085 dated 1 February 2002, TC12 South Atlantic-Europe Resolutions r1-r12, Minutes—TC12 SATL–EUR 0087, dated 22 February 2002, Tables—TC12 SATL–EUR Fares 0026, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11698.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MATL–EUR 0060 dated 1 February 2002, Mid Atlantic-Europe Resolutions r1-r28, PTC12 MATL–EUR 0062 dated 22 February 2002, (Technical Correction), Minutes—PTC12 MATL–EUR 0061, dated 22 February 2002, Tables—PTC12 MATL–EUR Fares 0021, dated 5 February 2002, Intended effective date: 1 April 2002.

Docket Number: OST–2002–11699.
Date Filed: February 26, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–ME 0161 dated 15 February 2002, North Atlantic-Middle East Resolutions r1-r27, Minutes—PTC12 NMS–ME 0160, dated 15 February 2002, Tables—PTC12 NMS–ME Fares 0089, dated 19 February 2002, Intended effective date: 1 April 2002.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–6302 Filed 3–14–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending February 8, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4686.
Date Filed: February 7, 2002.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 2002.
Description: Amendment of Continental Airlines, Inc., to its application, amending its authority to engage in the scheduled foreign air transportation of persons, property, and mail over the following segments: (1) From points behind the United States via the United States and intermediate points to point or points in France, the French Departments of America, French Polynesia, Saint-Pierre and Miquelon

and beyond; (2) from points behind the United States via the United States to New Caledonia and/or Wallis and Futuna. Continental also requests to integrate its U.S.-France certificate authority with its existing exemption and certificate authority.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6301 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending March 1, 2002. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–2686.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102, 41108 and subpart B, requesting renewal of its certificate of public convenience and necessity for Route 744, to engage in foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Zurich, Switzerland, and the terminal point Prague, Czech Republic.

Docket Number: OST–2002–11708.

Date Filed: February 26, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 19, 2002.

Description: Application of ExpressJet, d/b/a Continental Express, requesting the Department to disclaim jurisdiction and reissue a certificate, designations and code-sharing authority to New ExpressJet Airlines, Inc. (NewCo), which will be renamed ExpressJet Airlines, Inc. and do business as Continental Express.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–6303 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Thomas F. Oelerich, P.E., Acting Regional Director, State Office Building; 250 Veterans Memorial Highway; Hauppauge, NY 11788; Telephone: (631) 952–6632 or Robert, E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve the Northern State Parkway/NYS Route 110 interchange in Suffolk County, New York. The proposed improvement would involve the reconstruction of the existing routes in the Town of Huntington for a distance of about 0.98 miles along Northern State Parkway and 1.65 miles along NYS Route 110. Improvements to this interchange are considered necessary to provide for the existing and projected traffic demand along NYS Route 110 and to address an area with a history of accidents. Also included in this project is the replacement of the Northern State Parkway bridge over NYS Route 110.

Alternatives under consideration include: (1) Taking no action; (2) reconfiguring the Northern State Parkway/NYS Route 110 interchange and replacing the existing Northern State Parkway bridge over NYS Route 110; (3) reconfiguring the Northern State Parkway/NYS Route 110 interchange without replacing the existing Northern State Parkway bridge over NYS Route 110; (4) replacing the Northern State Parkway bridge over NYS Route 110 without reconfiguring the interchange; this would include widening of the Northern State Parkway; and (5) widening NYS Route 110 to a six lane arterial. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment and various intersection improvements.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. In addition to scoping discussion with these interested parties, the general public will have the opportunity to make scoping comments both in writing and in person at a Public Information/Scoping Meeting that will be held at the Sunquam Elementary School, 15 Sweet Hollow Road, Melville on March 14, 2002. After the DEIS is prepared, it will available for public and agency review and comment. This will be followed by a public hearing. Public notice will be given of the time and place of the hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addressed provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; CFR 771.123

Issued on: February 27, 2002.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. 02–6281 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34171]

Butte-Silver Bow County—Acquisition Exemption—Silver Bow County, MT

Butte-Silver Bow County (BSB, or the County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 [1] to acquire an 11-mile rail line known as the Missoula Gulch and Butte Hill Line (MGBH) in and near Butte, in Silver Bow County, MT.[2] The MGBH extends from milepost 0.0 at Rocker, west of Butte, to milepost 4.40 at the Butte Hill Yard (Missoula Gulch segment), and also extends north and east from milepost 0.0 at the Butte Hill Yard to milepost 3.69 near the Badger Mine (Butte Hill segment). BSB is acquiring the MGBH in order to facilitate abandonment of the line, an environmental cleanup, and conversion of the railroad beds to trail and public use.[3]

The exemption was scheduled to become effective on February 22, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34171, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Susan J. Geer, Esq., Davis Graham & Stubbs LLP, 1550 17th Street, Suite 500, Denver, CO 80202.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: March 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6308 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

[1] BSB has also invoked 49 CFR 1180.2(d)(1), pertaining to finance transactions involving more than one railroad. However, because the acquisition in question does not involve more than one railroad, this provision is inapplicable.

[2] The MGBH was most recently owned and operated by a non-profit corporation called the Butte/Anaconda Historic Park and Railroad Corporation (BAHPR, or the Railroad). The BAHPR operated a tourist train over the portion of the MGBH between Rocker and the former Butte Hill Yard. BAHPR operated over the MGBH under a lease from the State of Montana from 1988 to 1991, at which time the BAHPR acquired the MGBH. *See Butte/Anaconda Historic Park and Railroad Corporation—Acquisition Exemption—State of Montana, Department of Commerce,* ICC Finance Docket No. 31982 (ICC served Feb. 11, 1992). In 1994, the Montana Secretary of State's Office involuntarily dissolved the BAHPR for failing to maintain its filings. However, the BAHPR continued intermittently to operate a tourist train over the MGBH through 1996, did not seek reinstatement, and never distributed its assets following dissolution.

[3] BSB states that it intends to seek authority to abandon the line following receipt of authority to acquire it. In *Land Conservancy—Acq. And Oper.—Burlington Northern*, 2 S.T.B. 673 (1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998) (*Land Conservancy*), *pet. for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB*, 238 F.3d 429 (9th Cir. 2000), the Board disallowed the sale of an active rail line to a purchaser that had, immediately after the purchase, sought to abandon the line. Acquisitions of active rail lines under 49 U.S.C. 10901 are supposed to be for continued rail use. In *Land Conservancy*, the Board found that the deliberate course of conduct on the part of the abandoning carrier and the purchaser constituted a misuse of Board procedures and acted to preserve the integrity of its processes.

Here, the acquisition is not taking place pursuant to an agreement or course of conduct by the parties—no transaction has occurred—but rather pursuant to the operation of state law. BAHPR didn't sell the line to BSB. Rather, the Railroad was dissolved by the Montana Secretary of State. The County acquired the Railroad's assets pursuant to an order of the Court of the Second Judicial District of Montana, Silver Bow County. Acquisition of an active rail line—the line is not presently in service, but it has never been abandoned—requires Board authority and BSB has sought to comply with the statute. BSB has no desire to go into the railroad business—it is an agency of local government, not a commercial enterprise—and seeks merely to dispose of the property. Under the circumstances, BSB's notice invoking the class exemption to obtain authority for its acquisition is consistent with the statute.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 606X)]

CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

On February 25, 2002, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad in its Northeast Region, Baltimore Division, P&W Subdivision, extending between milepost BFH 0.0 and milepost BFH 2.1, a distance of approximately 2.1 miles, in Pittsburgh, Allegheny County, PA. The line traverses U.S. Postal Service Zip Code 15212 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision is anticipated to be issued by June 14, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 4, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 606X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before April 4, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on

the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: March 7, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–6024 Filed 3–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, March 21, 2002, and Friday, March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, March 21, 2002, from 9 a.m. to 4 p.m. and Friday, March 22, 2002, from 8 a.m. to Noon at the Doubletree Hotel, 1616 Dodge Street, Omaha, Nebraska. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Public comments will be welcome during the meeting, or you can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and an update on the recruitment for new panel members.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cynthia Vanderpool,

CAP Project Manager.

[FR Doc. 02–6299 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Florida Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Florida Citizen Advocacy Panel will be held in Sunrise, Florida.

DATES: The meeting will be held Saturday, March 23, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Saturday, March 23, 2002, from 8 a.m. to 1 p.m, at the Sunrise Hilton, 3003 N. University Drive, Sunrise, Florida 33322. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com*. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973, or e-mail *firstcapsfl@mindspring.com.*

The agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 6, 2002.

Cindy Vanderpool,

Director, CAP, Communications and Liaison.

[FR Doc. 02–6300 Filed 3–14–02; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 67, No. 51
Friday, March 15, 2002

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 ENERGY

Western Area Power Administration

Boulder Canyon Project

Correction

In notice document 02–4617 beginning on page 8664 in the issue of Wednesday, February 27, 2002, make the following correction:

On page 8964, the table at the bottom of the page is changed to read as follows:

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current Oct. 1, 2001 through Sept. 30, 2002	Proposed Oct. 1, 2002 through Sept. 30, 2003	% change increase
Total Composite (mills/kWh)	10.32	12.44	21
Base Charge ($)	48,039,988	58,993,730	23
Energy Rate (mills/kWh)	5.33	6.22	17
Capacity Rate ($/kWmonth)	0.99	1.26	27

[FR Doc. C2–4617 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN139–1a; FRL–7155–3]

Approval and Promulgation of State Implementation Plans; Indiana

Correction

In rule document 02–5598 beginning on page 10620 in the issue of Friday, March 8, 2002 make the following correction:

PART 62—[CORRECTED]

On page 10622, in the second column, under amendatory instruction 2. in the new center heading, in the seventh line, ''Aust'' should read ''August''.

[FR Doc. C2–5598 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

Correction

In notice document 02–5128 beginning on page 9737 in the issue of Monday, March 4, 2002, make the following correction:

On page 9738, in the first column, the third paragraph should read:

''*Burden hours and costs for established entities*: Burden for established entities already familiar with the Rule would predictably be less than for start-up entities since start-up costs, such as crafting a privacy policy, are generally one-time costs and have been incurred. Staff's best estimate of the average burden for these entities as follows:''

[FR Doc. C2–5128 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4027–P]

RIN 0938–AL25

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative

Correction

In proposed rule document 02–5129 beginning on page 10262 in the issue of Wednesday, March 6, 2002, make the following correction:

On page 10272, in table 1, under the column ''Drug groups/subgroups (subgroups where shown are indented)'', in the second line, ''Vasodilators 3'', should read, ''Vasodilators''.

[FR Doc. C2–5129 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-16]

Modification of Class E Airspace; Portsmouth, OH

Correction

In rule document 02–5629 beginning on page 10839 in the issue of Monday, March 11, 2002 make the following correction:

§71.1 [Corrected]

1. On page 10840, in §71.1, in the second column, under the heading **AGL OH E5 PORTSMOUTH, OH [REVISED]**, the third line, '25''' should read '26''.'

[FR Doc. C2–5629 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-20]

Modification of Class E Airspace; Washington Court House, OH

Correction

§71.1 [Corrected]

In rule document 02–5628 beginning on page 10840 in the issue of Monday, March 11, 2002 make the following correction:

1. On page 10841, in §71.1, in the third column, in the third line, ''radious'' should read ''radius.''

[FR Doc. C2–5628 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-21]

Modification of Class E Airspace; Zanesville OH

Correction

In rule document 02–5633 beginning on page 10835 in the issue of Monday, March 11, 2002 make the following corrections:

§71.1 [Corrected]

1. On page 10836, in §71.1, in the third column, in the first paragraph, in the fifth line ''radiul'' should read ''radial.''.

2. On the same page, in the same section, in the same column, in the same paragraph, in the eighth line ''radius'' should read ''radial.''.

3. On the same page, in the same section, in the same column, in the same paragraph, in the ninth line, ''northwest'' should read ''northeast.''.

[FR Doc. C2–5633 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

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[FR Doc. C2–4617 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN139–1a; FRL–7155–3]

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[FR Doc. C2–5128 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4027–P]

RIN 0938–AL25

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative

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[FR Doc. C2–5129 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-16]

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BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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[FR Doc. C2–5628 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AGL-21]

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[FR Doc. C2–5633 Filed 3–14–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 15, 2002

Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[Docket #: A–2000–25; FRL–7147–9]

RIN 2012–AA01

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. The FIPs would include basic air quality regulations for the protection of communities in and adjacent to such Indian reservations. These rules would be implemented by EPA, or a delegated Tribal Authority, until replaced by Tribal Implementation Plans (TIPs).

DATES: Comments must be received no later than June 13, 2002.

ADDRESSES: Written comments should be addressed to: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128. Please cite the administrative docket, #A–2000–25, upon which you are providing comment.

Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Standard Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500M (6102), 401 M Street, SW., Washington, DC 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

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I. National Technology Transfer and Advancement Act

I. Background

A. Today's Action

EPA is proposing to establish Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. These rules, when promulgated, would be an important step in ensuring that basic air quality protection is in place to protect health and welfare on Indian reservations located in the Pacific Northwest. In Region 10, EPA has been working with the Tribes to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources. EPA's evaluations have identified concerns with unregulated particulate matter, such as from open burning for agricultural purposes. A significant number of industrial major stationary sources subject to Title V of the CAA are located on these Indian reservations. By means of these rules, EPA would impose regulatory requirements on industry and residents on reservations, similar to those imposed by the rules of State and local air agencies in the surrounding areas. EPA believes that it is appropriate to focus initially on the sources in Region 10 that have been identified as ones that may cause or contribute to prevalent air quality problems on reservations and in shared airsheds of the Pacific Northwest. Aside from existing national emissions standards and requirements, the FIPs proposed in this rule are the first building blocks under the CAA to address such emissions.

In the Clean Air Act (42 U.S.C. 7401 to 7671q), Congress gave EPA broad authority to protect air resources throughout the nation, including the air resources on Indian reservations and other areas of Indian country. Based on the authority of section 301 of the CAA, EPA promulgated a final rule entitled ''Indian Tribes: Air Quality Planning and Management,'' on February 12, 1998, 63 FR 7254. The rule, generally referred to as the ''Tribal Authority Rule'' or ''TAR,'' establishes procedures for EPA determinations on Tribal eligibility applications for ''treatment in the same manner as a State'' (commonly referred to as ''TAS'') under CAA authorities for Indian reservations and for non-reservation areas within a Tribe's jurisdiction. The U.S. Court of Appeals for the District of Columbia Circuit recently upheld the TAR in *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001).

In the TAR, EPA explained that it intends to use its authority under the CAA ''to protect air quality throughout Indian country'' [1] by directly implementing the CAA's requirements where Tribes have chosen not to develop or implement a CAA program. EPA wrote in the final rule at 40 CFR 49.11 that it would ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality'' for these areas.

In order to further this commitment to protect air quality, EPA is proposing rules for Indian reservations in Idaho, Oregon, and Washington.[2] In exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or

[1] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdication of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

[2] EPA is not proposing at this time to establish rules for Indian country areas in Alaska, and will continue to evaluate the need and appropriateness of air quality rules there in consultation with the Federally recognized Tribes in Alaska. EPA is working with the U.S. Bureau of Indian Affairs (BIA) to complete the mapping of the Indian country in Alaska. Once the extent and specific locations of the Indian country is better known, air quality characterization and subsequent assessment of the needs can be initiated in consultation with the affected Tribal governments. EPA anticipates that conditions and needs in Alaska may warrant a different array of requirements and provisions than are included in these proposed FIPs.

appropriate to protect air quality in Indian country, EPA has stated that it will carry out this authority in a prioritized way, beginning with sources that pose the greatest threat to public health and the environment. 64 FR at 8255. The FIPs proposed today are the first building block under the CAA to address the most prevalent gaps identified to date on reservations in the Pacific Northwest. EPA will continue to evaluate air quality conditions and the sources that cause or contribute to the degradation of air quality, and expects to promulgate additional FIP provisions, in consultation with Tribes, including Tribes that are developing TIPs. Thus, EPA views these FIP provisions as a first step towards establishing a complete plan for maintaining the NAAQS that, together with approved TIPs, would meet the goals of section 110(a) of the CAA.

After consulting with the Tribes in Idaho, Oregon, and Washington, EPA Region 10 is concerned that there is currently a gap in air quality requirements in these areas under the CAA. While many Tribes in Region 10 are in the process of developing air quality management programs, EPA Region 10 has approved only one Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho, to assume certain CAA authorities. Furthermore, States generally lack the authority to regulate air quality in Indian country. See *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 216 and n.18 (1987); see also *HRI* v. *EPA,* 198 F.3d 1224, 1242 (10th Cir. 2000), *Montana* v. *EPA,* 137 F.3d 1135 (9th Cir. 1998), *cert. denied* 525 U.S. 921 (1998). These proposed rules, as described below, are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs.

As discussed in greater detail below, EPA believes that in light of the particular air quality issues generally present on reservations in the Pacific Northwest, it is appropriate to establish each of the air quality rules for each reservation that are proposed today. These rules would regulate activities, pollutants, and sources by supplementing the existing Federal regulatory programs such as the Prevention of Significant Deterioration (PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs. These proposed rules would provide additional regulatory tools for EPA to use in implementing the CAA on Indian reservations. EPA has adequate enforcement authority under section 113 of the CAA to ensure compliance with the requirements that are proposed.

In Region 10, EPA is continuing to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources pending submission of a TIP by a Tribe and approval by EPA. This information is assisting EPA in determining, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes that it is appropriate to focus its efforts to develop FIPs initially on the sources that may cause or contribute to air quality problems that have been identified.

EPA's evaluations and information from affected Indian Tribes identified concerns with pollution from unregulated sources of particulate matter. Examples of categories of sources of air pollution not currently regulated include emissions from open burning and fugitive dust. Agricultural burning has been identified as a source of uncontrolled particulate matter that if not properly regulated can endanger people's health and safety, as well as cause other environmental impacts such as regional haze. EPA Region 10 is working at a regional level in partnership with States, Tribes, local governments, growers, and citizen groups to support and strengthen tools and programs for addressing particulate matter, including the development of appropriate regulatory controls in each jurisdiction. EPA also is identifying the industrial and commercial sources of emissions that are not fully regulated. There are at least 11 facilities on these reservations that meet the definition of major source, under the Federal Operating Permits provisions in Title V of the CAA. Most of these facilities are in the forest products industry, that can emit plumes of particulate matter at levels that should be controlled. Industrial facilities such as these also use fuels containing sulfur that can cause excessive concentrations of ground-level sulfur dioxide if not properly controlled. Regulating these sources is appropriate in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter and sulfur dioxide. Particulate matter and sulfur dioxide are regulated by National Ambient Air Quality Standards (NAAQS) under section 109 of the CAA. A number of rules proposed today would control emissions of particulate matter and sulfur dioxide to the atmosphere as appropriate for the purpose of maintaining or attaining the NAAQS. Along with the protections these Federal air quality rules would provide, the rules can also assist Tribes in developing air quality management programs by using the Federal rules as templates in drafting TIPs.

It is important to note that these proposed rules are analogous to, but different from, the types of rules generally approved by EPA into State Implementation Plans (SIPs). The rules proposed today represent an average program, and so are more stringent than some SIP rules and less stringent than others. However, while these would be Federal CAA rules, they would not change the minimum criteria in 40 CFR Part 51, the CAA, or the TAR for approval of rules in either a SIP or a TIP. [3] EPA encourages Tribes to develop individual TIPs and will work with Tribes seeking to replace these rules with TIPs. These regulations would apply until they are replaced by Tribal regulations in an approved TIP.

EPA Region 10 has actively consulted with and encouraged Tribes to assist EPA in developing these proposed regulations to ensure that Tribal considerations are addressed. EPA Region 10 staff has worked with, and will continue to work with, individual Tribes to assess air quality problems, and develop, in consultation with the Tribes, Tribal or Federal strategies for addressing these problems. For example, EPA Region 10 has worked with Tribes to develop emission inventories and air monitoring studies where appropriate, to determine the nature of air quality problems, and to identify a range of potential control strategies. During the development of the rules proposed here, EPA Region 10 staff consulted with affected Tribes in a series of group and individual meetings that are described in detail below in Section V.G, which discusses compliance with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

B. Areas and Sources Covered by the Rules

These proposed rules would apply to any person who owns or operates an air pollution source within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR Part 49, Subpart M Implementation Plans for Tribes—Region X. Further, as discussed in the TAR at 63 FR 7257–58, EPA interprets the term ''reservation'' consistent with U.S. Supreme Court case law to include

[3] EPA has used the planning requirements applicable to States as a guide in developing these FIPs.

trust lands that have been validly set apart for the use of a Tribe even though the land has not been formally designated as a reservation. EPA is not proposing to establish rules for all of Indian country, e.g., these rules would not apply to allotment lands that are held in trust for individual Indians that are located outside the exterior boundaries of a reservation or for dependent Indian communities. Based on consultations, EPA is not aware of any sources on those types of land outside of reservations to which these rules need to apply. This proposed rulemaking is a step in addressing known air quality concerns on reservations. If in the future, EPA becomes aware of air quality concerns for Indian country outside of reservations, EPA may propose other requirements that are deemed necessary or appropriate.

This proposal includes: (1) Rules of general applicability that would regulate emissions of particulate matter and sulfur dioxide from combustion and process sources, visible emissions and fugitive dust; and (2) additional proposed rules that would control particulate matter emissions from specific types of equipment used to burn wood wastes, sometimes known as ''wigwam burners,'' and certain wood product industry sources. The proposed rules would also regulate open burning, and allow the Regional Administrator to impose restrictions on emissions during periods of impaired air quality or when emissions from sources are detrimental to human health and welfare. Finally, the proposed rules would require registration of many stationary sources of air pollution and would provide the opportunity for stationary sources with low emission levels to obtain potential to emit limits in operating permits. The specific rules that would apply to sources on a particular reservation are specified in today's proposed rule, at 40 CFR part 49, Subpart M.

EPA will decide whether a source or activity located on an Indian reservation is subject to the provisions of these rules as made applicable in the implementation plan for that reservation. Today's proposed rules include procedures for sources to obtain individual determinations from EPA as to whether they are subject to these regulatory requirements. A source that is uncertain regarding the applicability of a rule may submit a written request to EPA for an applicability determination. In response to a request for an applicability determination, EPA will issue a written determination stating whether the source or activity is subject to a particular Federal air quality rule. In most cases, determining whether the source or activity is on an Indian reservation will be straightforward and non-controversial. For example, in most cases EPA and the source will be able to easily determine whether a source is located within the exterior boundaries of a reservation, including Tribal trust lands. In the rarer, more complex factual cases, EPA will work with the U.S. Department of the Interior, Tribes, and stakeholders to assess the reservation status of the location. After EPA has reviewed the relevant materials, the Agency will send a letter to the source stating EPA's belief whether the source is located within the boundaries of a reservation. For sources or activities located on Indian reservations, the source or activity would be expected to comply with the applicable requirements of these FIPs.

C. Organization of the Rules

EPA has structured these proposed regulations consistent with the ''modular'' approach described in the TAR to allow for both variation among reservations and to facilitate the development and approval of TIPs to replace all or part of these Federal regulations. EPA is using this modular approach to propose a full set of regulations, and each regulation in today's proposal is effectively a ''stand-alone'' rule. Each FIP is tailored and is being proposed on a reservation-by-reservation basis. For example, the proposed regulation for particulate matter emissions from wood products industry sources would only be promulgated for reservations that have existing wood products industry sources or for those where such sources might be expected to locate. Similarly, the proposed regulation for forestry burning permits would only be promulgated for reservations with forestry lands where the use of fire as a forest management tool is prevalent.

EPA expects that many Tribes will develop their own air quality programs. However, Tribes are not required to adopt and implement all CAA programs at once. Under section 49.7(c) of the TAR, Tribes that meet the eligibility criteria for TAS have the option of developing severable elements of a TIP and submitting those elements to EPA for approval under the CAA. The modular approach used in these proposed regulations would allow EPA to approve a Tribal rule covering a particular source type or activity and revoke the EPA regulation, while still leaving in place the EPA regulations for other sources and/or activities. For example, a Tribe may initially want to adopt and implement Tribal rules for open burning and rules for the registration of air pollution sources, while EPA would continue to regulate industrial emissions under the FIP for that reservation. This modular approach would allow for an easy incremental transition from Federal regulations to EPA-approved Tribal rules.

While most of the rules in the FIPs constitute a ''base program'' that EPA is proposing to put in place in all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include rules where specific needs exist or where EPA determines, in consultation with the relevant Tribe, that a more stringent provision than would otherwise apply is appropriate. These ''additional rules'' are being proposed only for certain reservations. For example, EPA is proposing rules specific to particular kinds of woodwaste burners and certain wood products industries that will require better controls for particulate matter emissions than the general limits for visible emissions and particulate matter. These regulations are proposed for reservations where such sources exist and where EPA determines, in consultation with the Tribe, that more stringent provisions are appropriate. The following table identifies the rules summarized below in section III.B that would be included in the ''Base Program'' and the ''Additional Rules'' that may be included as appropriate.

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES

Rule #	Title	Base program	Additional rules
Section 49.123	General provisions	X	
Section 49.124	Rule for limiting visible emissions	X	
Section 49.125	Rule for limiting the emissions of particulate matter	X	
Section 49.126	Rule for limiting fugitive particulate matter emissions	X	
Section 49.127	Rule for woodwaste burners		X

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES—Continued

Rule #	Title	Base program	Additional rules
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.		X
Section 49.129	Rule for limiting emissions of sulfur dioxide	X	
Section 49.130	Rule for limiting sulfur in fuels	X	
Section 49.131	General rule for open burning	X	
Section 49.132	Rule for open burning permits		X
Section 49.133	Rule for agricultural burning permits		X
Section 49.134	Rule for forestry burning permits		X
Section 49.135 or	Rule for emissions detrimental to human health and welfare or	X	
Section 49.136	Tribal Alternative Rule Rule for emissions detrimental to persons or property, cultural or traditional resources.		X
Section 49.137	Rule for air pollution episodes	X	
Section 49.138	Rule for the registration of air pollution sources and the reporting of emissions.	X	
Section 49.139	Rule for non-Title V operating permits	X	

The modular approach provides flexibility to promulgate provisions where EPA will have adequate resources to carry out the FIP, including situations where Tribes assist EPA in implementation of FIP provisions. For certain rules that are best administered at a local level, EPA is proposing to establish requirements for a reservation and to delegate to the affected Tribal government the authority to administer that particular program, as discussed below. A delegation agreement will authorize a Tribe, with Federal assistance, to administer the Federal program but refer unresolved noncompliance matters to EPA for Federal enforcement. This approach allows EPA to establish requirements tailored to local needs that can be effectively implemented through a partnership between EPA and the Tribe.

With respect to the rule that would regulate emissions detrimental to persons and property, EPA is proposing two versions. One version of the detrimental emissions regulation, proposed as § 49.135, would allow EPA to address situations where emissions would be injurious to human health and welfare. The Tribal alternative rule, § 49.136, would provide additional protection for situations where emissions would unreasonably interfere with the enjoyment of life or property, or would damage unique Tribal cultural or traditional resources. The second, more inclusive regulation (§ 49.136) is proposed for reservations where EPA, based on a request from the relevant Tribe, has considered and determined that regulatory authority to address such situations is appropriate and will generally include agreements with the Tribe to assist EPA in implementing the programs. EPA requests comment on this proposed determination. EPA developed § 49.136 to address the Tribes' unique concern regarding the holistic concept of health and welfare, which was emphasized by Tribes during consultation. In this rulemaking, EPA is proposing that § 49.136 will apply only on two reservations, the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2. Section 49.135 will apply on all other reservations in Idaho, Oregon, and Washington. EPA is seeking comment on this proposed approach. If EPA does not finalize § 49.136, § 49.135 will be promulgated for the Nez Perce and Umatilla Indian Reservations.

Finally, EPA is proposing three additional open burning permit programs: general open burning (§ 49.132), agricultural open burning (§ 49.133), and forestry open burning (§ 49.134). These rules differ from the general open burning rule proposed in § 49.131 by requiring that any person who conducts a regulated open burn to obtain and comply with a permit. These permit programs are proposed only for reservations where EPA, in consultation with the relevant Tribe, has determined that the programs are appropriate and will generally include delegations of authority from EPA to the Tribe for implementation of the Federal rules upon promulgation, as discussed below.

D. Delegation

The modular approach will allow Tribes that are building air quality programs to gain experience by assisting with implementation of the Federal rules before they decide to adopt their own rules and regulations. EPA recognizes that a Tribe may choose not to develop a Tribal air program under Tribal law for approval under the TAR, but may still like to assist EPA in implementing the Federal air quality requirements for its reservation and to build its capacity in managing an air quality program. The rule proposed here at § 49.122 provides Tribal governments the alternative of seeking delegation from EPA of the authority to administer all or some of the Federal rules that have been promulgated for their reservation. These rules would allow EPA to delegate distinct and severable Federal regulations to a Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. For example, if a Tribe wished to implement the open burning permit program, or run the source registration program, EPA could delegate responsibility to the Tribe for just those regulations. The process EPA would follow to delegate the administration of a Federal program to a Tribal government is similar to the process EPA follows to delegate programs to State governments. As part of the process for delegating the authority to administer one or more of the rules, the Tribe and EPA would enter into an agreement that specifies how the governments would work together for the effective implementation of the particular CAA program(s) at issue on that reservation.

The delegation from EPA to a Tribe to implement a specific Federal air rule proposed in these rules is to be distinguished from EPA's interpretation that the CAA is a delegation of Federal authority from Congress to Tribes, as described in the TAR at 63 FR 7254–7259. It is EPA's position that the CAA TAS provision constitutes a statutory delegation of authority to eligible Tribes over their reservations. As described above, the TAR established how EPA can approve Tribal eligibility applications for a Tribe to operate a CAA program under Tribal law. When

EPA approves a Tribal eligibility application and approves a TIP, the approved Tribe will manage the approved air quality program under Tribal law, and the approved Tribal program is Federally enforceable. In contrast, the delegation approach proposed in these rules provides for EPA to administratively delegate its own Federal authority to a qualified Tribe to implement specified Federal rules. EPA has well-established processes for delegating its Federal authority to States for administering Federal rules under the CAA, such as for conducting new source review under 40 CFR part 52, at 40 CFR 52.21(u); and for issuing Federal operating permits under 40 CFR part 71, at 40 CFR 71.4(j). With delegated Federal programs, the Federal requirement administered by the delegated Tribe is subject to enforcement by EPA, not the Tribe, under Federal law.

EPA believes that the modular approach will provide the maximum flexibility for EPA and Tribes to work in partnership to ensure that the goals and objectives of the CAA will be met on Indian reservations and to make real the principles set out in the TAR. It will allow EPA and Tribes to jointly manage air quality on Indian reservations through a combination of TIP and FIP elements, and delegations to Tribes of FIP elements. Under this modular approach, Tribes may adopt and submit severable elements of TIPs that replace elements of FIPs while leaving in place FIP provisions that Tribes are not yet willing or able to take on.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over Indian country generally lies with EPA and Federally recognized Indian Tribes leads to the conclusion that a regulatory gap exists with regard to air pollution sources there. EPA is proposing to take an initial step towards remedying this gap with a FIP for each Indian reservation in Idaho, Oregon, and Washington. These FIPs will establish new Federal requirements where no general air pollution control program other than nationally applicable rules is currently in effect.

As described above, the CAA Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the CAA in Indian country. Section 301(d) of the CAA authorizes EPA to issue regulations specifying the provisions of the CAA for which Indian Tribes may be treated in the same manner as States. See CAA sections 301(d)(1) and (2). Based on that authority, EPA promulgated the TAR.

In the preamble to the proposed and final TAR, EPA discusses generally the legal basis under the CAA by which EPA and Tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory delegation of Federal authority to eligible Indian Tribes over all sources on their reservations. Under the CAA, Tribes are allowed to develop air programs covering their reservations and non-reservation areas within their jurisdiction for submission to EPA for approval in the same manner as States. 63 FR 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands, until a Tribe is approved for TAS and Tribal programs are approved. See 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)); see also Federal Operating Permits Program, Final Rule, 64 FR 8251–8254. EPA decided that in areas of Indian country where no Tribal program has been explicitly approved by EPA, a gap exists in air quality requirements under the CAA that EPA is authorized to fill. In fact, in promulgating the TAR, EPA specifically stated that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the CAA, EPA:

> shall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a Tribe does not submit a Tribal implementation plan meeting the completeness criteria of 40 CFR Part 51, Appendix V, or does not receive EPA approval of a submitted Tribal implementation plan. 63 FR 7273 (codified at 40 CFR 49.11(a)).[4]

It is EPA's policy to aid Tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop the current State and Federal programs to cover State areas, it will also require time to develop Tribal and Federal programs to cover reservations and other areas of Indian country. 59 FR 43961.

Many of the Tribal governments in Idaho, Oregon, and Washington have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on their reservations and in non-reservation areas under Tribal jurisdiction pursuant to the CAA. Based on discussions with the Tribes, however, EPA believes that it will be some time before most Tribes will be ready to seek authority under the TAR to assume CAA planning and regulatory responsibilities and that, when they do, the Tribes are likely to build their capacity and seek authority for the various CAA programs over time, rather than all at once. Through government-to-government consultation between EPA and Tribal governments, the Tribes have advised EPA that they support EPA's efforts to impose such controls on Indian reservation air pollution sources as are necessary or appropriate to protect air quality in the interim.

Therefore, in these proposed FIPs, EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian reservations located in the States of Idaho, Oregon, and Washington. Although many facilities in these areas have historically followed State, regional, and local government air quality programs, with only one exception EPA has never approved those governments to exercise regulatory authority under the CAA on any Indian reservations.[5] It is EPA's position that absent an explicit finding of jurisdiction and approval in Indian country, those governments lack authority under the CAA over the sources or their owners or operators for compliance or enforcement purposes. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that the proposed FIP provisions are appropriate to protect air quality on the identified reservations.

[4] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the CAA, that directs EPA to promulgate a FIP within two years after EPA finds a State has failed to submit a complete State plan or within two years after EPA disapproval of a State plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected Tribal areas within a reasonable time. See 63 FR 7264–7265.

[5] For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR Part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian Puyallup Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to State and local governments to administer their environmental laws on all non-trust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

B. Relation to Tribal Authority Rule

The TAR provides the framework for Tribes to obtain authority to administer Federally-approved and Federally-enforceable programs under the CAA. See 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule). Thus, each Federally recognized Indian Tribe now has the option of assuming responsibility for the development and implementation of Federally-enforceable air quality programs under the CAA by seeking EPA approval of a Tribal air program established under Tribal law, i.e., a TIP. Until a Federally-approved implementation plan that covers a source is in place, however, EPA has the authority to regulate the source under the CAA. The regulations proposed here also offer another alternative. Specifically, Tribes in Idaho, Oregon, or Washington may seek delegation from EPA to assist EPA in implementing a Federal regulation (FIP).

III. Summary of FIP Provisions

A. Origin of the Rules

EPA's intention is to promulgate Federal regulations that reflect an important initial step to fill the ''regulatory gap'' on Indian reservations in Idaho, Oregon, and Washington. As described above, EPA has been evaluating, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes it is appropriate to focus its efforts initially on developing FIPs for the most prevalent sources that cause or contribute to identified air quality problems.

However, EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. This approach is intended to formally ''level the playing field''. In other words, EPA intends that people living within reservation boundaries receive equivalent air quality protection, and that emissions from sources located within reservations are controlled to levels similar to those of sources located outside the reservations.

To do this, EPA Region 10 first determined what types of air pollution sources and pollutant-emitting activities were most prevalent on Indian reservations in Idaho, Oregon, and Washington. Then EPA Region 10 reviewed the State and local rules from air pollution agencies throughout the western United States that are included in SIPs that EPA has approved for those types of sources and activities. The gap-filling rules proposed here are generally based upon the aspects of these State and local rules most relevant to the air polluting activities on reservations in the Pacific Northwest, and follow a level of control of a typical air quality control program. The proposed regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. Nor do the proposed regulations look like State or local rules because they use the Federal regulatory structure and are written in a ''plain language'' format in accordance with the Plain Language Executive Memorandum, dated June 1, 1998. EPA invites your comments on ways to make these proposed rules easier to understand. Included in the docket for this proposed rulemaking are copies of all the State and local rules that EPA considered in this process, as well as a technical support document with summary tables showing the State and local agency levels of control as compared with the proposed regulations and a description of why EPA believes the proposed rules are appropriate.

Each of the rules proposed as part of the Base Program to be applicable on all reservations in Idaho, Oregon and Washington either addresses particular sources, activities or pollutants identified by EPA as the most prevalent and in need of regional regulation or implements an important structural aspect of the CAA regulatory scheme for Indian reservations. A number of the Base Program rules are proposed in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA (see § 49.124 Rule limiting visible emissions; § 49.125 Rule for limiting the emissions of particulate matter; § 49.126 Rule for limiting fugitive particulate matter emissions; and § 49.129 General rule for open burning). Two Base Program rules would protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. These rules would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide (see § 49.130 Rule for limiting emissions of sulfur dioxide and § 49.131 Rule for limiting sulfur in fuels). The Base Program would also include a number of provisions to establish the infrastructure of a CAA regulatory program. Provisions at § 49.122 describe how EPA would process delegation requests from a Tribe; § 49.123 would define the terms that are used throughout the FIPs; § 49.135 would establish a process for EPA to limit emissions that are detrimental to human health and welfare; § 49.137 would establish the measures EPA could take to address excessive buildup of certain air pollutants during periods of stagnant air; § 49.138 would provide for the registration of air pollution sources and reporting of emissions so that EPA can maintain a current and accurate record of air pollution sources within an Indian reservation; and § 49.139 would set up a permitting program for non-Title V sources that would establish federally-enforceable requirements.

Further, EPA is proposing certain Additional Rules to be applicable on specified reservations where EPA has determined, in consultation with the relevant Tribe, that such additional regulatory measures are appropriate. During the course of its consultation with Tribes and analysis of regulatory needs, EPA attempted to identify instances where specific sources or pollution control needs beyond those addressed in the Base Program exist on particular reservations. For example, certain types of wood products industries, or certain practices of agricultural or forestry burning, may be prevalent on particular reservations and may be important contributors to air pollution concerns. In order to address these concerns, EPA has developed the current set of Additional Rules. As an initial step, EPA is proposing to promulgate some or all of these rules for those reservations where relevant sources have been identified as prevalent and where particular Tribes have indicated an interest in the additional regulation. For example, at the request of specific Tribes, EPA considered and is now proposing to promulgate a rule that would provide additional protections against emissions detrimental to their unique Tribal cultural or traditional resources. EPA considers this approach an appropriate first step in prioritizing its efforts to address these concerns consistent with CAA responsibilities. EPA anticipates that relevant Tribes may choose to assist in the implementation of the Additional Rules through the delegation process described above. EPA is continuing to consult with Tribes regarding sources of air pollution and air regulatory needs on their reservations and may propose some or all of the Additional Rules, or

may propose further additional rules, for reservations as needs and priorities are identified. As described in section I.C, the current package of Additional Rules includes § 49.127 Rule for woodwaste burners; § 49.128 Rule for limiting particulate matter emissions from wood products industry sources; § 49.132 Rule for open burning permits, § 49.133 Rule for agricultural burning permits, § 49.134 Rule for forestry burning permits; and § 49.136 Rule for emissions detrimental to persons or property, cultural or traditional resources. With this proposal, EPA is seeking comment on these Additional Rules, whether the criteria EPA used for selecting the Additional Rules are appropriate, and whether EPA has appropriately applied those criteria in this proposal.

In developing these regulations EPA also had two other objectives in mind, in addition to filling the regulatory gap. First, EPA is proposing only those regulations that it believes it has the resources to implement and enforce. To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. Second, EPA anticipates that these regulations can serve as models for Tribes as they develop their own air quality programs. To that end, the regulations are designed so they can be implemented by a small air pollution agency, and can be readily delegated to a Tribe for implementation.

B. Rule Summaries

These proposed rules would establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington to ensure a basic level of air pollution control that protects public health and welfare. The following paragraphs summarize each of the proposed rules. The actual rule requirements being proposed are set forth in 40 CFR part 49, subpart C.

Section 49.122—Delegation of authority to a Tribe. This section would provide a mechanism for delegating to a Tribe, for administration, all or a portion of the FIP rules that apply within a reservation. It sets out the process a Tribe must follow to request delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. This section would not affect the requirements established under the TAR for Tribal applications to administer EPA-approved Tribal CAA programs or requirements for delegation of other EPA air programs such as Part 71 operating permits or PSD permits under 40 CFR 52.21.

Section 49.123—General provisions. This section includes definitions of the terms used in these rules as well as general provisions regarding requirements for emission testing, monitoring, recordkeeping, reporting, the use of credible evidence in compliance certifications and for establishing violations, and the incorporation by reference of the American Society for Testing and Materials Methods referenced in this rulemaking.

Section 49.124—Visible emissions. Section 49.124 would restrict visible emissions from air pollution sources to 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9. This rule would not apply to certain sources, such as: Open burning; agricultural activities; non-commercial smoke houses; sweat houses or lodges; smudge pots; furnaces and boilers used exclusively to heat residential buildings with four or fewer units; fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government; and emissions from fuel combustion in mobile sources. The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

All of the State and local air agency rules that EPA reviewed contain a 20% opacity limit. Most of these visible emissions rules allow a 3-minute exception over a 60-minute period. However, EPA decided to use the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings or to install a COMS unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.125—Particulate matter. Particulate matter emissions from combustion (except for wood-fired boilers) and process sources would be limited to an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to 7% oxygen (for combustion sources), during any 3-hour period. Particulate matter emissions from wood-fired boilers would be limited to an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to 7% oxygen, during any 3-hour period. Woodwaste burners, furnaces, and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources would be exempt from this rule.

For combustion sources and wood-fired boilers, the particulate matter limit in this rule is the same as the limit in most of the State and local agency air rules that EPA reviewed. For process sources, many State and local air agencies employ process weight rate tables in their rules to limit particulate matter. EPA is proposing to use a concentration limit rather than a process weight rate table for this rule to be consistent with the EPA method for measuring particulate matter, which is EPA Method 5, found at 40 CFR Part 60, Appendix A. The particulate matter limit for process sources in this rule equals the control of all but one of the concentration-based rules that EPA reviewed. This rule does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.126—Fugitive particulate matter. The owner or operator of any source of fugitive particulate matter emissions would be required to take all reasonable precautions to prevent fugitive particulate matter emissions and to maintain and operate the source to minimize these emissions. A person subject to this rule would be required to periodically survey the air pollution source to determine if there are sources of fugitive particulate matter emissions, determine and document in a written plan the reasonable precautions that would be taken to prevent fugitive particulate matter emissions, and then implement the plan. This rule would not apply to activities associated with single-family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any

Federal, Tribal, State, or local government.

All but one of the State and local air agency rules that EPA reviewed have rules for controlling fugitive particulate matter. All of these rules contain reasonable precautions provisions similar to the ones in § 49.126. A few rules control fugitive emissions beyond reasonable precautions, but these rules are primarily for nonattainment areas so EPA believes they are not appropriate here because the reservations at issue are generally not designated nonattainment for PM10.

Section 49.127—Woodwaste burners. Section 49.127 would phase out the operation of woodwaste burners (commonly known as wigwam or teepee burners). In the interim, visible emissions from a woodwaste burner would not be allowed to exceed 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9, and only wood waste generated onsite could be burned or disposed of in the woodwaste burner. The owner or operator would be required to submit a plan for shutting down the woodwaste burner to EPA within 180 days after the effective date of these rules and to shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of these rules. Sources could apply to EPA for an extension of the 2-year deadline if there is no reasonably available alternative method of disposal for the wood waste.

EPA recognizes that on some reservations particulate matter from woodwaste burners can contribute to air quality deterioration. This section would be promulgated in Part 49 Subpart M on reservations only where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.127 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

Most woodwaste burners under programs of State and local air agencies have already been shut down. All but one of the State and local air agency rules that control the woodwaste burners that still exist have a 20% opacity limit. Most of these rules use an opacity measurement method with a 3-minute exception over a 60-minute period. However, EPA is proposing use of the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.128—Particulate matter emissions from wood products industry sources. Section 49.128 would apply to any person who owns or operates any of the following wood products industry sources: veneer manufacturing operations, plywood manufacturing operations, particleboard manufacturing operations, or hardboard manufacturing operations. This section would impose limits on the amount of particulate matter that could be emitted from such sources, in addition to the particulate matter limits for combustion and process sources in § 49.125. The reference method for determining compliance with the particulate matter limits is EPA Method 202, found at 40 CFR part 51, Appendix M. This rule does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

In Part 49 Subpart M, EPA is proposing this requirement on reservations where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from those specific wood products industry sources. EPA will base this determination on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.128 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

One State has both State-wide rules and area-specific rules to control particulate matter emissions from the wood products industry. The limits that EPA is proposing in this rule closely resembles the area-specific rules for that State.

Section 49.129—Sulfur dioxide. This rule would restrict sulfur dioxide emissions from combustion and process sources to no more than an average of 500 parts per million by volume, on a dry basis, and corrected to 7% oxygen (for combustion sources), during any 3-hour period. Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour and mobile sources would be exempt from this rule.

This rule is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. This section would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide. All of the concentration-based rules that EPA reviewed have one of two sulfur dioxide concentration limits: 500 ppm averaged over a 3-hour period or 1,000 ppm average over a 1-hour period. EPA is proposing to use the 500 ppm, 3-hour average limit because it does a better job of accounting for the short-term variability in process emissions and in the sulfur content of fuels. The reference methods for determining compliance with the SO2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. These methods are found at 40 CFR 60, Appendix A. This rule does not require any person to conduct Method 6, 6A, 6B, or 6C source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.130—Sulfur content of fuels. This section would apply to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel on Indian reservations. This rule restricts the sulfur content of the previously

listed types of fuels. Fuels used exclusively for mobile sources, such as automotive or marine diesel fuel, would be exempt from this rule. A person subject to this rule would be required to demonstrate compliance through recordkeeping and/or continuous monitoring or sampling. Owners or occupants of a single-family residence and the owners or managers of a residential building with four or fewer units are not subject to the sulfur content recordkeeping requirements if the furnace fuel is purchased from a licensed fuel distributor.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. Fuel combustion sources can emit sulfur dioxide. This section would limit the amount of sulfur in fuels to control the amount of sulfur dioxide emitted to the atmosphere and minimize ground-level concentrations of sulfur dioxide.

The majority of the State and local air agency rules that EPA reviewed contain the same level of control that EPA is proposing for the sulfur content in each type of fuel.

Section 49.131—Open burning. This rule would prohibit certain materials from being open burned, such as: Garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, asphalt or composition roofing, tar, tarpaper, petroleum products, paints, paper or cardboard other than what is necessary to start a fire, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, hazardous wastes, or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned (see rule for a complete list). The following situations would be exempt from certain provisions of this rule: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires set for recreational purposes, provided that no prohibited materials are burned; the burning of combustible household waste in burn barrels at single-family residences or residential buildings with four or fewer dwelling units; with permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated; with permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials; and open burning for the disposal of diseased animals or infested material by order of a public health official. All open burning, except for cultural and traditional purposes, would be prohibited under the following circumstances: The Regional Administrator declares a burn ban due to deteriorating air quality; the National Weather Service issues an air stagnation advisory; or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency. This section also describes the practices a person subject to this rule must follow in conducting an open burn.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. All of the State and local air agency rules that EPA examined have an open burning rule with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.132—Open burning permits. Any person who conducts an open burn would be required to: (1) Apply for and obtain a permit for each open burn; (2) have the permit available on site during the open burn; (3) conduct the open burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. The following activities are exempt: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires for recreational purposes, provided that no prohibited materials are burned; forestry or silvicultural burning; agricultural burning; and the burning of combustible household waste in burn barrels at single family residences or residential buildings with four or fewer dwelling units. The Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, forecasted meteorological conditions, and other scheduled burning activities in the surrounding area in determining whether to issue the permit.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.132 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most of the State and local air agency rules that EPA reviewed have a permitting program for open burning with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.133—Agricultural burning permits. Any person who conducts an agricultural burn would be required to: (1) Apply for and obtain a permit for each agricultural burn; (2) have the permit available on site during the agricultural burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated agricultural burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of agricultural burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.133 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Two of the States, three local air agencies, and one Tribe in Region 10 have established a permitting program

for agricultural burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Section 49.134—Forestry burning permits. Any person who conducts a forestry burn would be required to: (1) Apply for and obtain a permit for each forestry burn; (2) have the permit available on site during the forestry burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated forestry burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of forestry burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. This rule would protect air quality on those reservations where forestry burning can contribute to air quality deterioration. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.134 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Three of the States in Region 10 have established a permitting program for forestry burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Sections 49.135 and 49.136—Emissions detrimental to persons or property. These are two alternatives to regulate emissions that are detrimental, and EPA would promulgate one of the rules for each reservation. For both §§ 49.135 and 49.136, an owner or operator of an air pollution source would not be allowed to cause or allow the emission of any air pollutants, in sufficient quantities and of such characteristics and duration, that the Regional Administrator determines is, or would likely be, injurious to human health and welfare. The Tribal alternative rule § 49.136 would include the same requirements as § 49.135, and also authorize controls when the Regional Administrator determines an emission does, or is likely to, unreasonably interfere with the enjoyment of life or property or damage unique Tribal cultural or traditional resources. If the Regional Administrator makes such a determination under § 49.135 or § 49.136, EPA is proposing that the Regional Administrator would be able to require the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions.

Section 49.136 would provide additional protection of unique Tribal resources, and would be promulgated on reservations only where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base this determination on a number of factors, including the prevalence of activities on the reservation which can affect unique Tribal cultural or traditional resources, the significance of the resulting pollution on those resources, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that the Tribal alternative rule § 49.136 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most State and local air agency rules incorporate similar provisions prohibiting emissions detrimental to persons or property.

Section 49.137—Air pollution episodes. Under § 49.137, the Regional Administrator could issue warnings about air quality that would apply to any person who owns or operates an air pollution source on Indian reservations. An air pollution alert, air pollution warning, or air pollution emergency could be declared by the Regional Administrator whenever it is determined that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. These announcements would be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health, describe actions that people can take to reduce exposure, request voluntary actions to reduce emissions from sources of air pollutants, and indicate that a ban on open burning is in effect. Voluntary or mandatory curtailment of emissions could be declared by the Regional Administrator.

Most State and local air agencies have rules for air pollution episodes with procedures and conditions similar to those in the rule that EPA is proposing. Section 110(a)(2)(G) of the Clean Air Act and 40 CFR part 51, Subpart H of EPA's regulations require agencies to have pre-planned procedures to follow in the event of an air pollution episode as well as adequate authorities to require sources to reduce emissions in order to protect public health. Section 49.137 is consistent with EPA's requirements for State and local agencies as set forth in 40 CFR part 51, Subpart H and the model procedures in 40 CFR part 51, Appendix L.

Section 49.138—Registration of air pollution sources and reporting of emissions. Any person who owns or operates an air pollution source except those exempted below would be required to register the source with EPA. A person subject to this rule must register the air pollution source by no later than one year after the effective date of these rules. A new air pollution source must register within 90 days after beginning operation. Sources must re-register each year and provide updates on any changes since the previous registration. The following sources are exempt from this rule: mobile sources; single family residences, and residential buildings with four or fewer units; air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the CAA and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour; cooking of food, except for retail and wholesale businesses that both cook and sell cooked food; consumer use of office equipment and products; janitorial services and consumer use of janitorial products; maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops; agricultural activities and forestry activities, including agricultural burning and forestry burning; and open burning.

This requirement is appropriate as it would enable EPA to develop and maintain accurate records of air pollution sources and their emissions

on reservation lands. Maintaining an accurate inventory of sources and emissions would help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. While the emission increase at each facility may be de minimis, the cumulative effect of the increases may be significant. The registration program would enable EPA to track trends and identify potential problems before they arise.

Many State and local air agencies have a registration program or a permitting program to collect information similar to that required by the registration program in this section.

Section 49.139—Rule for non-Title V operating permits. This section would create a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources on Indian reservations. This rule would apply in the following three situations: (1) The owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit and submits an application to the Regional Administrator requesting such limitation; (2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the Federal or, if applicable, Tribal Implementation Plan; or (3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or PSD increment. A source that would otherwise require a Part 71 Federal operating permit may instead obtain an operating permit under this section that limits its potential to emit to below major source thresholds so that the source is not subject to Part 71. The Regional Administrator would write the operating permit and follow the consultation and public comment procedures described in this rule.

This rule would provide air pollution sources on reservations with air quality control requirements and regulatory alternatives similar to those available to sources located off-reservation. The rule also would enable the Regional Administrator to require further air emission reductions if necessary to attain or maintain the NAAQS or PSD increment.

All State and local air agencies have a permitting mechanism to control emissions and to allow a source to limit its potential to emit so that it is not subject to Title V or other requirements for major stationary sources with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

C. Rules Proposed for Specific Reservations

The proposed rules that follow this discussion identify for each Indian Tribe listed in Subpart M the specific rules that EPA is proposing to promulgate as a FIP for the Indian reservation of that Tribe. Subpart M is organized to contain the implementation plan for each Indian Tribe with a reservation. This plan will consist of a combination of Tribal rules and measures and Federal regulations and measures that apply to all applicable sources within the specific reservation, including trust lands set aside for the Tribe.

While most of the rules in the FIPs constitute a base program that EPA is proposing for all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include additional rules where specific needs have been identified through consultation with Tribes. Table 1 lists the ''Base Program'' rules, as well as the ''Additional Rules''. The following ''Additional Rules'' are being proposed for three reservations (see Table 2 below) where EPA has found, in consultation with the relevant Tribe, that it is appropriate to establish these requirements in order to control air pollution.

EPA is proposing the rules listed in Table 2 for the Nez Perce Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the Reservation. EPA has found, in consultation with the Nez Perce Tribe, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Nez Perce Reservation. Specifically, the woodwaste burners, the wood products industries, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Nez Perce Tribe, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribe in ways that may not be adequately protected by Tribal law.

For the Umatilla Reservation, EPA is proposing the rules listed in Table 2 to limit the amount of particulate matter emitted to the atmosphere and airsheds in and around the Reservation. EPA has found, in consultation with the Confederated Tribes of the Umatilla Reservation, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Umatilla Reservation. Specifically, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Confederated Tribes of the Umatilla Reservation, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribes in ways that may not be adequately protected by Tribal law.

Finally, EPA is proposing the rules listed in Table 2 for the Colville Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the area. EPA has found, in consultation with the Confederated Tribes of the Colville Reservation, that these rules are appropriate because the operations of woodwaste burners and wood products facilities located on the Colville Reservation cause the release of particulate matter which may adversely affect air quality in ways that may not be adequately protected by Tribal law.

Correspondence from these Tribes providing relevant information and requesting that EPA propose these Additional Rules are included in the docket for this proposal.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES

Rule #	Additional rules
Nez Perce Reservation, Lapwai, Idaho	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES—Continued

Rule #	Additional rules
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Umatilla Indian Reservation, Pendleton, Oregon	
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Colville Indian Reservation, Nespelem, Washington	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.

D. Costs Associated With These Rules and Request for Comment

As part of developing these proposed rules, EPA conducted an analysis of the expected costs should these rules be adopted. Included in the docket for this rulemaking is an Economic Impact Analysis (EIA) that was prepared to assist EPA in estimating the costs of compliance for the sources that would be subject to these rules.

For the purposes of generating cost estimates for each of the proposed rules, EPA assumed that there will be no capital costs incurred under any of these rules. EPA makes this assumption because the unique nature of this rule—sources are believed to be complying in the absence of the rule because they thought they were subject to State and local rules—makes it difficult to establish a counterfactual baseline showing what sources would be doing had they realized they were not subject to those rules under the CAA. Furthermore, based on information obtained from State, local, and Tribal authorities, as well as the businesses and other entities affected by these rules, EPA does not anticipate that facilities will add control devices as a result of these rules. In addition, EPA has not estimated operation and maintenance (O&M) costs to comply with these rules. EPA believes that O&M costs should be considered, but insufficient data were available to estimate them. O&M costs estimates based on information gathered from comments on the proposal will be included in the analysis for the final rule.

Thus the costs estimated for these rules are primarily the labor costs associated with record keeping and reporting under the regulations. Costs for both the basic rules and additional rules were estimated in the EIA. For the basic rules, the annualized labor costs and non-labor costs were estimated to be $117,000 and $17,000, respectively, while incremental capital costs and incremental O&M costs were assumed to be zero. Thus, the total estimated cost associated with the basic rules is $134,000. Cost estimates for the additional rules only account for costs on those reservations for which EPA has proposed additional rules. The additional rules were estimated to have annualized labor costs of $23,000, while non-labor costs, incremental capital costs, and incremental O&M costs were each assumed to equal zero for a total of $23,000. Overall, annualized labor costs were estimated to be $140,000, annualized non-labor costs are estimated to be $17,000, incremental capital costs are assumed to be zero, and incremental O&M costs are assumed to be zero for a total estimated cost of $157,000.

The information available to EPA for this analysis was assembled from a number of sources, including surveys of sources on the reservations, consultations with the sources and Tribal governments, and EPA's experience with air quality issues in the Pacific Northwest. Based on this information, several assumptions were made in order to estimate the expected compliance costs associated with these rules. EPA is now seeking comment on these assumptions. While comments on all aspects of the analysis are solicited, EPA specifically is soliciting comments on the assumptions described below regarding capital costs, O&M costs, and the costs of meeting visible emission and fugitive emission requirements, conducting source tests, and meeting the sulfur content in fuel limits.

EPA is seeking comments on the assumption that no incremental capital costs would be required by these rules. The O&M costs associated with the continued compliance with these rules are expected to be small. However, there were insufficient data to estimate the magnitude of these costs. Therefore, EPA is requesting comment and supplemental information if appropriate on the expected O&M costs that would result from continued compliance with these rules. In addition, EPA would like comments on the following assumptions used for costing several of the individual rules. For the visible emission rule, it was assumed for costing purposes that two facilities would voluntarily train their own visible emissions readers and would send them to retraining each year. For the fugitive particulate matter emissions rule, it was assumed that an average of one construction project per reservation per year would need to develop and update particulate matter control plans. Under the particulate matter rule and the sulfur dioxide rule, it was assumed that six facilities and one facility, respectively, would conduct source tests within the first three years (Method 5 tests for the particulate matter rule and Method 6 tests for the sulfur dioxide rule). Finally, for the sulfur content of fuels rule, EPA assumed that fuel distributors have access to data on the sulfur content of delivered fuel and that fuel purchases would be unaffected because the fuel currently available already meets the sulfur limits established in the rule. EPA would like feedback from interested parties on the accuracy of these assumptions and suggestions for modifications, if applicable. For additional details on the assumptions used in the development of the estimated compliance costs associated with these rules, the reader is referred to the EIA.

IV. Request for Public Comment

EPA solicits comments on all aspects of today's proposal. In this proposal, EPA is trying to create a level playing field without imposing significant new costs to sources. Interested parties should submit comments by mail or in person to the address listed in the front of this proposal. Be sure to identify the

appropriate docket control number (#A–2000–25) in your correspondence. Your comments must be received by June 13, 2002 to be considered in the final action taken by EPA.

You may also comment on this proposal by attending the public hearing if one is held and providing oral comments. If EPA determines that a hearing should be held, the date and time will be announced in the local papers. You may also call David Bray at (206) 553–4253 to determine if a hearing will be held and to obtain the time and location.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed rulemaking is a ''significant regulatory action'' because it may raise novel legal or policy issues. The rulemaking marks the first time that, under the Clean Air Act, EPA has proposed Federal Implementation Plans for specific reservations that would be generally applicable to all sources within the exterior boundaries of those reservations.

However, EPA's analysis indicates that this rulemaking will not have a significant economic impact. EPA is finding that many sources on Indian reservations have historically been following similar air programs that are established by State and local agencies acting under State law or local rules. Although EPA has not approved SIPs as extending into Indian country under the CAA, some sources located on Indian reservations have made efforts to follow those programs. Most industrial sources on the Region 10 reservations have installed or upgraded air pollution control equipment to conform with State or local air programs without challenging the authority of those agencies within Indian country. As a result, these sources already have pollution controls that would satisfy State and local rules.

As discussed above in section III.A, this rulemaking would establish regulatory requirements for sources under the authority of the CAA that are substantially similar to the requirements of adjacent jurisdictions that most sources already meet. Thus, it is EPA's expectation that these rules would not impose significant costs or require changes at regulated sources. Nevertheless, because of the limited precedent this rulemaking would set, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section in Washington DC and at EPA Region 10 in Seattle, Washington. See the **ADDRESSES** section of this preamble for specific addresses and times when the docket may be reviewed.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), 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 rulemaking on small entities, small entity is defined as: (1) A small business as defined by the RFA (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on our economic analysis, we certify that this action will not have a significant economic impact on a substantial number of small entities. The economic analysis shows the total annual compliance costs of the basic and additional rules to be approximately $1,000 per small business. The cost-to-sales ratio for small business entities is expected to be less than one percent, with the exception of one facility whose estimated ratio is 1.15, when the worst-case scenario is applied.

Although this proposed rulemaking will not have a significant economic impact on a substantial number of small entities, EPA also has included a number of exemptions in the rules where appropriate to reduce impacts of this rulemaking on small entities. There are 13 rules that EPA proposes to apply to all reservations in Idaho, Oregon and Washington. Of these 13 rules, one (§ 49.121) provides an introduction, one (§ 49.122) provides delegation procedures for Tribes, and one (§ 49.123) provides definitions. The remaining ten (§§ 49.124, 49.125, 49.126, 49.129, 49.130, 49.131, 49.135, 49.137, 49.138, 49.139) have some regulatory effect. Eight of these ten contain exemptions for sources considered sufficiently small, such as households or the owners of mobile sources. Only two rules, one that addresses emissions detrimental to persons (§ 49.135) and one that addresses air pollution episodes (§ 49.137), do not include exemptions. These two rules require determinations by the Regional Administrator and would only be used when EPA determines that adverse effects of air pollution warrant their use.

In developing this proposal, EPA consulted extensively with Tribal governments regarding the potential impacts of these rules (see section G below). In order to better understand the implications of these rules for small entities, as part of the consultations with Tribal representatives, EPA also explored the possible effects for small businesses operating on Tribal lands. Moreover, while making site visits to Tribal reservations, EPA staff met one-on-one with numerous small business owner/operators and discussed today's proposal. Also during the course of these rules' development, EPA attended and made presentations about this activity at numerous public meetings and conferences; venues at which representatives of Tribally-owned and Indian-owned small businesses were present and had opportunities to

comment on the rule. We continue to be interested in the potential impacts of the proposed rulemaking on small entities and welcome comments on issues related to such impacts. In addition, EPA intends to continue outreach to affected businesses, especially small businesses, during the public comment period to provide additional opportunities for input from 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 by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA 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 explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. With regard to State and local governments, there is no expenditure because these rules only apply on Indian reservations. With regard to Tribal governments, there is no expenditure in implementing and enforcing the rules because the rules would provide that EPA would take on that responsibility unless a Tribe chooses to assist EPA or assume responsibility for its own reservation. In such a case, EPA would seek to provide funding to support these efforts. Thus, today's rules are not subject to the requirements of sections 202 and 205 of UMRA.

In developing this rulemaking, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rules that might significantly or uniquely affect small governments. As explained in the discussion of Executive Order 13175 in section G below, among other things, we notified all potentially affected Tribal governments of the requirements in these proposed rules. Further, although there are no significant Federal intergovernmental mandates, we provided officials of all potentially affected Tribal governments an opportunity for meaningful and timely input in the development of the regulatory proposals. Finally, through consultation meetings and other forums, we will continue to keep Tribal governments involved by providing them with opportunities for learning about and receiving advice on compliance with the regulatory requirements.

D. Paperwork Reduction Act

The information collection requirements in this proposed rulemaking have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2020.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The proposed FIPs include information collection requirements related to the registration of and reporting of emissions from air pollution sources. EPA believes these information collection requirements are appropriate because they would enable EPA to develop and maintain accurate records of air pollution sources and their emissions on reservation lands. As discussed in the summary of § 49.138 in section III.A. of this preamble, maintaining an accurate inventory of sources and emissions would, among other things, help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. These registration requirements would be mandatory under § 49.138. Regulated entities would be able to assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, Subpart B.

The reporting and record keeping burden for this collection of information is described below. 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.

EPA estimates that the owners or operators of facilities affected by these basic and additional rules will incur a total of $140,000 in labor costs and $17,000 in non-labor costs to comply with the information collection requirements of these rules.

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. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for

EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 15, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by April 15, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe 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 proposed rulemaking is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children.

F. Executive Order 13132: Federalism

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

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

This proposed rulemaking 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. These rules only prescribe regulations for facilities in areas where a State does not administer an approved Clean Air Act program, and thus does not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rulemaking. EPA has provided advance draft copies of the proposed rules to State and local authorities in Idaho, Oregon and Washington. Generally, the States are pleased that EPA is developing rules for Indian reservations, as the rules will create more parity in the regulatory environment between on-reservation and off-reservation lands. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rulemaking from State and local officials.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule will have Tribal implications. These regulations would significantly affect specific Indian reservation communities by filling the gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. However, the air quality requirements proposed here are applicable broadly to all sources within the identified Indian reservation areas, and are not uniquely applicable to Tribal governments. The gap-filling approach used in this proposal would create Federal requirements similar to those that are already in place in jurisdictions adjacent to the reservations covered by the proposal. Tribal governments may incur some compliance costs in meeting those requirements that apply to sources they own or operate; however, the economic impacts analysis does not indicate that those costs will be significant. Finally, although Tribal governments are encouraged to partner with EPA on the implementation of these regulations, they are not required to do so. EPA will seek to provide funding to Tribes that apply for delegation of EPA's authority to administer specific rules to support their activities. Since this proposed rulemaking will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA consulted with Tribal officials and representatives of Tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The concept for this rulemaking grew from discussions related to implementation of the CAA and the TAR with Tribes throughout Region 10 who are engaged in developing Tribal air quality programs. EPA Region 10 began assembling an inventory of air pollution sources in 1995, and EPA has been working with Tribes and other air management agencies since then to better determine the need for specific rules and to evaluate alternatives for Tribal and Federal programs. Based on the

discussions and inventory development, EPA decided to develop the proposed approach to rulemaking that would be tailored to the air quality issues of Tribes in Idaho, Oregon and Washington.

In June 1999, EPA Region 10 met in Seattle, Washington, with Tribal leaders, managers, and attorneys to introduce the Tribal Air Rules Project. A generally favorable response from Tribal leadership to the project led EPA to prepare a formal consultation package that included preliminary rules, and the package was distributed for review to the leadership of all of the potentially affected Tribes in Idaho, Oregon, and Washington. In August 1999, EPA Region 10 held three technical meetings with Tribal staff who are air specialists for in-depth discussions. Thirteen Tribes participated in these technical meetings. The Consultation Record in the docket for this proposal provides detailed information on the consultations.

In July 2000, a complete draft of the proposed rules was formally distributed to all 41 of the Tribal governments in Idaho, Oregon, and Washington. At the time of this proposal, 39 of the 41 Tribes have reservations. Two Tribes recently received Federal recognition and do not have reservation lands yet. The letter that transmitted the rule package was addressed to the Tribal Chair and sent by certified mail. Complete copies of the package were sent to the Natural Resource or Environmental Director at each Tribe and to the air specialist, in cases where the Tribe has one. In the letter, EPA Region 10 requested that the Tribe provide their views and comments on the proposed rules by September 30, 2000, and identify any additional rules that the Tribe would like EPA to propose for a particular reservation.

EPA Region 10 conducted follow-up telephone inquiries to offer opportunities for Tribes to participate in conference calls, group consultation meetings with EPA Region 10, and individual meetings with EPA Region 10. EPA Region 10 reached 39 of the 41 Tribes through these initial telephone contacts. In September and October of 2000, EPA Region 10 held four consultation meetings to discuss the draft proposed rulemaking package in Spokane, Puyallup, the Swinomish Reservation, and Portland. In the 2000 consultation round, 19 Tribes participated in face-to-face meetings with EPA Region 10. Another seven tribes consulted with EPA Region 10 through individual or group conference calls. Three Tribes submitted comments supporting the rule and requesting that EPA propose specific rules for their reservation. Please see the consultation record for more detailed information on the consultations. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

H. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects, because the facilities affected already have the pollution controls in place to enable them to comply with these rules.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of 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, 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 standards.

This proposed rulemaking involves technical standards. EPA proposes to use American Society for Testing and Materials (ASTM) Methods and generally accepted test methods previously promulgated by EPA. Because all of these methods are generally accepted and are widely used by State and local agencies for determining compliance with similar rules, EPA believes it would be impracticable and potentially confusing to put in place methods that vary from what is already accepted. As a result, EPA believes it is unnecessary and inappropriate to consider alternative technical standards. Nevertheless, EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in these regulations.

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 13, 2002.

Christine Todd Whitman,

Administrator.

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

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is amended by revising subpart C to read as follows:

Subpart C—General Federal Implementation Plan Provisions

Sec.

49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

49.121 Introduction.
49.122 Delegation of authority to a Tribe.
49.123 General provisions.
49.124 Rule for limiting visible emissions.
49.125 Rule for limiting the emissions of particulate matter.
49.126 Rule for limiting fugitive particulate matter emissions.
49.127 Rule for woodwaste burners.
49.128 Rule for limiting particulate matter emissions from wood products industry sources.
49.129 Rule for limiting emissions of sulfur dioxide.
49.130 Rule for limiting sulfur in fuels.
49.131 General rule for open burning.
49.132 Rule for open burning permits.
49.133 Rule for agricultural burning permits.
49.134 Rule for forestry burning permits.
49.135 Rule for emissions detrimental to human health and welfare.
49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
49.137 Rule for air pollution episodes.
49.138 Rule for the registration of air pollution sources and the reporting of emissions.
49.139 Rule for non-Title V operating permits.
49.140–49.200 [Reserved]

Subpart C—General Federal Implementation Plan Provisions

§§ 49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

§ 49.121 Introduction.

(a) *What is the purpose of these rules?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these rules developed?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' were developed through consultation with the Indian Tribes located in Idaho, Oregon, and Washington. The rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these rules applicable to sources on a particular Indian reservation?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules into effect for that reservation. Rules shall be promulgated into effect through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this Part. These ''General Rules for Application to Indian Reservations in EPA Region 10'' will not apply to air pollution sources located on newly established Tribal trust lands located outside the exterior boundaries of an Indian reservation until after they are promulgated into effect through notice and comment rulemaking.

§ 49.122 Delegation of authority to a Tribe.

(a) *What is the purpose of this rule?* The purpose of this rule, § 49.122, is to establish the process by which the Regional Administrator may delegate to an Indian Tribe the authority to administer all, or a portion of, the rules that have been promulgated into effect in Subpart M of this Part for a particular Indian reservation. This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request delegation?* In order to be delegated authority to administer the rules that are in effect in Subpart M of this Part for a particular Indian reservation, the authorized representative of a Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific rules and provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the rules and provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, adequate resources to carry out the aspects of the rules and provisions for which delegation is requested.

(c) *How is the delegation of authority accomplished?*

(1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rules and provisions that the Tribe shall be authorized to implement, and shall be entered into by the Regional Administrator and the Tribe. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Act, to the extent specified in the Agreement, for administering the rules in effect in Subpart M of this Part for the particular Indian reservation and shall act as the Regional Administrator as that term is used in these regulations.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe.

(d) *How will any delegation of authority be publicized?* The Regional Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of authority to a Tribe to administer all or a portion of the rules in Subpart M of this Part that apply for an Indian reservation and will indicate such delegation in the implementation plan for the Indian reservation. The Regional Administrator shall also publish an announcement of the delegation in local newspapers.

§ 49.123 General provisions.

(a) *Definitions.* The following definitions apply for the purposes of the ''General Rules for Application to Indian Reservations in EPA Region 10''. Terms not defined herein have the meaning given to them in the Act.

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Actual emissions means the actual rate of emissions, in tons per year, of an air pollutant from an air pollution source. For an existing source, the actual emissions are the actual rate of emissions for the most recently completed calendar year and must be calculated using the actual operating hours, production rates, and types of materials processed, stored, or combusted during that calendar year. For a new source that has not operated for a complete calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

Agricultural burning means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

Air pollutant means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the

particular purpose for which the term air pollutant is used.

Air pollution source means any building, structure, facility, installation, activity, or equipment that emits, or may emit, an air pollutant.

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

(1) The applicable standards in 40 CFR parts 60, 61, 62 and 63;

(2) The applicable implementation plan emission limitations, including those with a future compliance date; or

(3) The emissions rates specified in Federally-enforceable permit conditions.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

Burn barrel means a cylindrical steel vessel, no greater than 55 gallons in size, with an open top, bottom air holes, and equipped with a steel spark screen, used for burning combustible household waste.

Coal means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials (ASTM) in ASTM Method D388–99, Standard Classification of Coals by Rank.

Combustible household waste means paper, paper products, cardboard, food packaging, plastic containers, garbage, rags, wood, and other combustible waste materials resulting from general residential activities, but does not include the following household wastes: tires; rubber materials or products; plastic materials or products (except containers); asphalt or composition roofing, or any other asphaltic material or product; tar or tarpaper; petroleum products; paints; timbers treated with preservatives; pesticides, herbicides, or fertilizers; insulated wire; batteries; light bulbs; materials containing mercury; or materials containing asbestos.

Combustion source means any source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

Continuous emissions monitoring system (CEMS) means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous opacity monitoring system (COMS) means the total equipment used to sample, analyze, and provide a permanent record of opacity.

Distillate fuel oil means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Emission means a direct or indirect release into the atmosphere of any air pollutant; or the air pollutants released into the atmosphere.

Emission factor means an estimate of the rate at which an air pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity.

Emission unit means any part of an air pollution source that emits, or may emit air pollutants into the atmosphere.

Federally enforceable means enforceable by the Administrator under the Act.

Fuel means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

Fuel oil means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

Forestry or silvicultural burning means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

Fugitive dust means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

Fugitive particulate matter means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

Garbage means food wastes.

Gaseous fuel means any fuel that exists in a gaseous state at standard conditions, including but not limited to natural gas, propane, fuel gas, process gas, and landfill gas.

Grate cleaning means removing ash from fireboxes.

Hardboard means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

Heat input means the total gross calorific value (where gross calorific value is measured by ASTM Method D240–92(1997)e2, D1826–94(1998), D5865–99a, or E711–87(1996)) of all fuels burned.

Implementation plan means a Tribal implementation plan approved by EPA pursuant to this Part or 40 CFR Part 51, or a Federal implementation plan promulgated by EPA in this Part or in 40 CFR Part 52 that applies in Indian country, or a combination of Tribal and Federal implementation plans.

Incinerator means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Marine vessel means a waterborne craft, ship, or barge.

Mobile sources means locomotives, aircraft, motor vehicles, non-road vehicles, non-road engines, and marine vessels.

Motor vehicle means any self-propelled vehicle designed for transporting people or property on a street or highway.

New air pollution source means an air pollution source that begins actual construction after the effective date of the ''General Rules for Application to Indian Reservations in EPA Region 10''.

Noncombustibles means materials that are not flammable, capable of catching fire, or burning.

Non-road engine means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely

for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Non-road vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Oil-fired boiler means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Open burning means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

Owner or operator means any person who owns, leases, operates, controls or supervises an air pollution source.

Particleboard means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

Particulate matter means any airborne finely divided solid or liquid material, other than uncombined water.

Permit to construct or construction permit means a permit issued by the Regional Administrator pursuant to 40 CFR 52.10 or 52.21, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51, Subpart I, authorizing the construction or modification of a stationary source.

Permit to operate or operating permit means a permit issued by the Regional Administrator pursuant to § 49.139 or 40 CFR Part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51 or 40 CFR Part 70, authorizing the operation of a stationary source.

Plywood means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

PM10 means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

Process source means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

Rated capacity means the maximum sustainable capacity of the equipment.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable rule.

Refuse means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

Regional Administrator means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

Residual fuel oil means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

Soot blowing means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

Stack means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

Standard conditions means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

Start-up means the setting into operation of a piece of equipment.

Stationary source means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

Tempering oven means any facility used to bake hardboard following an oil treatment process.

Uncombined water means droplets of water that have not combined with hygroscopic particles or contain dissolved solids.

Used oil means petroleum products that have been recovered from another application.

Veneer means a single flat panel of wood not exceeding ¼ inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

Visible emissions means air pollutants in sufficient amount to be observable to the human eye.

Wood means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

Wood-fired boiler means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in

addition to, or exclusive of, steam or natural gas or propane combustion.

Woodwaste burner means a wigwam burner, teepee burner, silo burner, olivine burner, truncated cone burner, or other such wood waste burning device used by the wood products industry for the disposal of wood wastes by burning.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the ''General Rules for Application to Indian Reservations in EPA Region 10'' by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person subject to the ''General Rules for Application to Indian Reservations in EPA Region 10'' to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(1) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388–99, Standard Classification of Coals by Rank, IBR approved for § 49.123(a).

(ii) ASTM D396–98, Standard Specification for Fuel Oils, IBR approved for § 49.123(a) and § 49.130(d).

(iii) ASTM D240–92(1997)e2, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826–94(1998), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

(v) ASTM D5865–99a, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711–87(1996) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880–98, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294–98, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021–96, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177–89(1997), Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239–00, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492–90(1998), Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775–87(1996), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072–90(1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084–94(1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468–85(1995)e1, Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228–98 Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

§ 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this rule?* This rule, § 49.124, limits the visible emissions of air pollutants from air pollution sources operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10 and to detect the violation of any other rules and regulations.

(b) *Who is affected by this rule?* This rule, § 49.124, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this rule?* This rule, § 49.124, does not apply to open burning, agricultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?*

(1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive 6-minute period, unless paragraph (d)(2) or (d)(3) of § 49.124 applies to the air pollution source.

(2) The visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

(3) The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the opacity limits is EPA Method 9 of Appendix A of 40 CFR Part 60. A complete description of this method is found in Appendix A.

(2) An alternative reference method for determining compliance is a COMS that complies with Performance Specification 1 found in Appendix B of 40 CFR Part 60.

(3) This rule, § 49.124, does not require any person to conduct Method 9, of Appendix A of 40 CFR Part 60, opacity readings or to install a COMS unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.124, are defined in § 49.123 General provisions: Act, agricultural activities, air pollutant, air pollution source, ambient air, coal, continuous opacity monitoring system (COMS), distillate fuel oil, emission, fuel, fuel oil, fugitive dust, gaseous fuel, grate cleaning, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, oil-fired boiler, opacity, open burning, particulate matter, permit to construct, permit to operate, PM10, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, solid fuel-fired boiler, soot blowing, stack, standard conditions, start-up, stationary source, uncombined water, used oil, visible emissions, and wood.

§ 49.125 Rule for limiting the emissions of particulate matter.

(a) *What is the purpose of this rule?* This rule, § 49.125, limits the amount of particulate matter that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.125, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this rule?* This rule, § 49.125, does not apply to woodwaste burners, furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources.

(d) *What are the particulate matter limits for sources?*

(1) Particulate matter emissions from a combustion source (except for wood-fired boilers) must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Particulate matter emissions from a wood-fired boiler must not exceed an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(3) Particulate matter emissions from a process source must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot) during any three (3) hour period.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits for a combustion source, wood-fired boiler, or process source is EPA Method 5. A complete description of this method is found in Appendix A of 40 CFR Part 60.

(2) This rule, § 49.125, does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.125, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, particulate matter, permit to construct, permit to operate, PM10, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, uncombined water, used oil, wood, wood-fired boiler, and woodwaste burner.

§ 49.126 Rule for limiting fugitive particulate matter emissions.

(a) *What is the purpose of this rule?* This rule, § 49.126, limits the amount of fugitive particulate matter that can be emitted from air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.126, applies to any person who owns or operates a source of fugitive particulate matter emissions.

(c) *What is exempted from this rule?* This rule, § 49.126, does not apply to activities associated with single family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any Federal, Tribal, State or local government.

(d) *What are the requirements for sources of fugitive particulate matter emissions?*

(1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

(2) Reasonable precautions include, but are not limited to the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of buildings or structures,

construction operations, grading of roads, or clearing of land.

(ii) Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces that can create airborne dust.

(iii) Full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals is not sufficient or appropriate to prevent particulate matter from becoming airborne.

(iv) Implementation of good housekeeping practices to avoid or minimize the accumulation of dusty materials that have the potential to become airborne, and the prompt cleanup of spilled or accumulated materials.

(v) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

(vi) Adequate containment during sandblasting or other similar operations.

(vii) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.

(viii) The prompt removal from paved streets of earth or other material that does or may become airborne.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.126, must:

(i) Periodically survey the air pollution source during typical operating conditions to determine if there are sources of fugitive particulate matter emissions. This must be done at least once each calendar quarter, and must be done weekly if dry or dusty materials are handled at the air pollution source. Document the results of the survey, including the date and time of the survey and identification of any sources of fugitive particulate matter emissions found.

(ii) If sources of fugitive particulate matter emissions are present, determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions.

(iii) Prepare, and update as necessary following each periodic survey, a written plan that specifies the reasonable precautions to be taken and the procedures to be followed to prevent fugitive particulate matter emissions.

(iv) Implement the reasonable precautions and procedures plan, and maintain and operate the source to minimize fugitive particulate matter emissions.

(v) Maintain records for five years that document the periodic surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

(2) The Regional Administrator may require specific actions to prevent fugitive particulate matter emissions, or impose conditions to maintain and operate the air pollution source to minimize fugitive particulate matter emissions, in a permit to construct or a permit to operate for the source.

(3) A prudent approach to complying with this rule, § 49.126, requires that the owner or operator consider all environmental implications of any particular measures. Efforts to comply with this rule cannot be used as a reason for not complying with other environmental rules, or in the absence of such rules, creating other environmental problems.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.126, are defined in § 49.123 General provisions: Agricultural activities, air pollutant, air pollution source, ambient air, emission, fugitive dust, fugitive particulate matter, owner or operator, particulate matter, permit to construct, permit to operate, PM10, Regional Administrator, stack, and uncombined water.

§ 49.127 Rule for woodwaste burners.

(a) *What is the purpose of this rule?* This rule, § 49.127, phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners), and in the interim, limits the visible emissions from woodwaste burners operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.127, applies to any person who owns or operates a woodwaste burner.

(c) *What are the requirements for woodwaste burners?*

(1) The owner or operator of a woodwaste burner must shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of this rule, § 49.127. Until the woodwaste burner is shut down, visible emissions from the woodwaste burner must not exceed 20% opacity, averaged over any consecutive 6-minute period.

(2) Until the woodwaste burner is shut down, only wood waste generated onsite may be burned or disposed of in the woodwaste burner.

(3) If there is no reasonably available alternative method of disposal for the wood waste other than by burning it onsite in a woodwaste burner, the owner or operator of the woodwaste burner that is in compliance with the opacity limit in paragraph (c)(1) of this section, may apply to the Regional Administrator for an extension of the 2-year deadline. If the Regional Administrator finds that there is no reasonably available alternative method of disposal, then a 2-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator.

(d) *What is the reference method for determining compliance with the opacity limit?*

(1) The reference method for determining compliance with the opacity limit is EPA Method 9. A complete description of this method is found in 40 CFR Part 60, Appendix A.

(2) This rule, § 49.127, does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.127, must submit a plan to shut down and dismantle the woodwaste burner to the Regional Administrator within 180 days after the effective date of this rule, § 49.127. Unless an extension has been granted by the Regional Administrator, the woodwaste burner must be shut down and dismantled within 2 years after the effective date of this rule, § 49.127. The owner or operator of the woodwaste burner must notify the Regional Administrator that the woodwaste burner has been shut down and dismantled within 30 days after completion.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.127, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, opacity, owner or operator, particulate matter, permit to construct, permit to operate, PM10, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

§ 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(a) *What is the purpose of this rule?* This rule, § 49.128, limits the amount of particulate matter that can be emitted from certain wood products industry sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.128, applies to any person who owns or operates any of the following wood products industry sources:

(1) Veneer manufacturing operations;

(2) Plywood manufacturing operations;

(3) Particleboard manufacturing operations; and

(4) Hardboard manufacturing operations.

(c) *What are the particulate matter limits for wood products industry sources?* These particulate matter limits are in addition to, and not in lieu of, the particulate matter limits for combustion sources and process sources.

(1) *Veneer Dryers at Veneer Manufacturing Operations and Plywood Manufacturing Operations.*

(i) Particulate matter emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(ii) Particulate matter emissions from steam heated veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(iii) Particulate matter emissions from wood fired veneer dryers must not exceed a total of 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis) and 0.2 pounds per 1000 pounds of steam generated in boilers, prorated for the amount of combustion gases routed to the veneer dryer, one-hour average.

(2) *Wood Particle Dryers at Particleboard Manufacturing Operation.* Particulate matter emissions from wood particle dryers must not exceed a total of 0.4 pounds per 1000 square feet of board produced by the plant (3/4 inch basis), one-hour average.

(3) *Press/Cooling Vents at Hardboard Manufacturing Operations.* Particulate matter emissions from hardboard press/cooling vents must not exceed 0.3 pounds per 1000 square feet of hardboard produced (1/8 inch basis), one-hour average.

(4) *Tempering Ovens at Hardboard Manufacturing Operations.* A person must not operate any hardboard tempering oven unless all gases and vapors are collected and treated in a fume incinerator capable of raising the temperature of the gases and vapors to at least 1500 degrees Fahrenheit for 0.3 seconds or longer.

(d) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits is EPA Method 202. A complete description of this method is found in 40 CFR Part 51, Appendix M.

(2) This rule, § 49.128, does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.128, are defined in § 49.123 General provisions: Act, combustion source, emissions, hardboard, particleboard, particulate matter, permit to construct, permit to operate, plywood, PM10, press/cooling vent, process source, tempering oven, veneer, veneer dryer, wood, and wood-fired veneer dryer.

§ 49.129 Rule for limiting emissions of sulfur dioxide.

(a) *What is the purpose of this rule?* This rule, § 49.129, limits the amount of sulfur dioxide (SO_2) that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.129, applies to any person who owns or operates an air pollution source that emits, or could emit, SO_2 to the atmosphere.

(c) *What is exempted from this rule?* This rule, § 49.129, does not apply to furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, and mobile sources.

(d) *What are the sulfur dioxide limits for sources?*

(1) Sulfur dioxide emissions from a combustion source must not exceed an average of 500 parts per million by volume, on a dry basis and corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Sulfur dioxide emissions from a process source must not exceed an average of 500 parts per million by volume, on a dry basis, during any three (3) hour period.

(e) *What are the reference methods for determining compliance?*

(1) The reference methods for determining compliance with the SO_2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. A complete description of these methods are found in 40 CFR Part 60, Appendix A.

(2) An alternative reference method is a continuous emissions monitoring system (CEMS) that complies with Performance Specification 2 found in 40 CFR Part 60, Appendix B.

(3) This rule, § 49.129, does not require any person to conduct Method 6, 6A, 6B, or 6C of Appendix A of 40 CFR Part 60 source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.129, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, continuous emissions monitoring system (CEMS), distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, permit to construct, permit to operate, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, used oil, wood, and woodwaste burner.

§ 49.130 Rule for limiting sulfur in fuels.

(a) *What is the purpose of this rule?* This rule, § 49.130, limits the amount of sulfur contained in fuels that are burned at stationary sources within the Indian reservation in order to control emissions of sulfur dioxide (SO_2) to the atmosphere and ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.130, applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel within the Indian reservation.

(c) *What is exempted from this rule?* This rule, § 49.130, does not apply to fuel oils used exclusively for mobile sources, such as automotive and marine diesel fuels.

(d) *What are the sulfur limits for fuels?* A person must not sell, distribute, use, or make available for use any fuel oil, coal, solid fuel, or gaseous fuel that contains more than the following amounts of sulfur:

(1) For distillate fuel oil—0.3 percent by weight for ASTM Grade 1 fuel oil;

(2) For distillate fuel oil—0.5 percent by weight for ASTM Grade 2 fuel oil;

(3) For residual fuel oil—1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;

(4) For used oil—2.0 percent sulfur by weight;

(5) For coal—1.0 percent sulfur by weight;

(6) For solid fuels—2.0 percent sulfur by weight;

(7) For gaseous fuels—1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

(e) *What are the reference methods for determining compliance?* The reference methods for determining the amount of sulfur in a fuel are as follows:

(1) Sulfur content in fuel oil—ASTM methods D2880–98, D4294–98, and D6021–96;

(2) Sulfur content in coal—ASTM methods D3177–89(1997), D4239–00, and D2492–90(1998);

(3) Sulfur content in solid fuels—ASTM method E775–87(1996);

(4) Sulfur content in gaseous fuels—ASTM methods D1072–90(1999), D3246–96, D4084–94(1999), D5504–98, D4468–85(1995)e1, D2622–98, and D6228–98.

(f) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.130, must:

(i) For fuel oils, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel oil. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using EPA Methods 11 or 16. Complete descriptions of these Methods are found in 40 CFR Part 60, Appendix A. If only pipeline natural gas is used, then keep records showing that only pipeline quality natural gas was used.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. The owner or operator of a coal or solid fuel-fired source may apply to the Regional Administrator for a waiver of this provision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five (5) years and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.130, are defined in § 49.123 General provisions: Act, air pollutant, ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, standard conditions, stationary source, and used oil.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this rule?* This rule, § 49.131, limits the types of materials that can be open burned within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.131, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.131:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite;

(5) With permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service shall ensure that the structure does not contain any asbestos or asbestos containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(6) With permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(7) Open burning for the disposal of diseased animals or infested material by order of a public health official.

(d) *What are the requirements for open burning?*

(1) A person must not open burn, or allow the open burning of, the following materials:

(i) Garbage;

(ii) Dead animals or parts of dead animals;

(iii) Junked motor vehicles or any materials resulting from a salvage operation;

(iv) Tires or rubber materials or products;

(v) Plastics;

(vi) Asphalt or composition roofing, or any other asphaltic material or product;

(vii) Tar, tarpaper, petroleum products, or paints;

(viii) Paper or cardboard other than what is necessary to start a fire;

(ix) Lumber or timbers treated with preservatives;

(x) Construction debris or demolition waste;

(xi) Pesticides, herbicides, fertilizers, or other chemicals;

(xii) Insulated wire;

(xiii) Batteries;

(xiv) Light bulbs;

(xv) Materials containing mercury (thermometers for example);

(xvi) Asbestos or materials containing asbestos;

(xvii) Pathogenic wastes;

(xviii) Hazardous wastes; or

(xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard and will continue to exceed that level for at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the National Weather Service issues an air stagnation advisory, or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to § 49.137 Air pollution episodes.

(4) Nothing in this rule, § 49.131, exempts or excuses any person from

complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.131, must conduct open burning as follows:

(i) Prohibited materials must not be open burned;

(ii) All materials to be open burned must be kept as dry as possible through the use of a cover or dry storage;

(iii) Before igniting a burn, noncombustibles must be separated from the materials to be open burned to the greatest extent practicable;

(iv) Natural or artificially induced draft must be present;

(v) To the greatest extent practicable, materials to be open burned must be separated from the grass or peat layer; and

(vi) A fire must not be allowed to smolder.

(2) A person must not initiate any open burning subject to this rule when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued by the National Weather Service; or

(iii) An air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Any person conducting open burning subject to this rule, § 49.131, when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.131, are defined in § 49.123 General provisions: Air pollutant, ambient air, burn barrel, combustible household wastes, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.132 Rule for general open burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.132, establishes a permitting program for open burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.132, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.132:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry or silvicultural burning;

(5) Agricultural burning; and

(6) Burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite.

(d) *What are the requirements for open burning?*

(1) A person must apply for and obtain a permit for the open burn, have the permit available on site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) A person must comply with the § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.132, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.132, must submit an application to the Regional Administrator for each open burn. An application must be submitted in writing at least one working day, and no earlier than 5 working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over that burning will be conducted.

(v) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water.

(vi) The requested date (or dates if the duration of the burn is more than one day) that the proposed open burning would be conducted.

(vii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed open burning is consistent with this rule (§ 49.132) and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this rule (§ 49.132), § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), and to protect the public health and welfare.

(3) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.

(4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the opening burning permit programs of surrounding jurisdictions.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.132, are defined in § 49.123 General provisions: Agricultural burning, air pollutant, ambient air, burn barrel, combustible household wastes, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.133 Rule for agricultural burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.133, establishes a permitting program for agricultural burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.133, applies to any person who conducts agricultural burning.

(c) *What are the requirements for agricultural burning?*

(1) A person must apply for and obtain a permit for the agricultural burn, have the permit available onsite during the agricultural burn, and conduct the

agricultural burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.133, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.133, must submit an application to the Regional Administrator for each proposed agricultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed agricultural burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed agricultural burning.

(iii) A plot plan showing the location of the proposed agricultural burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of agricultural wastes proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile or stack burn, open field or broadcast burn, windrow burn, mobile field sanitizer, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and plowed firebreaks.

(vii) The requested date(s) that the proposed agricultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed agricultural burning is consistent with this rule, § 49.133, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the agricultural burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed agricultural burning can be conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the open burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.133, are defined in § 49.123 General provisions: Agricultural burning or agricultural burn, air pollutant, ambient air, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.134 Rule for forestry burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.134, establishes a permitting program for forestry burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.134, applies to any person who conducts forestry burning.

(c) *What are the requirements for forestry burning?*

(1) A person must apply for and obtain a permit for the forestry burn, have the permit available onsite during the forestry burn, and conduct the forestry burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.134, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule must submit an application to the Regional Administrator for each forestry burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed forestry burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed forestry burning.

(iii) A plot plan showing the location of the proposed forestry burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of forestry residues proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile burn, broadcast burn, windrow burn, understory burn, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and firebreaks.

(vii) The requested date(s) that the proposed forestry burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed forestry burning is consistent with this rule, § 49.134, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the forestry burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed forestry burning can be

conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the opening burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.134, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.135 Rule for emissions detrimental to human health and welfare.

(a) *What is the purpose of this rule?* This rule, § 49.135, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to human health and welfare.

(b) *Who is affected by this rule?* This rule, § 49.135, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is, or would likely be, injurious to human health and welfare.

(2) If the Regional Administrator makes either of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.135, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.135, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.135, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.135, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

Tribal Alternative Rule

§ 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(a) *What is the purpose of this rule?* This rule, § 49.136, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to persons, property, or cultural or traditional resources.

(b) *Who is affected by this rule?* This rule, § 49.136, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard;

(ii) Is, or would likely be, injurious to human health and welfare, animal or plant life, or property;

(iii) Unreasonably interferes with the enjoyment of life or property; or

(iv) Is, or would likely be, damaging to unique Tribal cultural or traditional resources.

(2) If the Regional Administrator makes any of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.136, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.136, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.136, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.136, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

§ 49.137 Rule for air pollution episodes.

(a) *What is the purpose of this rule?* This rule, § 49.137, establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This rule is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this rule?* This rule, § 49.137, applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this rule?*

(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency shall exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory shall be declared whenever the National Weather Service issues an atmospheric stagnation advisory.

(ii) *Air pollution alert.* An air pollution alert shall be declared when any one of the following levels is

reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O_3)—400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O_3)—800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O_3)—1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency shall remain in effect until the criteria for that level is no longer met. At such time, the Regional Administrator will make a new determination and shall make an appropriate declaration of the new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator shall request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory or air pollution alert sources of air pollutants shall be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

(4) *Mandatory curtailment of emissions by order of the Regional Administrator.*

(i) Open burning must cease in accordance with the requirements of § 49.131 General rule for open burning.

(ii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.137, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, fuel, motor vehicle, open burning, and Regional Administrator.

§ 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(a) *What is the purpose of this rule?* This rule, § 49.138, allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this rule?* This rule, § 49.138, applies to any person who owns or operates an air pollution source except those exempted below.

(c) *What is exempted from this rule?* This rule, § 49.138, does not apply to the following air pollution sources:

(1) Mobile sources;

(2) Single family residences, and residential buildings with four or fewer dwelling units;

(3) Air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the Act and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(4) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(6) Cooking of food, except for retail and wholesale businesses that both cook and sell cooked food (restaurants, for example);

(7) Consumer use of office equipment and products;

(8) Janitorial services and consumer use of janitorial products;

(9) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops;

(10) Agricultural activities and forestry activities, including agricultural burning and forestry burning; and

(11) Open burning.

(d) *What are the requirements of this rule?* Any person who owns or operates an air pollution source subject to this rule must register the source with the Regional Administrator as specified below.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.138, must register an air pollution source as follows:

(1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this rule must register the air pollution source with the Regional Administrator by no later than one year after the effective date of this rule. The owner or operator of a new air pollution source must register with the Regional Administrator within 90 days after beginning operation. Submitting an initial registration does not relieve the owner

or operator from the requirement to obtain a permit to construct if the new air pollution source is subject to those rules.

(2) *Annual re-registration.* After initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year. The re-registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the Regional Administrator.

(3) *Information to include in initial registration and annual re-registration (all that are applicable).*

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes and a related flow chart.

(vii) Identification of emission units and air pollutant generating activities.

(viii) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance and direction of the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis.

(x) Type and quantity of raw materials used on a daily and annual basis.

(xi) Estimates of the total actual emissions for the air pollution source of the following air pollutants: particulate matter emissions, PM10 emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds. Include all of the calculations for the estimates.

(xii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(xiii) Any other information specifically requested by the Regional Administrator.

(4) *Procedure for estimating emissions.* The initial registration and annual re-registration must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(5) *Report of relocation.* The owner or operator of an air pollution source must report any relocation of the source to the Regional Administrator no later than 30 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator from the requirement to obtain a permit to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(6) *Report of change of ownership.* The owner or operator of an air pollution source must report any change of ownership to the Regional Administrator within 90 days after the change in ownership is effective.

(7) *Report of closure.* The owner or operator of an air pollution source must submit a report of closure to the Regional Administrator within 90 days after the cessation of operations.

(8) *Certification of truth and accuracy.* All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.138, are defined in § 49.123 General provisions: Act, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, fuel, marine vessel, mobile source, motor vehicle, new air pollution source, non-road engine, non-road vehicle, open burning, owner or operator, particulate matter, permit to construct, PM10, rated capacity, Regional Administrator, stack, stationary source, and uncombined water.

§ 49.139 Rule for non-Title V operating permits.

(a) *What is the purpose of this rule?* This rule, § 49.139, establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this rule?*

(1) This rule, § 49.139, applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR Part 71, or a Tribal operating permit program approved pursuant to 40 CFR Part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1).

(c) *What are the procedures for obtaining an owner-requested operating permit?*

(1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit shall submit an application to the Regional Administrator requesting such limitation. The application must contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator shall determine if it contains the information specified in paragraph (d) of this section and if so, shall deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it shall be returned to the owner or operator along

with a description of the necessary information that must be submitted in order for the application to be deemed complete.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the proposed limitations and their effect on the actual emissions and/or potential to emit of the air pollution source.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and shall provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?*

(1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit. Include all of the calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation. Include all of the calculations for the estimates.

(vii) Any other information specifically requested by the Regional Administrator.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?*

(1) Whenever the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source shall be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide whatever information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this rule, § 49.139.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and shall

provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.139, are defined in § 49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.200 [Reserved]

3. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9861 through 49.9870 to read as follows:

Subpart M—Implementation Plans for Tribes—Region X

Implementation Plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon

§ 49.9861 Identification of plan.

This section and §§ 49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.

§ 49.9862 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Burns Paiute Indian Colony.

§ 49.9863 Legal authority. [Reserved]

§ 49.9864 Source surveillance. [Reserved]

§ 49.9865 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Burns Paiute Indian Colony is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9866 Contents of implementation plan.

The implementation plan for the Reservation of the Burns Paiute Indian Colony consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9867 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9868 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9869 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9870 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Burns Paiute Indian Colony:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9871–49.9890 [Reserved]

4. Subpart M of Part 49 is amended by adding an undesignated center heading

and §§ 49.9891 through 49.9900 to read as follows:

Implementation Plan for the Confederated Tribes of the Chehalis Reservation, Washington

§ 49.9891 Identification of plan.

This section and §§ 49.9892 through 49.9920 contain the implementation plan for the Confederated Tribes of the Chehalis Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Chehalis Reservation.

§ 49.9892 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Chehalis Reservation.

§ 49.9893 Legal authority. [Reserved]

§ 49.9894 Source surveillance. [Reserved]

§ 49.9895 Classification of regions for episode plans.

The air quality control region which encompasses the Chehalis Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.9896 Contents of implementation plan.

The implementation plan for the Chehalis Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9897 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9898 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9899 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9900 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Chehalis Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9901–49.9920 [Reserved]

5. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9921 through 49.9930 to read as follows:

Implementation Plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho

§ 49.9921 Identification of plan.

This section and §§ 49.9922 through 49.9950 contain the implementation plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Coeur D'Alene Reservation.

§ 49.9922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Coeur D'Alene Reservation.

§ 49.9923 Legal authority. [Reserved]

§ 49.9924 Source surveillance. [Reserved]

§ 49.9925 Classification of regions for episode plans.

The air quality control region which encompasses the Coeur D'Alene Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.9926 Contents of implementation plan.

The implementation plan for the Coeur D'Alene Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9930 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Coeur D'Alene Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9931–49.9950 [Reserved]

6. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9951 through 49.9960 to read as follows:

Implementation Plan for the Confederated Tribes of the Colville Reservation, Washington

§ 49.9951 Identification of plan.

This section and §§ 49.9952 through 49.9980 contain the implementation plan for the Confederated Tribes of the Colville Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Colville Reservation.

§ 49.9952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Colville Reservation.

§ 49.9953 Legal authority. [Reserved]

§ 49.9954 Source surveillance. [Reserved]

§ 49.9955 Classification of regions for episode plans.

The air quality control region which encompasses the Colville Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9956 Contents of implementation plan.

The implementation plan for the Colville Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to human health and welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§ 49.9957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Colville Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to human health and welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9961–49.9980 [Reserved]

7. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9981 through 49.9990 to read as follows:

Implementation Plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon

§ 49.9981 Identification of plan.

This section and §§ 49.9982 through 49.10010 contain the implementation plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9983 Legal authority. [Reserved]

§ 49.9984 Source surveillance. [Reserved]

§ 49.9985 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9986 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9991–49.10010 [Reserved]

8. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10011 through 49.10020 to read as follows:

Implementation Plan for the Coquille Tribe of Oregon

§ 49.10011 Identification of plan.

This section and §§ 49.10012 through 49.10040 contain the implementation plan for the Coquille Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Coquille Tribe.

§ 49.10012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Coquille Tribe.

§ 49.10013 Legal authority. [Reserved]

§ 49.10014 Source surveillance. [Reserved]

§ 49.10015 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Coquille Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10016 Contents of implementation plan.

The implementation plan for the Reservation of the Coquille Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Coquille Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10021–49.10040 [Reserved]

9. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10041 through 49.10050 to read as follows:

Implementation Plan for the Cow Creek Band of Umpqua Indians of Oregon

§ 49.10041 Identification of plan.

This section and §§ 49.10042 through 49.10100 contain the implementation

plan for the Cow Creek Band of Umpqua Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10043 Legal authority. [Reserved]

§ 49.10044 Source surveillance. [Reserved]

§ 49.10045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Cow Creek Band of Umpqua Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10046 Contents of implementation plan.

The implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10051–49.10100 [Reserved]

10. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10101 through 49.10110 to end as follows:

Implementation Plan for the Confederated Tribes of the Grand Ronde Community of Oregon

§ 49.10101 Identification of plan.

This section and §§ 49.10102 through 49.10130 contain the implementation plan for the Confederated Tribes of the Grand Ronde Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10103 Legal authority.[Reserved]

§ 49.10104 Source surveillance. [Reserved]

§ 49.10105 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Grand Ronde Community is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10106 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10111–49.10130 [Reserved]

11. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10131 through 49.10140 to read as follows:

Implementation Plan for the Hoh Indian Tribe of the Hoh Indian Reservation, Washington

§ 49.10131 Identification of plan.

This section and §§ 49.10132 through 49.10160 contain the implementation plan for the Hoh Indian Tribe of the Hoh Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Hoh Indian Reservation.

§ 49.10132 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Hoh Indian Reservation.

§ 49.10133 Legal authority. [Reserved]

§ 49.10134 Source surveillance. [Reserved]

§ 49.10135 Classification of regions for episode plans.

The air quality control region which encompasses the Hoh Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10136 Contents of implementation plan.

The implementation plan for the Hoh Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10137 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10138 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10139 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10140 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Hoh Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10141–49.10160 [Reserved]

12. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10161 through 49.10170 to read as follows:

Implementation Plan for the Jamestown S'Klallam Tribe of Washington

§ 49.10161 Identification of plan.

This section and §§ 49.10162 through 49.10190 contain the implementation plan for the Jamestown S'Klallam Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10162 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10163 Legal authority. [Reserved]

§ 49.10164 Source surveillance. [Reserved]

§ 49.10165 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Jamestown S'Klallam Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10166 Contents of implementation plan.

The implementation plan for the Reservation of the Jamestown S'Klallam Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10167 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10168 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10169 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10170 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Jamestown S'Klallam Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10171–49.10190 [Reserved]

13. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10191 through 49.10200 to read as follows:

Implementation Plan for the Kalispel Indian Community of the Kalispel Reservation, Washington

§ 49.10191 Identification of plan.

This section and §§ 49.1019192 through 49.10220 contain the implementation plan for the Kalispel Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Kalispel Reservation.

§ 49.10192 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Kalispel Reservation.

§ 49.10193 Legal authority. [Reserved]

§ 49.10194 Source surveillance. [Reserved]

§ 49.10195 Classification of regions for episode plans.

The air quality control region which encompasses the Kalispel Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10196 Contents of implementation plan.

The implementation plan for the Kalispel Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10197 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10198 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10199 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10200 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Kalispel Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10201–49.10220 [Reserved]

14. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10221 through 49.10230 to read as follows:

Implementation Plan for the Klamath Indian Tribe of Oregon

§ 49.10221 Identification of plan.

This section and §§ 49.10222 through 49.10250 contain the implementation plan for the Klamath Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Klamath Indian Tribe.

§ 49.10222 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Klamath Indian Tribe.

§ 49.10223 Legal authority. [Reserved]

§ 49.10224 Source surveillance. [Reserved]

§ 49.10225 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Klamath Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10226 Contents of implementation plan.

The implementation plan for the Reservation of the Klamath Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10227 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10228 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10229 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10230 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Klamath Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10231–49.10250 [Reserved]

15. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10251 through 49.10260 to read as follows:

Implementation Plan for the Kootenai Tribe of Idaho

§ 49.10251 Identification of plan.

This section and §§ 49.10252 through 49.10280 contain the implementation plan for the Kootenai Tribe of Idaho. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Kootenai Tribe of Idaho.

§ 49.10252 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Kootenai Tribe of Idaho.

§ 49.10253 Legal authority. [Reserved]

§ 49.10254 Source surveillance. [Reserved]

§ 49.10255 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Kootenai Tribe of Idaho is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10256 Contents of implementation plan.

The implementation plan for the Reservation of the Kootenai Tribe of Idaho consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10257 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10258 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10259 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10260 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Reservation of the Kootenai Tribe of Idaho:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.103261–49.10280 [Reserved]

16. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10281 through 49.10290 to read as follows:

Implementation Plan for the Lower Elwha Tribal Community of the Lower Elwha Reservation Washington

§ 49.10281 Identification of plan.

This section and §§ 49.10282 through 49.10310 contain the implementation plan for the Lower Elwha Tribal Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lower Elwha Reservation.

§ 49.10282 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lower Elwha Reservation.

§ 49.10283 Legal authority. [Reserved]

§ 49.10284 Source surveillance. [Reserved]

§ 49.10285 Classification of regions for episode plans.

The air quality control region which encompasses the Lower Elwha Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10286 Contents of implementation plan.

The implementation plan for the Lower Elwha Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10287 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10288 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10289 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10290 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lower Elwha Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10291–49.10310 [Reserved]

17. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10311 through 49.10320 to read as follows:

Implementation Plan for the Lummi Tribe of the Lummi Reservation, Washington

§ 49.10311 Identification of plan.

This section and §§ 49.10312 through 49.10340 contain the implementation plan for the Lummi Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lummi Reservation.

§ 49.10312 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lummi Reservation.

§ 49.10313 Legal authority. [Reserved]

§ 49.10314 Source surveillance. [Reserved]

§ 49.10315 Classification of regions for episode plans.

The air quality control region which encompasses the Lummi Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10316 Contents of implementation plan.

The implementation plan for the Lummi Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10317 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10318 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10319 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10320 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lummi Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10321–49.10340 [Reserved]

18. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10341 through 49.10350 to read as follows:

Implementation Plan for the Makah Indian Tribe of the Makah Indian Reservation, Washington

§ 49.10341 Identification of plan.

This section and §§ 49.10342 through 49.10370 contain the implementation plan for the Makah Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Makah Indian Reservation.

§ 49.10342 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Makah Indian Reservation.

§ 49.10343 Legal authority. [Reserved]

§ 49.10344 Source surveillance. [Reserved]

§ 49.10345 Classification of regions for episode plans.

The air quality control region which encompasses the Makah Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10346 Contents of implementation plan.

The implementation plan for the Makah Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10347 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10348 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10349 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10350 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Makah Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10351–49.10370 [Reserved]

19. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10371 through 49.10380 as follows:

Implementation Plan for the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington

§ 49.10371 Identification of plan.

This section and §§ 49.10372 through 49.10400 contain the implementation plan for the Muckleshoot Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Muckleshoot Reservation.

§ 49.10372 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Muckleshoot Reservation.

§ 49.10373 Legal authority. [Reserved]

§ 49.10374 Source surveillance. [Reserved]

§ 49.10375 Classification of regions for episode plans.

The air quality control region which encompasses the Muckleshoot Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10376 Contents of implementation plan.

The implementation plan for the Muckleshoot Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10377 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10378 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10379 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10380 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Muckleshoot Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10381–49.10400 [Reserved]

20. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10401 through 49.10410 as follows:

Implementation Plan for the Nez Perce Tribe of Idaho

§ 49.10401 Identification of plan.

This section and §§ 49.10402 through 49.10430 contain the implementation plan for the Nez Perce Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nez Perce Reservation.

§ 49.10402 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nez Perce Reservation.

§ 49.10403 Legal authority. [Reserved]

§ 49.10404 Source surveillance. [Reserved]

§ 49.10405 Classification of regions for episode plans.

The air quality control region which encompasses the Nez Perce Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10406 Contents of implementation plan.

The implementation plan for the Nez Perce Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10407 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10408 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10409 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nez Perce Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10411–49.10430 [Reserved]

21. Subpart M of Part 49 is amended by adding an undesignated center

heading and §§ 49.10431 through 49.10440 to read as follows:

Implementation Plan for the Nisqually Indian Tribe of the Nisqually Reservation, Washington

§ 49.10431 Identification of plan.

This section and §§ 49.10432 through 49.10460 contain the implementation plan for the Nisqually Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nisqually Reservation.

§ 49.10432 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nisqually Reservation.

§ 49.10433 Legal authority. [Reserved]

§ 49.10434 Source surveillance. [Reserved]

§ 49.10435 Classification of regions for episode plans.

The air quality control region which encompasses the Nisqually Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10436 Contents of implementation plan.

The implementation plan for the Nisqually Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10437 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10438 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10439 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10440 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nisqually Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10441–49.10460 [Reserved]

22. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10461 through 49.10470 to read as follows:

Implementation Plan for the Nooksack Indian Tribe of Washington

§ 49.10461 Identification of plan.

This section and §§ 49.10462 through 49.10490 contain the implementation plan for the Nooksack Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Nooksack Indian Tribe.

§ 49.10462 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Nooksack Indian Tribe.

§ 49.10463 Legal authority. [Reserved]

§ 49.10464. Source surveillance. [Reserved]

§ 49.10465 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Nooksack Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10466 Contents of implementation plan.

The implementation plan for the Reservation of the Nooksack Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10467 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10468 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10469 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10470 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the

implementation plan for the Reservation of the Nooksack Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10471–49.10490 [Reserved]

23. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10491 through 49.10500 to read as follows:

Implementation Plan for the Port Gamble Indian Community of the Port Gamble Reservation, Washington

§ 49.10491 Identification of plan.

This section and §§ 49.10492 through 49.10520 contain the implementation plan for the Port Gamble Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Gamble Reservation.

§ 49.10492 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Gamble Reservation.

§ 49.10493 Legal authority. [Reserved]

§ 49.10494 Source surveillance. [Reserved]

§ 49.10495 Classification of regions for episode plans.

The air quality control region which encompasses the Port Gamble Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10496 Contents of implementation plan.

The implementation plan for the Port Gamble Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10497 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10498 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10499 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10500 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Gamble Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10501–49.10520 [Reserved]

24. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10521 through 49.10530 as follows:

Implementation Plan for the Puyallup Tribe of the Puyallup Reservation, Washington

§ 49.10521 Identification of plan.

This section and §§ 49.10522 through 49.10550 contain the implementation plan for the Puyallup Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply to lands in trust that are within the 1873 survey area of the Puyallup Tribe (Puyallup Reservation), consistent with the Puyallup Tribe of Indians Land Claims Settlement Act, ratified by Congress in 1989 (25 U.S.C. 1773).

§ 49.10522 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the lands in trust that are within the Puyallup Reservation.

§ 49.10523 Legal authority. [Reserved]

§ 49.10524 Source surveillance. [Reserved]

§ 49.10525 Classification of regions for episode plans.

The air quality control region which encompasses the lands in trust that are within the Puyallup Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10526. Contents of implementation plan.

The implementation plan for the lands in trust that are within the Puyallup Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10527 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10528 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10529 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10530 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the lands in trust that are within the Puyallup Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10531–49.10550 [Reserved]

25. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10551 through 49.10560 to read as follows:

Implementation Plan for the Quileute Tribe of the Quileute Reservation, Washington

§ 49.10551 Identification of plan.

This section and §§ 49.10552 through 49.10580 contain the implementation plan for the Quileute Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quileute Reservation.

§ 49.10552 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quileute Reservation.

§ 49.10553 Legal authority. [Reserved]

§ 49.10554 Source surveillance. [Reserved]

§ 49.10555 Classification of regions for episode plans.

The air quality control region which encompasses the Quileute Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10556 Contents of implementation plan.

The implementation plan for the Quileute Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10557 EPA-approved tribal rules and plans. [Reserved]

§ 49.10558 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10559 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10560 Federally-promulgated regulations and federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quileute Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10561–49.10580 [Reserved]

26. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10581 through 49.10590 to read as follows:

Implementation Plan for the Quinault Tribe of the Quinault Reservation, Washington

§ 49.10581 Identification of plan.

This section and §§ 49.10582 through 49.10640 contain the implementation plan for the Quinault Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quinault Reservation.

§ 49.10582 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quinault Reservation.

§ 49.10583 Legal authority. [Reserved]

§ 49.10584 Source surveillance. [Reserved]

§ 49.10585 Classification of regions for episode plans.

The air quality control region which encompasses the Quinault Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10586 Contents of implementation plan.

The implementation plan for the Quinault Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10587 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10588 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10589 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10590 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quinault Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10591–49.10640 [Reserved]

27. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10641 through 49.10650 to read as follows:

Implementation Plan for the Sauk-Suiattle Indian Tribe of Washington

§ 49.10641 Identification of plan.

This section and §§ 49.10642 through 49.10670 contain the implementation plan for the Sauk-Suiattle Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Sauk-Suiattle Tribe.

§ 49.10642 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Sauk-Suiattle Tribe.

§ 49.10643 Legal authority. [Reserved]

§ 49.10644 Source surveillance. [Reserved]

§ 49.10645 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Sauk-Suiattle Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10646 Contents of implementation plan.

The implementation plan for the Reservation of the Sauk-Suiattle Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10647 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10648 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10649 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10650 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Sauk-Suiattle Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10651–49.10670 [Reserved]

28. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10671 through 49.10680 to read as follows:

Implementation Plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

§ 49.10671 Identification of plan.

This section and §§ 49.10672 through 49.10700 contain the implementation plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Shoalwater Bay Indian Reservation.

§ 49.10672 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoalwater Bay Indian Reservation.

§ 49.10673 Legal authority. [Reserved]

§ 49.10674 Source surveillance. [Reserved]

§ 49.10675 Classification of regions for episode plans.

The air quality control region which encompasses the Shoalwater Bay Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10676 Contents of implementation plan.

The implementation plan for the Shoalwater Bay Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10677 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10678 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10679 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10680 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoalwater Bay Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10681–49.10700 [Reserved]

29. Subpart M of Part 49 is amended by revising the undesignated center heading and §§ 49.10701 and 49.10702 to read as follows:

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho

§ 49.10701 Identification of plan.

This section and §§ 49.10702 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Fort Hall Indian Reservation.

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Fort Hall Indian Reservation.

30. Subpart M of Part 49 is amended by revising §§ 49.10704 through 49.10706 to read as follows:

§ 49.10704 Source surveillance. [Reserved]

§ 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.10706 Contents of implementation plan.

The implementation plan for the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

31. Subpart M of Part 49 is amended by revising §§ 49.10709 through 49.10710 to read as follows:

§ 49.10709 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10710 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Fort Hall Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

32. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10731 through 49.10740 to read as follows:

Implementation Plan for the Confederated Tribes of the Siletz Reservation, Oregon

§ 49.10731 Identification of plan.

This section and §§ 49.10732 through 49.10760 contain the implementation plan for the Confederated Tribes of the Siletz Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Siletz Reservation.

§ 49.10732 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Siletz Reservation.

§ 49.10733 Legal authority. [Reserved]

§ 49.10734 Source surveillance. [Reserved]

§ 49.10735 Classification of regions for episode plans.

The air quality control region which encompasses the Siletz Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	III
Sulfur oxides	III

§ 49.10736 Contents of implementation plan.

The implementation plan for the Siletz Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10737 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10738 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10739 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10740 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Siletz Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permit.

§§ 49.10741–49.10760 [Reserved]

33. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10761 through 49.10770 to read as follows:

Implementation Plan for the Skokomish Indian Tribe of the Skokomish Reservation, Washington

§ 49.10761 Identification of plan.

This section and §§ 49.10762 through 49.10820 contain the implementation plan for the Skokomish Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Skokomish Reservation.

§ 49.10762 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Skokomish Reservation.

§ 49.10763 Legal authority. [Reserved]

§ 49.10764 Source surveillance. [Reserved]

§ 49.10765 Classification of regions for episode plans.

The air quality control region which encompasses the Skokomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10766 Contents of implementation plan.

The implementation plan for the Skokomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10767 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10768 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10769 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10770 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Skokomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10771–49.10820 [Reserved]

34. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10821 through 49.10830 to read as follows:

Implementation Plan for the Spokane Tribe of the Spokane Reservation, Washington

§ 49.10821 Identification of plan.

This section and §§ 49.10822 through 49.10850 contain the implementation plan for the Spokane Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Spokane Reservation.

§ 49.10822 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Spokane Reservation.

§ 49.10823 Legal authority. [Reserved]

§ 49.10824 Source surveillance. [Reserved]

§ 49.10825 Classification of regions for episode plans.

The air quality control region which encompasses the Spokane Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10826 Contents of implementation plan.

The implementation plan for the Spokane Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10827 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10828 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10829 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10830 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Spokane Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10831–49.10850 [Reserved]

35. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10851 through 49.10860 to read as follows:

Implementation Plan for the Squaxin Island Tribe of the Squaxin Island Reservation, Washington

§ 49.10851 Identification of plan.

This section and §§ 49.10852 through 49.10880 contain the implementation

plan for the Squaxin Island Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Squaxin Island Reservation.

§ 49.10852 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Squaxin Island Reservation.

§ 49.10853 Legal authority. [Reserved]

§ 49.10854 Source surveillance. [Reserved]

§ 49.10855 Classification of regions for episode plans.

The air quality control region which encompasses the Squaxin Island Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10856 Contents of implementation plan.

The implementation plan for the Squaxin Island Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10857 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10858 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10859 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10860 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Squaxin Island Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10861–49.10880 [Reserved]

36. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10881 through 49.10890 to read as follows:

Implementation Plan for the Stillaguamish Tribe of Washington

§ 49.10881 Identification of plan.

This section and §§ 49.10882 through 49.10920 contain the implementation plan for the Stillaguamish Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Stillaguamish Tribe.

§ 49.10882 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Stillaguamish Tribe.

§ 49.10883 Legal authority. [Reserved]

§ 49.10884 Source surveillance. [Reserved]

§ 49.10885 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Stillaguamish Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10886 Contents of implementation plan.

The implementation plan for the Reservation of the Stillaguamish Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10887 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10888 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10889 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10890 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Stillaguamish Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10891–49.10920 [Reserved]

37. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10921 through 49.10930 to read as follows:

Implementation Plan for the Suquamish Indian Tribe of the Port Madison Reservation, Washington

§ 49.10921 Identification of plan.

This section and §§ 49.10922 through 49.10950 contain the implementation plan for the Suquamish Indian Tribe of the Port Madison Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Madison Reservation.

§ 49.10922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Madison Reservation.

§ 49.10923 Legal authority. [Reserved]

§ 49.10924 Source surveillance. [Reserved]

§ 49.10925 Classification of regions for episode plans.

The air quality control region which encompasses the Port Madison Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10926 Contents of implementation plan.

The implementation plan for the Port Madison Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Madison Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10931–49.10950 [Reserved]

38. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10951 through 49.10960 to read as follows:

Implementation Plan for the Swinomish Indians of the Swinomish Reservation, Washington

§ 49.10951 Identification of plan.

This section and §§ 49.10952 through 49.10980 contain the implementation plan for the Swinomish Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Swinomish Reservation.

§ 49.10952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Swinomish Reservation.

§ 49.10953 Legal authority. [Reserved]

§ 49.10954 Source surveillance. [Reserved]

§ 49.10955 Classification of regions for episode plans.

The air quality control region which encompasses the Swinomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10956 Contents of implementation plan.

The implementation plan for the Swinomish Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Swinomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10961–49.10980 [Reserved]

39. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10981 through 49.10990 to read as follows:

Implementation Plan for the Tulalip Tribes of the Tulalip Reservation, Washington

§ 49.10981 Identification of plan.

This section and §§ 49.10982 through 49.11010 contain the implementation plan for the Tulalip Tribes. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Tulalip Reservation.

§ 49.10982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Tulalip Reservation.

§ 49.10983 Legal authority. [Reserved]

§ 49.10984 Source surveillance. [Reserved]

§ 49.10985 Classification of regions for episode plans.

The air quality control region which encompasses the Tulalip Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10986 Contents of implementation plan.

The implementation plan for the Tulalip Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Tulalip Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10991–49.11010 [Reserved]

40. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11011 through 49.11020 to read as follows:

Implementation Plan for the Confederated Tribes of the Umatilla Reservation, Oregon

§ 49.11011 Identification of plan.

This section and §§ 49.11012 through 49.11040 contain the implementation plan for the Confederated Tribes of the Umatilla Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Umatilla Reservation.

§ 49.11012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Umatilla Reservation.

§ 49.11013 Legal authority. [Reserved]

§ 49.11014 Source surveillance. [Reserved]

§ 49.11015 Classification of regions for episode plans.

The air quality control region which encompasses the Umatilla Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11016 Contents of implementation plan.

The implementation plan for the Umatilla Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry burning permits.

(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Umatilla Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry burning permits.

(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11021–49.11040 [Reserved]

41. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11041 through 49.11050 to read as follows:

Implementation Plan for the Upper Skagit Indian Tribe of Washington

§ 49.11041 Identification of plan.

This section and §§ 49.11042 through 49.11070 contain the implementation plan for the Upper Skagit Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Upper Skagit Indian Tribe.

§ 49.11042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Upper Skagit Indian Tribe.

§ 49.11043 Legal authority. [Reserved]

§ 49.11044 Source surveillance. [Reserved]

§ 49.11045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Upper Skagit Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.11046 Contents of implementation plan.

The implementation plan for the Reservation of the Upper Skagit Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Upper Skagit Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11051–49.11070 [Reserved]

42. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11071 through 49.11080 to read as follows:

Implementation Plan for the Confederated Tribes of the Warm Springs Reservation of Oregon

§ 49.11071 Identification of plan.

This section and §§ 49.11072 through 49.11100 contain the implementation plan for the Confederated Tribes of the Warm Springs Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Warm Springs Reservation.

§ 49.11072 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Warm Springs Reservation.

§ 49.11073 Legal authority. [Reserved]

§ 49.11074 Source surveillance. [Reserved]

§ 49.11075 Classification of regions for episode plans.

The air quality control region which encompasses the Warm Springs Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11076 Contents of implementation plan.

The implementation plan for the Warm Springs Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11077 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11078 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11079 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11080 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Warm Springs Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11081–49.11100 [Reserved]

43. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11101 through 49.11110 to read as follows:

Implementation Plan for the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington

§ 49.11101 Identification of plan.

This section and §§ 49.11102 through 49.11130 contain the implementation plan for the Confederated Tribes and Bands of the Yakama Indian Nation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Yakama Reservation.

§ 49.11102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Yakama Reservation.

§ 49.11103 Legal authority. [Reserved]

§ 49.11104 Source surveillance. [Reserved]

§ 49.11105 Classification of regions for episode plans.

The air quality control region which encompasses the Yakama Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	IIII
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.11106 Contents of implementation plan.

The implementation plan for the Yakama Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in

accordance with the requirements of § 49.139.

§ 49.11110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Yakama Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11111–49.11130 [Reserved]

§§ 49.11131–49.17810 [Reserved]

44. Subpart M of Part 49 is amended by revising the ''Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections'' to read as follows:

Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

Indian tribe	Refer to the following sections in subpart M
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	§§ 49.9861 to 49.9890
Chehalis Reservation, Washington—Confederated Tribes of the	§§ 49.9891 to 49.9920
Coeur d'Alene Tribe of the Coeur D'Alene Reservation, Idaho	§§ 49.9921 to 49.9950
Colville Reservation, Washington—Confederated Tribes of the	§§ 49.9951 to 49.9980
Coos, Lower Umpqua and Siuslaw Indians of Oregon—Confederated Tribes of the	§§ 49.9981 to 49.10010
Coquille Tribe of Oregon	§§ 49.10011 to 49.10040
Cow Creek Band of Umpqua Indians of Oregon	§§ 49.10041 to 49.10100
Grand Ronde Community of Oregon—Confederated Tribes of the	§§ 49.10101 to 49.10130
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	§§ 49.10131 to 49.10160
Jamestown S'Klallam Tribe of Washington	§§ 49.10161 to 49.10190
Kalispel Indian Community of the Kalispel Reservation, Washington	§§ 49.10191 to 49.10220
Klamath Indian Tribe of Oregon	§§ 49.10221 to 49.10250
Kootenai Tribe of Idaho	§§ 49.10251 to 49.10280
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington	§§ 49.10281 to 49.10310
Lummi Tribe of the Lummi Reservation, Washington	§§ 49.10311 to 49.10340
Makah Indian Tribe of the Makah Indian Reservation, Washington	§§ 49.10341 to 49.10370
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	§§ 49.10371 to 49.10400
Nez Perce Tribe of Idaho	§§ 49.10401 to 49.10430
Nisqually Indian Tribe of the Nisqually Reservation, Washington	§§ 49.10431 to 49.10460
Nooksack Indian Tribe of Washington	§§ 49.10461 to 49.10490
Port Gamble Indian Community of the Port Gamble Reservation, Washington	§§ 49.10491 to 49.10520
Puyallup Tribe of the Puyallup Reservation, Washington	§§ 49.10521 to 49.10550
Quileute Tribe of the Quileute Reservation, Washington	§§ 49.10551 to 49.10580
Quinault Tribe of the Quinault Reservation, Washington	§§ 49.10581 to 49.10640
Sauk-Suiattle Indian Tribe of Washington	§§ 49.10641 to 49.10670
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington	§§ 49.10671 to 49.10700
Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho	§§ 49.10701 to 49.10730
Siletz Reservation, Oregon—Confederated Tribes of the	§§ 49.10731 to 49.10760
Skokomish Indian Tribe of the Skokomish Reservation, Washington	§§ 49.10761 to 49.10820
Spokane Tribe of the Spokane Reservation, Washington	§§ 49.10821 to 49.10850
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	§§ 49.10851 to 49.10880
Stillaguamish Tribe of Washington	§§ 49.10881 to 49.10920
Suquamish Indian Tribe of the Port Madison Reservation, Washington	§§ 49.10921 to 49.10950
Swinomish Indians of the Swinomish Reservation, Washington	§§ 49.10951 to 49.10980
Tulalip Tribes of the Tulalip Reservation, Washington	§§ 49.10981 to 49.11010
Umatilla Reservation, Oregon—Confederated Tribes of the	§§ 49.11011 to 49.11040
Upper Skagit Indian Tribe of Washington	§§ 49.11041 to 49.11070
Warm Springs Reservation of Oregon—Confederated Tribes of the	§§ 49.11071 to 49.11100
Yakama Indian Nation of the Yakama Reservation, Washington—Confederated Tribes and Bands of the	§§ 49.11101 to 49.11130

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Part II

Environmental Protection Agency

40 CFR Part 49

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[Docket #: A–2000–25; FRL–7147–9]

RIN 2012–AA01

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. The FIPs would include basic air quality regulations for the protection of communities in and adjacent to such Indian reservations. These rules would be implemented by EPA, or a delegated Tribal Authority, until replaced by Tribal Implementation Plans (TIPs).

DATES: Comments must be received no later than June 13, 2002.

ADDRESSES: Written comments should be addressed to: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128. Please cite the administrative docket, #A–2000–25, upon which you are providing comment.

Copies of all information supporting this action are available for public inspection and copying between 8:30 a.m. and 5:30 p.m. Eastern Standard Time at EPA's Central Docket Section, Office of Air and Radiation, Room 1500M (6102), 401 M Street, SW., Washington, DC 20460, and between 8:30 a.m. and 3:30 p.m. Pacific Standard Time at EPA Region 10, Office of Air Quality, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4253.

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I. Background

A. Today's Action

EPA is proposing to establish Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. These rules, when promulgated, would be an important step in ensuring that basic air quality protection is in place to protect health and welfare on Indian reservations located in the Pacific Northwest. In Region 10, EPA has been working with the Tribes to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources. EPA's evaluations have identified concerns with unregulated particulate matter, such as from open burning for agricultural purposes. A significant number of industrial major stationary sources subject to Title V of the CAA are located on these Indian reservations. By means of these rules, EPA would impose regulatory requirements on industry and residents on reservations, similar to those imposed by the rules of State and local air agencies in the surrounding areas. EPA believes that it is appropriate to focus initially on the sources in Region 10 that have been identified as ones that may cause or contribute to prevalent air quality problems on reservations and in shared airsheds of the Pacific Northwest. Aside from existing national emissions standards and requirements, the FIPs proposed in this rule are the first building blocks under the CAA to address such emissions.

In the Clean Air Act (42 U.S.C. 7401 to 7671q), Congress gave EPA broad authority to protect air resources throughout the nation, including the air resources on Indian reservations and other areas of Indian country. Based on the authority of section 301 of the CAA, EPA promulgated a final rule entitled ''Indian Tribes: Air Quality Planning and Management,'' on February 12, 1998, 63 FR 7254. The rule, generally referred to as the ''Tribal Authority Rule'' or ''TAR,'' establishes procedures for EPA determinations on Tribal eligibility applications for ''treatment in the same manner as a State'' (commonly referred to as ''TAS'') under CAA authorities for Indian reservations and for non-reservation areas within a Tribe's jurisdiction. The U.S. Court of Appeals for the District of Columbia Circuit recently upheld the TAR in *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001).

In the TAR, EPA explained that it intends to use its authority under the CAA ''to protect air quality throughout Indian country'' [1] by directly implementing the CAA's requirements where Tribes have chosen not to develop or implement a CAA program. EPA wrote in the final rule at 40 CFR 49.11 that it would ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality'' for these areas.

In order to further this commitment to protect air quality, EPA is proposing rules for Indian reservations in Idaho, Oregon, and Washington.[2] In exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate such FIP provisions as are necessary or

[1] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdication of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

[2] EPA is not proposing at this time to establish rules for Indian country areas in Alaska, and will continue to evaluate the need and appropriateness of air quality rules there in consultation with the Federally recognized Tribes in Alaska. EPA is working with the U.S. Bureau of Indian Affairs (BIA) to complete the mapping of the Indian country in Alaska. Once the extent and specific locations of the Indian country is better known, air quality characterization and subsequent assessment of the needs can be initiated in consultation with the affected Tribal governments. EPA anticipates that conditions and needs in Alaska may warrant a different array of requirements and provisions than are included in these proposed FIPs.

appropriate to protect air quality in Indian country, EPA has stated that it will carry out this authority in a prioritized way, beginning with sources that pose the greatest threat to public health and the environment. 64 FR at 8255. The FIPs proposed today are the first building block under the CAA to address the most prevalent gaps identified to date on reservations in the Pacific Northwest. EPA will continue to evaluate air quality conditions and the sources that cause or contribute to the degradation of air quality, and expects to promulgate additional FIP provisions, in consultation with Tribes, including Tribes that are developing TIPs. Thus, EPA views these FIP provisions as a first step towards establishing a complete plan for maintaining the NAAQS that, together with approved TIPs, would meet the goals of section 110(a) of the CAA.

After consulting with the Tribes in Idaho, Oregon, and Washington, EPA Region 10 is concerned that there is currently a gap in air quality requirements in these areas under the CAA. While many Tribes in Region 10 are in the process of developing air quality management programs, EPA Region 10 has approved only one Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho, to assume certain CAA authorities. Furthermore, States generally lack the authority to regulate air quality in Indian country. See *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 216 and n.18 (1987); see also *HRI* v. *EPA,* 198 F.3d 1224, 1242 (10th Cir. 2000), *Montana* v. *EPA,* 137 F.3d 1135 (9th Cir. 1998), *cert. denied* 525 U.S. 921 (1998). These proposed rules, as described below, are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs.

As discussed in greater detail below, EPA believes that in light of the particular air quality issues generally present on reservations in the Pacific Northwest, it is appropriate to establish each of the air quality rules for each reservation that are proposed today. These rules would regulate activities, pollutants, and sources by supplementing the existing Federal regulatory programs such as the Prevention of Significant Deterioration (PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs. These proposed rules would provide additional regulatory tools for EPA to use in implementing the CAA on Indian reservations. EPA has adequate enforcement authority under section 113 of the CAA to ensure compliance with the requirements that are proposed.

In Region 10, EPA is continuing to identify the primary sources of air pollution emissions on Indian reservations, and evaluating the CAA statutory authorities available to regulate those sources pending submission of a TIP by a Tribe and approval by EPA. This information is assisting EPA in determining, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes that it is appropriate to focus its efforts to develop FIPs initially on the sources that may cause or contribute to air quality problems that have been identified.

EPA's evaluations and information from affected Indian Tribes identified concerns with pollution from unregulated sources of particulate matter. Examples of categories of sources of air pollution not currently regulated include emissions from open burning and fugitive dust. Agricultural burning has been identified as a source of uncontrolled particulate matter that if not properly regulated can endanger people's health and safety, as well as cause other environmental impacts such as regional haze. EPA Region 10 is working at a regional level in partnership with States, Tribes, local governments, growers, and citizen groups to support and strengthen tools and programs for addressing particulate matter, including the development of appropriate regulatory controls in each jurisdiction. EPA also is identifying the industrial and commercial sources of emissions that are not fully regulated. There are at least 11 facilities on these reservations that meet the definition of major source, under the Federal Operating Permits provisions in Title V of the CAA. Most of these facilities are in the forest products industry, that can emit plumes of particulate matter at levels that should be controlled. Industrial facilities such as these also use fuels containing sulfur that can cause excessive concentrations of ground-level sulfur dioxide if not properly controlled. Regulating these sources is appropriate in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter and sulfur dioxide. Particulate matter and sulfur dioxide are regulated by National Ambient Air Quality Standards (NAAQS) under section 109 of the CAA. A number of rules proposed today would control emissions of particulate matter and sulfur dioxide to the atmosphere as appropriate for the purpose of maintaining or attaining the NAAQS. Along with the protections these Federal air quality rules would provide, the rules can also assist Tribes in developing air quality management programs by using the Federal rules as templates in drafting TIPs.

It is important to note that these proposed rules are analogous to, but different from, the types of rules generally approved by EPA into State Implementation Plans (SIPs). The rules proposed today represent an average program, and so are more stringent than some SIP rules and less stringent than others. However, while these would be Federal CAA rules, they would not change the minimum criteria in 40 CFR Part 51, the CAA, or the TAR for approval of rules in either a SIP or a TIP. [3] EPA encourages Tribes to develop individual TIPs and will work with Tribes seeking to replace these rules with TIPs. These regulations would apply until they are replaced by Tribal regulations in an approved TIP.

EPA Region 10 has actively consulted with and encouraged Tribes to assist EPA in developing these proposed regulations to ensure that Tribal considerations are addressed. EPA Region 10 staff has worked with, and will continue to work with, individual Tribes to assess air quality problems, and develop, in consultation with the Tribes, Tribal or Federal strategies for addressing these problems. For example, EPA Region 10 has worked with Tribes to develop emission inventories and air monitoring studies where appropriate, to determine the nature of air quality problems, and to identify a range of potential control strategies. During the development of the rules proposed here, EPA Region 10 staff consulted with affected Tribes in a series of group and individual meetings that are described in detail below in Section V.G, which discusses compliance with Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

B. Areas and Sources Covered by the Rules

These proposed rules would apply to any person who owns or operates an air pollution source within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR Part 49, Subpart M Implementation Plans for Tribes—Region X. Further, as discussed in the TAR at 63 FR 7257–58, EPA interprets the term ''reservation'' consistent with U.S. Supreme Court case law to include

[3] EPA has used the planning requirements applicable to States as a guide in developing these FIPs.

trust lands that have been validly set apart for the use of a Tribe even though the land has not been formally designated as a reservation. EPA is not proposing to establish rules for all of Indian country, e.g., these rules would not apply to allotment lands that are held in trust for individual Indians that are located outside the exterior boundaries of a reservation or for dependent Indian communities. Based on consultations, EPA is not aware of any sources on those types of land outside of reservations to which these rules need to apply. This proposed rulemaking is a step in addressing known air quality concerns on reservations. If in the future, EPA becomes aware of air quality concerns for Indian country outside of reservations, EPA may propose other requirements that are deemed necessary or appropriate.

This proposal includes: (1) Rules of general applicability that would regulate emissions of particulate matter and sulfur dioxide from combustion and process sources, visible emissions and fugitive dust; and (2) additional proposed rules that would control particulate matter emissions from specific types of equipment used to burn wood wastes, sometimes known as ''wigwam burners,'' and certain wood product industry sources. The proposed rules would also regulate open burning, and allow the Regional Administrator to impose restrictions on emissions during periods of impaired air quality or when emissions from sources are detrimental to human health and welfare. Finally, the proposed rules would require registration of many stationary sources of air pollution and would provide the opportunity for stationary sources with low emission levels to obtain potential to emit limits in operating permits. The specific rules that would apply to sources on a particular reservation are specified in today's proposed rule, at 40 CFR part 49, Subpart M.

EPA will decide whether a source or activity located on an Indian reservation is subject to the provisions of these rules as made applicable in the implementation plan for that reservation. Today's proposed rules include procedures for sources to obtain individual determinations from EPA as to whether they are subject to these regulatory requirements. A source that is uncertain regarding the applicability of a rule may submit a written request to EPA for an applicability determination. In response to a request for an applicability determination, EPA will issue a written determination stating whether the source or activity is subject to a particular Federal air quality rule. In most cases, determining whether the source or activity is on an Indian reservation will be straightforward and non-controversial. For example, in most cases EPA and the source will be able to easily determine whether a source is located within the exterior boundaries of a reservation, including Tribal trust lands. In the rarer, more complex factual cases, EPA will work with the U.S. Department of the Interior, Tribes, and stakeholders to assess the reservation status of the location. After EPA has reviewed the relevant materials, the Agency will send a letter to the source stating EPA's belief whether the source is located within the boundaries of a reservation. For sources or activities located on Indian reservations, the source or activity would be expected to comply with the applicable requirements of these FIPs.

C. Organization of the Rules

EPA has structured these proposed regulations consistent with the ''modular'' approach described in the TAR to allow for both variation among reservations and to facilitate the development and approval of TIPs to replace all or part of these Federal regulations. EPA is using this modular approach to propose a full set of regulations, and each regulation in today's proposal is effectively a ''stand-alone'' rule. Each FIP is tailored and is being proposed on a reservation-by-reservation basis. For example, the proposed regulation for particulate matter emissions from wood products industry sources would only be promulgated for reservations that have existing wood products industry sources or for those where such sources might be expected to locate. Similarly, the proposed regulation for forestry burning permits would only be promulgated for reservations with forestry lands where the use of fire as a forest management tool is prevalent.

EPA expects that many Tribes will develop their own air quality programs. However, Tribes are not required to adopt and implement all CAA programs at once. Under section 49.7(c) of the TAR, Tribes that meet the eligibility criteria for TAS have the option of developing severable elements of a TIP and submitting those elements to EPA for approval under the CAA. The modular approach used in these proposed regulations would allow EPA to approve a Tribal rule covering a particular source type or activity and revoke the EPA regulation, while still leaving in place the EPA regulations for other sources and/or activities. For example, a Tribe may initially want to adopt and implement Tribal rules for open burning and rules for the registration of air pollution sources, while EPA would continue to regulate industrial emissions under the FIP for that reservation. This modular approach would allow for an easy incremental transition from Federal regulations to EPA-approved Tribal rules.

While most of the rules in the FIPs constitute a ''base program'' that EPA is proposing to put in place in all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include rules where specific needs exist or where EPA determines, in consultation with the relevant Tribe, that a more stringent provision than would otherwise apply is appropriate. These ''additional rules'' are being proposed only for certain reservations. For example, EPA is proposing rules specific to particular kinds of woodwaste burners and certain wood products industries that will require better controls for particulate matter emissions than the general limits for visible emissions and particulate matter. These regulations are proposed for reservations where such sources exist and where EPA determines, in consultation with the Tribe, that more stringent provisions are appropriate. The following table identifies the rules summarized below in section III.B that would be included in the ''Base Program'' and the ''Additional Rules'' that may be included as appropriate.

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES

Rule #	Title	Base program	Additional rules
Section 49.123	General provisions	X	
Section 49.124	Rule for limiting visible emissions	X	
Section 49.125	Rule for limiting the emissions of particulate matter	X	
Section 49.126	Rule for limiting fugitive particulate matter emissions	X	
Section 49.127	Rule for woodwaste burners		X

TABLE 1.—PROPOSED BASE PROGRAM AND ADDITIONAL RULES—Continued

Rule #	Title	Base program	Additional rules
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.		X
Section 49.129	Rule for limiting emissions of sulfur dioxide	X	
Section 49.130	Rule for limiting sulfur in fuels	X	
Section 49.131	General rule for open burning	X	
Section 49.132	Rule for open burning permits		X
Section 49.133	Rule for agricultural burning permits		X
Section 49.134	Rule for forestry burning permits		X
Section 49.135 or	Rule for emissions detrimental to human health and welfare or	X	
Section 49.136	Tribal Alternative Rule Rule for emissions detrimental to persons or property, cultural or traditional resources.		X
Section 49.137	Rule for air pollution episodes	X	
Section 49.138	Rule for the registration of air pollution sources and the reporting of emissions.	X	
Section 49.139	Rule for non-Title V operating permits	X	

The modular approach provides flexibility to promulgate provisions where EPA will have adequate resources to carry out the FIP, including situations where Tribes assist EPA in implementation of FIP provisions. For certain rules that are best administered at a local level, EPA is proposing to establish requirements for a reservation and to delegate to the affected Tribal government the authority to administer that particular program, as discussed below. A delegation agreement will authorize a Tribe, with Federal assistance, to administer the Federal program but refer unresolved noncompliance matters to EPA for Federal enforcement. This approach allows EPA to establish requirements tailored to local needs that can be effectively implemented through a partnership between EPA and the Tribe.

With respect to the rule that would regulate emissions detrimental to persons and property, EPA is proposing two versions. One version of the detrimental emissions regulation, proposed as § 49.135, would allow EPA to address situations where emissions would be injurious to human health and welfare. The Tribal alternative rule, § 49.136, would provide additional protection for situations where emissions would unreasonably interfere with the enjoyment of life or property, or would damage unique Tribal cultural or traditional resources. The second, more inclusive regulation (§ 49.136) is proposed for reservations where EPA, based on a request from the relevant Tribe, has considered and determined that regulatory authority to address such situations is appropriate and will generally include agreements with the Tribe to assist EPA in implementing the programs. EPA requests comment on this proposed determination. EPA developed § 49.136 to address the Tribes' unique concern regarding the holistic concept of health and welfare, which was emphasized by Tribes during consultation. In this rulemaking, EPA is proposing that § 49.136 will apply only on two reservations, the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2. Section 49.135 will apply on all other reservations in Idaho, Oregon, and Washington. EPA is seeking comment on this proposed approach. If EPA does not finalize § 49.136, § 49.135 will be promulgated for the Nez Perce and Umatilla Indian Reservations.

Finally, EPA is proposing three additional open burning permit programs: general open burning (§ 49.132), agricultural open burning (§ 49.133), and forestry open burning (§ 49.134). These rules differ from the general open burning rule proposed in § 49.131 by requiring that any person who conducts a regulated open burn to obtain and comply with a permit. These permit programs are proposed only for reservations where EPA, in consultation with the relevant Tribe, has determined that the programs are appropriate and will generally include delegations of authority from EPA to the Tribe for implementation of the Federal rules upon promulgation, as discussed below.

D. Delegation

The modular approach will allow Tribes that are building air quality programs to gain experience by assisting with implementation of the Federal rules before they decide to adopt their own rules and regulations. EPA recognizes that a Tribe may choose not to develop a Tribal air program under Tribal law for approval under the TAR, but may still like to assist EPA in implementing the Federal air quality requirements for its reservation and to build its capacity in managing an air quality program. The rule proposed here at § 49.122 provides Tribal governments the alternative of seeking delegation from EPA of the authority to administer all or some of the Federal rules that have been promulgated for their reservation. These rules would allow EPA to delegate distinct and severable Federal regulations to a Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. For example, if a Tribe wished to implement the open burning permit program, or run the source registration program, EPA could delegate responsibility to the Tribe for just those regulations. The process EPA would follow to delegate the administration of a Federal program to a Tribal government is similar to the process EPA follows to delegate programs to State governments. As part of the process for delegating the authority to administer one or more of the rules, the Tribe and EPA would enter into an agreement that specifies how the governments would work together for the effective implementation of the particular CAA program(s) at issue on that reservation.

The delegation from EPA to a Tribe to implement a specific Federal air rule proposed in these rules is to be distinguished from EPA's interpretation that the CAA is a delegation of Federal authority from Congress to Tribes, as described in the TAR at 63 FR 7254–7259. It is EPA's position that the CAA TAS provision constitutes a statutory delegation of authority to eligible Tribes over their reservations. As described above, the TAR established how EPA can approve Tribal eligibility applications for a Tribe to operate a CAA program under Tribal law. When

EPA approves a Tribal eligibility application and approves a TIP, the approved Tribe will manage the approved air quality program under Tribal law, and the approved Tribal program is Federally enforceable. In contrast, the delegation approach proposed in these rules provides for EPA to administratively delegate its own Federal authority to a qualified Tribe to implement specified Federal rules. EPA has well-established processes for delegating its Federal authority to States for administering Federal rules under the CAA, such as for conducting new source review under 40 CFR part 52, at 40 CFR 52.21(u); and for issuing Federal operating permits under 40 CFR part 71, at 40 CFR 71.4(j). With delegated Federal programs, the Federal requirement administered by the delegated Tribe is subject to enforcement by EPA, not the Tribe, under Federal law.

EPA believes that the modular approach will provide the maximum flexibility for EPA and Tribes to work in partnership to ensure that the goals and objectives of the CAA will be met on Indian reservations and to make real the principles set out in the TAR. It will allow EPA and Tribes to jointly manage air quality on Indian reservations through a combination of TIP and FIP elements, and delegations to Tribes of FIP elements. Under this modular approach, Tribes may adopt and submit severable elements of TIPs that replace elements of FIPs while leaving in place FIP provisions that Tribes are not yet willing or able to take on.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over Indian country generally lies with EPA and Federally recognized Indian Tribes leads to the conclusion that a regulatory gap exists with regard to air pollution sources there. EPA is proposing to take an initial step towards remedying this gap with a FIP for each Indian reservation in Idaho, Oregon, and Washington. These FIPs will establish new Federal requirements where no general air pollution control program other than nationally applicable rules is currently in effect.

As described above, the CAA Amendments of 1990 greatly expanded the role of Indian Tribes in implementing the provisions of the CAA in Indian country. Section 301(d) of the CAA authorizes EPA to issue regulations specifying the provisions of the CAA for which Indian Tribes may be treated in the same manner as States. See CAA sections 301(d)(1) and (2). Based on that authority, EPA promulgated the TAR.

In the preamble to the proposed and final TAR, EPA discusses generally the legal basis under the CAA by which EPA and Tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory delegation of Federal authority to eligible Indian Tribes over all sources on their reservations. Under the CAA, Tribes are allowed to develop air programs covering their reservations and non-reservation areas within their jurisdiction for submission to EPA for approval in the same manner as States. 63 FR 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands, until a Tribe is approved for TAS and Tribal programs are approved. See 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)); see also Federal Operating Permits Program, Final Rule, 64 FR 8251–8254. EPA decided that in areas of Indian country where no Tribal program has been explicitly approved by EPA, a gap exists in air quality requirements under the CAA that EPA is authorized to fill. In fact, in promulgating the TAR, EPA specifically stated that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the CAA, EPA:

> shall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 301(a) and 301(d)(4), if a Tribe does not submit a Tribal implementation plan meeting the completeness criteria of 40 CFR Part 51, Appendix V, or does not receive EPA approval of a submitted Tribal implementation plan. 63 FR 7273 (codified at 40 CFR 49.11(a)).[4]

It is EPA's policy to aid Tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop the current State and Federal programs to cover State areas, it will also require time to develop Tribal and Federal programs to cover reservations and other areas of Indian country. 59 FR 43961.

Many of the Tribal governments in Idaho, Oregon, and Washington have expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on their reservations and in non-reservation areas under Tribal jurisdiction pursuant to the CAA. Based on discussions with the Tribes, however, EPA believes that it will be some time before most Tribes will be ready to seek authority under the TAR to assume CAA planning and regulatory responsibilities and that, when they do, the Tribes are likely to build their capacity and seek authority for the various CAA programs over time, rather than all at once. Through government-to-government consultation between EPA and Tribal governments, the Tribes have advised EPA that they support EPA's efforts to impose such controls on Indian reservation air pollution sources as are necessary or appropriate to protect air quality in the interim.

Therefore, in these proposed FIPs, EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian reservations located in the States of Idaho, Oregon, and Washington. Although many facilities in these areas have historically followed State, regional, and local government air quality programs, with only one exception EPA has never approved those governments to exercise regulatory authority under the CAA on any Indian reservations.[5] It is EPA's position that absent an explicit finding of jurisdiction and approval in Indian country, those governments lack authority under the CAA over the sources or their owners or operators for compliance or enforcement purposes. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that the proposed FIP provisions are appropriate to protect air quality on the identified reservations.

[4] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the CAA, that directs EPA to promulgate a FIP within two years after EPA finds a State has failed to submit a complete State plan or within two years after EPA disapproval of a State plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected Tribal areas within a reasonable time. See 63 FR 7264–7265.

[5] For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR Part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian Puyallup Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to State and local governments to administer their environmental laws on all non-trust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

B. Relation to Tribal Authority Rule

The TAR provides the framework for Tribes to obtain authority to administer Federally-approved and Federally-enforceable programs under the CAA. See 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule). Thus, each Federally recognized Indian Tribe now has the option of assuming responsibility for the development and implementation of Federally-enforceable air quality programs under the CAA by seeking EPA approval of a Tribal air program established under Tribal law, i.e., a TIP. Until a Federally-approved implementation plan that covers a source is in place, however, EPA has the authority to regulate the source under the CAA. The regulations proposed here also offer another alternative. Specifically, Tribes in Idaho, Oregon, or Washington may seek delegation from EPA to assist EPA in implementing a Federal regulation (FIP).

III. Summary of FIP Provisions

A. Origin of the Rules

EPA's intention is to promulgate Federal regulations that reflect an important initial step to fill the ''regulatory gap'' on Indian reservations in Idaho, Oregon, and Washington. As described above, EPA has been evaluating, in consultation with affected Indian Tribes, the activities and sources of air pollution that threaten air resources. EPA believes it is appropriate to focus its efforts initially on developing FIPs for the most prevalent sources that cause or contribute to identified air quality problems.

However, EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. This approach is intended to formally ''level the playing field''. In other words, EPA intends that people living within reservation boundaries receive equivalent air quality protection, and that emissions from sources located within reservations are controlled to levels similar to those of sources located outside the reservations.

To do this, EPA Region 10 first determined what types of air pollution sources and pollutant-emitting activities were most prevalent on Indian reservations in Idaho, Oregon, and Washington. Then EPA Region 10 reviewed the State and local rules from air pollution agencies throughout the western United States that are included in SIPs that EPA has approved for those types of sources and activities. The gap-filling rules proposed here are generally based upon the aspects of these State and local rules most relevant to the air polluting activities on reservations in the Pacific Northwest, and follow a level of control of a typical air quality control program. The proposed regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. Nor do the proposed regulations look like State or local rules because they use the Federal regulatory structure and are written in a ''plain language'' format in accordance with the Plain Language Executive Memorandum, dated June 1, 1998. EPA invites your comments on ways to make these proposed rules easier to understand. Included in the docket for this proposed rulemaking are copies of all the State and local rules that EPA considered in this process, as well as a technical support document with summary tables showing the State and local agency levels of control as compared with the proposed regulations and a description of why EPA believes the proposed rules are appropriate.

Each of the rules proposed as part of the Base Program to be applicable on all reservations in Idaho, Oregon and Washington either addresses particular sources, activities or pollutants identified by EPA as the most prevalent and in need of regional regulation or implements an important structural aspect of the CAA regulatory scheme for Indian reservations. A number of the Base Program rules are proposed in order to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA (see § 49.124 Rule limiting visible emissions; § 49.125 Rule for limiting the emissions of particulate matter; § 49.126 Rule for limiting fugitive particulate matter emissions; and § 49.129 General rule for open burning). Two Base Program rules would protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. These rules would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide (see § 49.130 Rule for limiting emissions of sulfur dioxide and § 49.131 Rule for limiting sulfur in fuels). The Base Program would also include a number of provisions to establish the infrastructure of a CAA regulatory program. Provisions at § 49.122 describe how EPA would process delegation requests from a Tribe; § 49.123 would define the terms that are used throughout the FIPs; § 49.135 would establish a process for EPA to limit emissions that are detrimental to human health and welfare; § 49.137 would establish the measures EPA could take to address excessive buildup of certain air pollutants during periods of stagnant air; § 49.138 would provide for the registration of air pollution sources and reporting of emissions so that EPA can maintain a current and accurate record of air pollution sources within an Indian reservation; and § 49.139 would set up a permitting program for non-Title V sources that would establish federally-enforceable requirements.

Further, EPA is proposing certain Additional Rules to be applicable on specified reservations where EPA has determined, in consultation with the relevant Tribe, that such additional regulatory measures are appropriate. During the course of its consultation with Tribes and analysis of regulatory needs, EPA attempted to identify instances where specific sources or pollution control needs beyond those addressed in the Base Program exist on particular reservations. For example, certain types of wood products industries, or certain practices of agricultural or forestry burning, may be prevalent on particular reservations and may be important contributors to air pollution concerns. In order to address these concerns, EPA has developed the current set of Additional Rules. As an initial step, EPA is proposing to promulgate some or all of these rules for those reservations where relevant sources have been identified as prevalent and where particular Tribes have indicated an interest in the additional regulation. For example, at the request of specific Tribes, EPA considered and is now proposing to promulgate a rule that would provide additional protections against emissions detrimental to their unique Tribal cultural or traditional resources. EPA considers this approach an appropriate first step in prioritizing its efforts to address these concerns consistent with CAA responsibilities. EPA anticipates that relevant Tribes may choose to assist in the implementation of the Additional Rules through the delegation process described above. EPA is continuing to consult with Tribes regarding sources of air pollution and air regulatory needs on their reservations and may propose some or all of the Additional Rules, or

may propose further additional rules, for reservations as needs and priorities are identified. As described in section I.C, the current package of Additional Rules includes § 49.127 Rule for woodwaste burners; § 49.128 Rule for limiting particulate matter emissions from wood products industry sources; § 49.132 Rule for open burning permits, § 49.133 Rule for agricultural burning permits, § 49.134 Rule for forestry burning permits; and § 49.136 Rule for emissions detrimental to persons or property, cultural or traditional resources. With this proposal, EPA is seeking comment on these Additional Rules, whether the criteria EPA used for selecting the Additional Rules are appropriate, and whether EPA has appropriately applied those criteria in this proposal.

In developing these regulations EPA also had two other objectives in mind, in addition to filling the regulatory gap. First, EPA is proposing only those regulations that it believes it has the resources to implement and enforce. To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. Second, EPA anticipates that these regulations can serve as models for Tribes as they develop their own air quality programs. To that end, the regulations are designed so they can be implemented by a small air pollution agency, and can be readily delegated to a Tribe for implementation.

B. Rule Summaries

These proposed rules would establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington to ensure a basic level of air pollution control that protects public health and welfare. The following paragraphs summarize each of the proposed rules. The actual rule requirements being proposed are set forth in 40 CFR part 49, subpart C.

Section 49.122—Delegation of authority to a Tribe. This section would provide a mechanism for delegating to a Tribe, for administration, all or a portion of the FIP rules that apply within a reservation. It sets out the process a Tribe must follow to request delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. This section would not affect the requirements established under the TAR for Tribal applications to administer EPA-approved Tribal CAA programs or requirements for delegation of other EPA air programs such as Part 71 operating permits or PSD permits under 40 CFR 52.21.

Section 49.123—General provisions. This section includes definitions of the terms used in these rules as well as general provisions regarding requirements for emission testing, monitoring, recordkeeping, reporting, the use of credible evidence in compliance certifications and for establishing violations, and the incorporation by reference of the American Society for Testing and Materials Methods referenced in this rulemaking.

Section 49.124—Visible emissions. Section 49.124 would restrict visible emissions from air pollution sources to 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9. This rule would not apply to certain sources, such as: Open burning; agricultural activities; non-commercial smoke houses; sweat houses or lodges; smudge pots; furnaces and boilers used exclusively to heat residential buildings with four or fewer units; fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government; and emissions from fuel combustion in mobile sources. The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

All of the State and local air agency rules that EPA reviewed contain a 20% opacity limit. Most of these visible emissions rules allow a 3-minute exception over a 60-minute period. However, EPA decided to use the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings or to install a COMS unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.125—Particulate matter. Particulate matter emissions from combustion (except for wood-fired boilers) and process sources would be limited to an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to 7% oxygen (for combustion sources), during any 3-hour period. Particulate matter emissions from wood-fired boilers would be limited to an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to 7% oxygen, during any 3-hour period. Woodwaste burners, furnaces, and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources would be exempt from this rule.

For combustion sources and wood-fired boilers, the particulate matter limit in this rule is the same as the limit in most of the State and local agency air rules that EPA reviewed. For process sources, many State and local air agencies employ process weight rate tables in their rules to limit particulate matter. EPA is proposing to use a concentration limit rather than a process weight rate table for this rule to be consistent with the EPA method for measuring particulate matter, which is EPA Method 5, found at 40 CFR Part 60, Appendix A. The particulate matter limit for process sources in this rule equals the control of all but one of the concentration-based rules that EPA reviewed. This rule does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.126—Fugitive particulate matter. The owner or operator of any source of fugitive particulate matter emissions would be required to take all reasonable precautions to prevent fugitive particulate matter emissions and to maintain and operate the source to minimize these emissions. A person subject to this rule would be required to periodically survey the air pollution source to determine if there are sources of fugitive particulate matter emissions, determine and document in a written plan the reasonable precautions that would be taken to prevent fugitive particulate matter emissions, and then implement the plan. This rule would not apply to activities associated with single-family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any

Federal, Tribal, State, or local government.

All but one of the State and local air agency rules that EPA reviewed have rules for controlling fugitive particulate matter. All of these rules contain reasonable precautions provisions similar to the ones in § 49.126. A few rules control fugitive emissions beyond reasonable precautions, but these rules are primarily for nonattainment areas so EPA believes they are not appropriate here because the reservations at issue are generally not designated nonattainment for PM10.

Section 49.127—Woodwaste burners. Section 49.127 would phase out the operation of woodwaste burners (commonly known as wigwam or teepee burners). In the interim, visible emissions from a woodwaste burner would not be allowed to exceed 20% opacity, averaged over 6 consecutive minutes, as measured by EPA Method 9, and only wood waste generated onsite could be burned or disposed of in the woodwaste burner. The owner or operator would be required to submit a plan for shutting down the woodwaste burner to EPA within 180 days after the effective date of these rules and to shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of these rules. Sources could apply to EPA for an extension of the 2-year deadline if there is no reasonably available alternative method of disposal for the wood waste.

EPA recognizes that on some reservations particulate matter from woodwaste burners can contribute to air quality deterioration. This section would be promulgated in Part 49 Subpart M on reservations only where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.127 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

Most woodwaste burners under programs of State and local air agencies have already been shut down. All but one of the State and local air agency rules that control the woodwaste burners that still exist have a 20% opacity limit. Most of these rules use an opacity measurement method with a 3-minute exception over a 60-minute period. However, EPA is proposing use of the method with an average opacity over a 6-minute interval to be consistent with the only Federally promulgated opacity measurement method, which is EPA Method 9, found at 40 CFR Part 60, Appendix A. This method is used to determine compliance with Federal New Source Performance Standards for numerous categories of industrial sources. This rule does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.128—Particulate matter emissions from wood products industry sources. Section 49.128 would apply to any person who owns or operates any of the following wood products industry sources: veneer manufacturing operations, plywood manufacturing operations, particleboard manufacturing operations, or hardboard manufacturing operations. This section would impose limits on the amount of particulate matter that could be emitted from such sources, in addition to the particulate matter limits for combustion and process sources in § 49.125. The reference method for determining compliance with the particulate matter limits is EPA Method 202, found at 40 CFR part 51, Appendix M. This rule does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

In Part 49 Subpart M, EPA is proposing this requirement on reservations where EPA finds, in consultation with the relevant Tribe, that it is appropriate to establish this requirement in order to control air pollution. This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from those specific wood products industry sources. EPA will base this determination on a number of factors, including the prevalence of these sources on the reservation, the significance of the resulting pollution on air quality in the area, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that § 49.128 will apply only on the Nez Perce Reservation and the Colville Indian Reservation, as shown in Table 2.

One State has both State-wide rules and area-specific rules to control particulate matter emissions from the wood products industry. The limits that EPA is proposing in this rule closely resembles the area-specific rules for that State.

Section 49.129—Sulfur dioxide. This rule would restrict sulfur dioxide emissions from combustion and process sources to no more than an average of 500 parts per million by volume, on a dry basis, and corrected to 7% oxygen (for combustion sources), during any 3-hour period. Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour and mobile sources would be exempt from this rule.

This rule is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. This section would limit the amount of sulfur dioxide emitted to the atmosphere from certain air pollution sources in order to control ground-level concentrations of sulfur dioxide. All of the concentration-based rules that EPA reviewed have one of two sulfur dioxide concentration limits: 500 ppm averaged over a 3-hour period or 1,000 ppm average over a 1-hour period. EPA is proposing to use the 500 ppm, 3-hour average limit because it does a better job of accounting for the short-term variability in process emissions and in the sulfur content of fuels. The reference methods for determining compliance with the SO2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. These methods are found at 40 CFR 60, Appendix A. This rule does not require any person to conduct Method 6, 6A, 6B, or 6C source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in an information request pursuant to section 114 of the Act, a permit to construct, or permit to operate.

Section 49.130—Sulfur content of fuels. This section would apply to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel on Indian reservations. This rule restricts the sulfur content of the previously

listed types of fuels. Fuels used exclusively for mobile sources, such as automotive or marine diesel fuel, would be exempt from this rule. A person subject to this rule would be required to demonstrate compliance through recordkeeping and/or continuous monitoring or sampling. Owners or occupants of a single-family residence and the owners or managers of a residential building with four or fewer units are not subject to the sulfur content recordkeeping requirements if the furnace fuel is purchased from a licensed fuel distributor.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of sulfur dioxide, which is regulated by a NAAQS under section 109 of the CAA. Fuel combustion sources can emit sulfur dioxide. This section would limit the amount of sulfur in fuels to control the amount of sulfur dioxide emitted to the atmosphere and minimize ground-level concentrations of sulfur dioxide.

The majority of the State and local air agency rules that EPA reviewed contain the same level of control that EPA is proposing for the sulfur content in each type of fuel.

Section 49.131—Open burning. This rule would prohibit certain materials from being open burned, such as: Garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, asphalt or composition roofing, tar, tarpaper, petroleum products, paints, paper or cardboard other than what is necessary to start a fire, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, hazardous wastes, or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned (see rule for a complete list). The following situations would be exempt from certain provisions of this rule: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires set for recreational purposes, provided that no prohibited materials are burned; the burning of combustible household waste in burn barrels at single-family residences or residential buildings with four or fewer dwelling units; with permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated; with permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials; and open burning for the disposal of diseased animals or infested material by order of a public health official. All open burning, except for cultural and traditional purposes, would be prohibited under the following circumstances: The Regional Administrator declares a burn ban due to deteriorating air quality; the National Weather Service issues an air stagnation advisory; or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency. This section also describes the practices a person subject to this rule must follow in conducting an open burn.

This section is appropriate to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere. All of the State and local air agency rules that EPA examined have an open burning rule with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.132—Open burning permits. Any person who conducts an open burn would be required to: (1) Apply for and obtain a permit for each open burn; (2) have the permit available on site during the open burn; (3) conduct the open burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. The following activities are exempt: Fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires for recreational purposes, provided that no prohibited materials are burned; forestry or silvicultural burning; agricultural burning; and the burning of combustible household waste in burn barrels at single family residences or residential buildings with four or fewer dwelling units. The Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, forecasted meteorological conditions, and other scheduled burning activities in the surrounding area in determining whether to issue the permit.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of these activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.132 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most of the State and local air agency rules that EPA reviewed have a permitting program for open burning with procedures, conditions, prohibitions and exemptions similar to those in the rule that EPA is proposing.

Section 49.133—Agricultural burning permits. Any person who conducts an agricultural burn would be required to: (1) Apply for and obtain a permit for each agricultural burn; (2) have the permit available on site during the agricultural burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated agricultural burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of agricultural burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.133 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Two of the States, three local air agencies, and one Tribe in Region 10 have established a permitting program

for agricultural burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Section 49.134—Forestry burning permits. Any person who conducts a forestry burn would be required to: (1) Apply for and obtain a permit for each forestry burn; (2) have the permit available on site during the forestry burn; (3) conduct the burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable.

This section is designed to protect air quality from the potential for significant deterioration caused by the release of particulate matter, which is regulated by a NAAQS under section 109 of the CAA. This rule would limit the amount of particulate matter emitted to the atmosphere from unregulated forestry burning activities. EPA is proposing to promulgate this rule only for reservations where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base the determination of whether this rule is appropriate for a particular reservation on a number of factors, including the prevalence of forestry burning activities on the reservation, the significance of the resulting pollution on air quality in the area and adjacent airsheds, and the absence of Tribal laws to control the pollution. This rule would protect air quality on those reservations where forestry burning can contribute to air quality deterioration. EPA anticipates that Tribes will seek EPA delegation to implement this rule on their reservation. In this rulemaking, EPA is proposing that § 49.134 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Three of the States in Region 10 have established a permitting program for forestry burning with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

Sections 49.135 and 49.136—Emissions detrimental to persons or property. These are two alternatives to regulate emissions that are detrimental, and EPA would promulgate one of the rules for each reservation. For both §§ 49.135 and 49.136, an owner or operator of an air pollution source would not be allowed to cause or allow the emission of any air pollutants, in sufficient quantities and of such characteristics and duration, that the Regional Administrator determines is, or would likely be, injurious to human health and welfare. The Tribal alternative rule § 49.136 would include the same requirements as § 49.135, and also authorize controls when the Regional Administrator determines an emission does, or is likely to, unreasonably interfere with the enjoyment of life or property or damage unique Tribal cultural or traditional resources. If the Regional Administrator makes such a determination under § 49.135 or § 49.136, EPA is proposing that the Regional Administrator would be able to require the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions.

Section 49.136 would provide additional protection of unique Tribal resources, and would be promulgated on reservations only where EPA finds, in consultation with the relevant Tribe, that the rule is appropriate. EPA will base this determination on a number of factors, including the prevalence of activities on the reservation which can affect unique Tribal cultural or traditional resources, the significance of the resulting pollution on those resources, and the absence of Tribal laws to control the pollution. In this rulemaking, EPA is proposing that the Tribal alternative rule § 49.136 will apply only on the Nez Perce Reservation and the Umatilla Indian Reservation, as shown in Table 2.

Most State and local air agency rules incorporate similar provisions prohibiting emissions detrimental to persons or property.

Section 49.137—Air pollution episodes. Under § 49.137, the Regional Administrator could issue warnings about air quality that would apply to any person who owns or operates an air pollution source on Indian reservations. An air pollution alert, air pollution warning, or air pollution emergency could be declared by the Regional Administrator whenever it is determined that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. These announcements would be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health, describe actions that people can take to reduce exposure, request voluntary actions to reduce emissions from sources of air pollutants, and indicate that a ban on open burning is in effect. Voluntary or mandatory curtailment of emissions could be declared by the Regional Administrator.

Most State and local air agencies have rules for air pollution episodes with procedures and conditions similar to those in the rule that EPA is proposing. Section 110(a)(2)(G) of the Clean Air Act and 40 CFR part 51, Subpart H of EPA's regulations require agencies to have pre-planned procedures to follow in the event of an air pollution episode as well as adequate authorities to require sources to reduce emissions in order to protect public health. Section 49.137 is consistent with EPA's requirements for State and local agencies as set forth in 40 CFR part 51, Subpart H and the model procedures in 40 CFR part 51, Appendix L.

Section 49.138—Registration of air pollution sources and reporting of emissions. Any person who owns or operates an air pollution source except those exempted below would be required to register the source with EPA. A person subject to this rule must register the air pollution source by no later than one year after the effective date of these rules. A new air pollution source must register within 90 days after beginning operation. Sources must re-register each year and provide updates on any changes since the previous registration. The following sources are exempt from this rule: mobile sources; single family residences, and residential buildings with four or fewer units; air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the CAA and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour; cooking of food, except for retail and wholesale businesses that both cook and sell cooked food; consumer use of office equipment and products; janitorial services and consumer use of janitorial products; maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops; agricultural activities and forestry activities, including agricultural burning and forestry burning; and open burning.

This requirement is appropriate as it would enable EPA to develop and maintain accurate records of air pollution sources and their emissions

on reservation lands. Maintaining an accurate inventory of sources and emissions would help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. While the emission increase at each facility may be de minimis, the cumulative effect of the increases may be significant. The registration program would enable EPA to track trends and identify potential problems before they arise.

Many State and local air agencies have a registration program or a permitting program to collect information similar to that required by the registration program in this section.

Section 49.139—Rule for non-Title V operating permits. This section would create a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources on Indian reservations. This rule would apply in the following three situations: (1) The owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit and submits an application to the Regional Administrator requesting such limitation; (2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the Federal or, if applicable, Tribal Implementation Plan; or (3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or PSD increment. A source that would otherwise require a Part 71 Federal operating permit may instead obtain an operating permit under this section that limits its potential to emit to below major source thresholds so that the source is not subject to Part 71. The Regional Administrator would write the operating permit and follow the consultation and public comment procedures described in this rule.

This rule would provide air pollution sources on reservations with air quality control requirements and regulatory alternatives similar to those available to sources located off-reservation. The rule also would enable the Regional Administrator to require further air emission reductions if necessary to attain or maintain the NAAQS or PSD increment.

All State and local air agencies have a permitting mechanism to control emissions and to allow a source to limit its potential to emit so that it is not subject to Title V or other requirements for major stationary sources with procedures, conditions, prohibitions, and exemptions similar to those in the rule that EPA is proposing.

C. Rules Proposed for Specific Reservations

The proposed rules that follow this discussion identify for each Indian Tribe listed in Subpart M the specific rules that EPA is proposing to promulgate as a FIP for the Indian reservation of that Tribe. Subpart M is organized to contain the implementation plan for each Indian Tribe with a reservation. This plan will consist of a combination of Tribal rules and measures and Federal regulations and measures that apply to all applicable sources within the specific reservation, including trust lands set aside for the Tribe.

While most of the rules in the FIPs constitute a base program that EPA is proposing for all reservations in Idaho, Oregon, and Washington, some of the proposed FIPs would include additional rules where specific needs have been identified through consultation with Tribes. Table 1 lists the ''Base Program'' rules, as well as the ''Additional Rules''. The following ''Additional Rules'' are being proposed for three reservations (see Table 2 below) where EPA has found, in consultation with the relevant Tribe, that it is appropriate to establish these requirements in order to control air pollution.

EPA is proposing the rules listed in Table 2 for the Nez Perce Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the Reservation. EPA has found, in consultation with the Nez Perce Tribe, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Nez Perce Reservation. Specifically, the woodwaste burners, the wood products industries, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Nez Perce Tribe, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribe in ways that may not be adequately protected by Tribal law.

For the Umatilla Reservation, EPA is proposing the rules listed in Table 2 to limit the amount of particulate matter emitted to the atmosphere and airsheds in and around the Reservation. EPA has found, in consultation with the Confederated Tribes of the Umatilla Reservation, that these rules are appropriate because the activities that would be regulated by these rules are taking place on the Umatilla Reservation. Specifically, open burning, agricultural, and forestry activities may be significant contributors to air quality concerns in the area. Based on consultations with the Confederated Tribes of the Umatilla Reservation, EPA also is concerned that air pollution sources could adversely affect cultural or traditional resources of the Tribes in ways that may not be adequately protected by Tribal law.

Finally, EPA is proposing the rules listed in Table 2 for the Colville Reservation to limit the amount of particulate matter emitted to the atmosphere in the airsheds in and around the area. EPA has found, in consultation with the Confederated Tribes of the Colville Reservation, that these rules are appropriate because the operations of woodwaste burners and wood products facilities located on the Colville Reservation cause the release of particulate matter which may adversely affect air quality in ways that may not be adequately protected by Tribal law.

Correspondence from these Tribes providing relevant information and requesting that EPA propose these Additional Rules are included in the docket for this proposal.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES

Rule #	Additional rules
Nez Perce Reservation, Lapwai, Idaho	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.

TABLE 2.—RESERVATION SPECIFIC ADDITIONAL RULES—Continued

Rule #	Additional rules
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Umatilla Indian Reservation, Pendleton, Oregon	
Section 49.132	Rule for open burning permits.
Section 49.133	Rule for agricultural burning permits.
Section 49.134	Rule for forestry burning permits.
Section 49.136	Rule for emissions detrimental to persons, property, cultural or traditional resources.
Colville Indian Reservation, Nespelem, Washington	
Section 49.127	Rule for woodwaste burners.
Section 49.128	Rule for limiting particulate matter emissions from wood products industry sources.

D. Costs Associated With These Rules and Request for Comment

As part of developing these proposed rules, EPA conducted an analysis of the expected costs should these rules be adopted. Included in the docket for this rulemaking is an Economic Impact Analysis (EIA) that was prepared to assist EPA in estimating the costs of compliance for the sources that would be subject to these rules.

For the purposes of generating cost estimates for each of the proposed rules, EPA assumed that there will be no capital costs incurred under any of these rules. EPA makes this assumption because the unique nature of this rule—sources are believed to be complying in the absence of the rule because they thought they were subject to State and local rules—makes it difficult to establish a counterfactual baseline showing what sources would be doing had they realized they were not subject to those rules under the CAA. Furthermore, based on information obtained from State, local, and Tribal authorities, as well as the businesses and other entities affected by these rules, EPA does not anticipate that facilities will add control devices as a result of these rules. In addition, EPA has not estimated operation and maintenance (O&M) costs to comply with these rules. EPA believes that O&M costs should be considered, but insufficient data were available to estimate them. O&M costs estimates based on information gathered from comments on the proposal will be included in the analysis for the final rule.

Thus the costs estimated for these rules are primarily the labor costs associated with record keeping and reporting under the regulations. Costs for both the basic rules and additional rules were estimated in the EIA. For the basic rules, the annualized labor costs and non-labor costs were estimated to be $117,000 and $17,000, respectively, while incremental capital costs and incremental O&M costs were assumed to be zero. Thus, the total estimated cost associated with the basic rules is $134,000. Cost estimates for the additional rules only account for costs on those reservations for which EPA has proposed additional rules. The additional rules were estimated to have annualized labor costs of $23,000, while non-labor costs, incremental capital costs, and incremental O&M costs were each assumed to equal zero for a total of $23,000. Overall, annualized labor costs were estimated to be $140,000, annualized non-labor costs are estimated to be $17,000, incremental capital costs are assumed to be zero, and incremental O&M costs are assumed to be zero for a total estimated cost of $157,000.

The information available to EPA for this analysis was assembled from a number of sources, including surveys of sources on the reservations, consultations with the sources and Tribal governments, and EPA's experience with air quality issues in the Pacific Northwest. Based on this information, several assumptions were made in order to estimate the expected compliance costs associated with these rules. EPA is now seeking comment on these assumptions. While comments on all aspects of the analysis are solicited, EPA specifically is soliciting comments on the assumptions described below regarding capital costs, O&M costs, and the costs of meeting visible emission and fugitive emission requirements, conducting source tests, and meeting the sulfur content in fuel limits.

EPA is seeking comments on the assumption that no incremental capital costs would be required by these rules. The O&M costs associated with the continued compliance with these rules are expected to be small. However, there were insufficient data to estimate the magnitude of these costs. Therefore, EPA is requesting comment and supplemental information if appropriate on the expected O&M costs that would result from continued compliance with these rules. In addition, EPA would like comments on the following assumptions used for costing several of the individual rules. For the visible emission rule, it was assumed for costing purposes that two facilities would voluntarily train their own visible emissions readers and would send them to retraining each year. For the fugitive particulate matter emissions rule, it was assumed that an average of one construction project per reservation per year would need to develop and update particulate matter control plans. Under the particulate matter rule and the sulfur dioxide rule, it was assumed that six facilities and one facility, respectively, would conduct source tests within the first three years (Method 5 tests for the particulate matter rule and Method 6 tests for the sulfur dioxide rule). Finally, for the sulfur content of fuels rule, EPA assumed that fuel distributors have access to data on the sulfur content of delivered fuel and that fuel purchases would be unaffected because the fuel currently available already meets the sulfur limits established in the rule. EPA would like feedback from interested parties on the accuracy of these assumptions and suggestions for modifications, if applicable. For additional details on the assumptions used in the development of the estimated compliance costs associated with these rules, the reader is referred to the EIA.

IV. Request for Public Comment

EPA solicits comments on all aspects of today's proposal. In this proposal, EPA is trying to create a level playing field without imposing significant new costs to sources. Interested parties should submit comments by mail or in person to the address listed in the front of this proposal. Be sure to identify the

appropriate docket control number (#A–2000–25) in your correspondence. Your comments must be received by June 13, 2002 to be considered in the final action taken by EPA.

You may also comment on this proposal by attending the public hearing if one is held and providing oral comments. If EPA determines that a hearing should be held, the date and time will be announced in the local papers. You may also call David Bray at (206) 553–4253 to determine if a hearing will be held and to obtain the time and location.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposed rulemaking is a ''significant regulatory action'' because it may raise novel legal or policy issues. The rulemaking marks the first time that, under the Clean Air Act, EPA has proposed Federal Implementation Plans for specific reservations that would be generally applicable to all sources within the exterior boundaries of those reservations.

However, EPA's analysis indicates that this rulemaking will not have a significant economic impact. EPA is finding that many sources on Indian reservations have historically been following similar air programs that are established by State and local agencies acting under State law or local rules. Although EPA has not approved SIPs as extending into Indian country under the CAA, some sources located on Indian reservations have made efforts to follow those programs. Most industrial sources on the Region 10 reservations have installed or upgraded air pollution control equipment to conform with State or local air programs without challenging the authority of those agencies within Indian country. As a result, these sources already have pollution controls that would satisfy State and local rules.

As discussed above in section III.A, this rulemaking would establish regulatory requirements for sources under the authority of the CAA that are substantially similar to the requirements of adjacent jurisdictions that most sources already meet. Thus, it is EPA's expectation that these rules would not impose significant costs or require changes at regulated sources. Nevertheless, because of the limited precedent this rulemaking would set, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section in Washington DC and at EPA Region 10 in Seattle, Washington. See the **ADDRESSES** section of this preamble for specific addresses and times when the docket may be reviewed.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) (SBREFA), 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 rulemaking on small entities, small entity is defined as: (1) A small business as defined by the RFA (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on our economic analysis, we certify that this action will not have a significant economic impact on a substantial number of small entities. The economic analysis shows the total annual compliance costs of the basic and additional rules to be approximately $1,000 per small business. The cost-to-sales ratio for small business entities is expected to be less than one percent, with the exception of one facility whose estimated ratio is 1.15, when the worst-case scenario is applied.

Although this proposed rulemaking will not have a significant economic impact on a substantial number of small entities, EPA also has included a number of exemptions in the rules where appropriate to reduce impacts of this rulemaking on small entities. There are 13 rules that EPA proposes to apply to all reservations in Idaho, Oregon and Washington. Of these 13 rules, one (§ 49.121) provides an introduction, one (§ 49.122) provides delegation procedures for Tribes, and one (§ 49.123) provides definitions. The remaining ten (§§ 49.124, 49.125, 49.126, 49.129, 49.130, 49.131, 49.135, 49.137, 49.138, 49.139) have some regulatory effect. Eight of these ten contain exemptions for sources considered sufficiently small, such as households or the owners of mobile sources. Only two rules, one that addresses emissions detrimental to persons (§ 49.135) and one that addresses air pollution episodes (§ 49.137), do not include exemptions. These two rules require determinations by the Regional Administrator and would only be used when EPA determines that adverse effects of air pollution warrant their use.

In developing this proposal, EPA consulted extensively with Tribal governments regarding the potential impacts of these rules (see section G below). In order to better understand the implications of these rules for small entities, as part of the consultations with Tribal representatives, EPA also explored the possible effects for small businesses operating on Tribal lands. Moreover, while making site visits to Tribal reservations, EPA staff met one-on-one with numerous small business owner/operators and discussed today's proposal. Also during the course of these rules' development, EPA attended and made presentations about this activity at numerous public meetings and conferences; venues at which representatives of Tribally-owned and Indian-owned small businesses were present and had opportunities to

comment on the rule. We continue to be interested in the potential impacts of the proposed rulemaking on small entities and welcome comments on issues related to such impacts. In addition, EPA intends to continue outreach to affected businesses, especially small businesses, during the public comment period to provide additional opportunities for input from 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 by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA 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 explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. With regard to State and local governments, there is no expenditure because these rules only apply on Indian reservations. With regard to Tribal governments, there is no expenditure in implementing and enforcing the rules because the rules would provide that EPA would take on that responsibility unless a Tribe chooses to assist EPA or assume responsibility for its own reservation. In such a case, EPA would seek to provide funding to support these efforts. Thus, today's rules are not subject to the requirements of sections 202 and 205 of UMRA.

In developing this rulemaking, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rules that might significantly or uniquely affect small governments. As explained in the discussion of Executive Order 13175 in section G below, among other things, we notified all potentially affected Tribal governments of the requirements in these proposed rules. Further, although there are no significant Federal intergovernmental mandates, we provided officials of all potentially affected Tribal governments an opportunity for meaningful and timely input in the development of the regulatory proposals. Finally, through consultation meetings and other forums, we will continue to keep Tribal governments involved by providing them with opportunities for learning about and receiving advice on compliance with the regulatory requirements.

D. Paperwork Reduction Act

The information collection requirements in this proposed rulemaking have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2020.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

The proposed FIPs include information collection requirements related to the registration of and reporting of emissions from air pollution sources. EPA believes these information collection requirements are appropriate because they would enable EPA to develop and maintain accurate records of air pollution sources and their emissions on reservation lands. As discussed in the summary of § 49.138 in section III.A. of this preamble, maintaining an accurate inventory of sources and emissions would, among other things, help EPA protect air quality from potential significant deterioration that can occur if many sources within a particular area increase their air pollutant emissions. These registration requirements would be mandatory under § 49.138. Regulated entities would be able to assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, Subpart B.

The reporting and record keeping burden for this collection of information is described below. 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.

EPA estimates that the owners or operators of facilities affected by these basic and additional rules will incur a total of $140,000 in labor costs and $17,000 in non-labor costs to comply with the information collection requirements of these rules.

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. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for

EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 15, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by April 15, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe 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 proposed rulemaking is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children.

F. Executive Order 13132: Federalism

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

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

This proposed rulemaking 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. These rules only prescribe regulations for facilities in areas where a State does not administer an approved Clean Air Act program, and thus does not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rulemaking. EPA has provided advance draft copies of the proposed rules to State and local authorities in Idaho, Oregon and Washington. Generally, the States are pleased that EPA is developing rules for Indian reservations, as the rules will create more parity in the regulatory environment between on-reservation and off-reservation lands. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rulemaking from State and local officials.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule will have Tribal implications. These regulations would significantly affect specific Indian reservation communities by filling the gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. However, the air quality requirements proposed here are applicable broadly to all sources within the identified Indian reservation areas, and are not uniquely applicable to Tribal governments. The gap-filling approach used in this proposal would create Federal requirements similar to those that are already in place in jurisdictions adjacent to the reservations covered by the proposal. Tribal governments may incur some compliance costs in meeting those requirements that apply to sources they own or operate; however, the economic impacts analysis does not indicate that those costs will be significant. Finally, although Tribal governments are encouraged to partner with EPA on the implementation of these regulations, they are not required to do so. EPA will seek to provide funding to Tribes that apply for delegation of EPA's authority to administer specific rules to support their activities. Since this proposed rulemaking will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA consulted with Tribal officials and representatives of Tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The concept for this rulemaking grew from discussions related to implementation of the CAA and the TAR with Tribes throughout Region 10 who are engaged in developing Tribal air quality programs. EPA Region 10 began assembling an inventory of air pollution sources in 1995, and EPA has been working with Tribes and other air management agencies since then to better determine the need for specific rules and to evaluate alternatives for Tribal and Federal programs. Based on the

discussions and inventory development, EPA decided to develop the proposed approach to rulemaking that would be tailored to the air quality issues of Tribes in Idaho, Oregon and Washington.

In June 1999, EPA Region 10 met in Seattle, Washington, with Tribal leaders, managers, and attorneys to introduce the Tribal Air Rules Project. A generally favorable response from Tribal leadership to the project led EPA to prepare a formal consultation package that included preliminary rules, and the package was distributed for review to the leadership of all of the potentially affected Tribes in Idaho, Oregon, and Washington. In August 1999, EPA Region 10 held three technical meetings with Tribal staff who are air specialists for in-depth discussions. Thirteen Tribes participated in these technical meetings. The Consultation Record in the docket for this proposal provides detailed information on the consultations.

In July 2000, a complete draft of the proposed rules was formally distributed to all 41 of the Tribal governments in Idaho, Oregon, and Washington. At the time of this proposal, 39 of the 41 Tribes have reservations. Two Tribes recently received Federal recognition and do not have reservation lands yet. The letter that transmitted the rule package was addressed to the Tribal Chair and sent by certified mail. Complete copies of the package were sent to the Natural Resource or Environmental Director at each Tribe and to the air specialist, in cases where the Tribe has one. In the letter, EPA Region 10 requested that the Tribe provide their views and comments on the proposed rules by September 30, 2000, and identify any additional rules that the Tribe would like EPA to propose for a particular reservation.

EPA Region 10 conducted follow-up telephone inquiries to offer opportunities for Tribes to participate in conference calls, group consultation meetings with EPA Region 10, and individual meetings with EPA Region 10. EPA Region 10 reached 39 of the 41 Tribes through these initial telephone contacts. In September and October of 2000, EPA Region 10 held four consultation meetings to discuss the draft proposed rulemaking package in Spokane, Puyallup, the Swinomish Reservation, and Portland. In the 2000 consultation round, 19 Tribes participated in face-to-face meetings with EPA Region 10. Another seven tribes consulted with EPA Region 10 through individual or group conference calls. Three Tribes submitted comments supporting the rule and requesting that EPA propose specific rules for their reservation. Please see the consultation record for more detailed information on the consultations. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

H. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects, because the facilities affected already have the pollution controls in place to enable them to comply with these rules.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of 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, 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 standards.

This proposed rulemaking involves technical standards. EPA proposes to use American Society for Testing and Materials (ASTM) Methods and generally accepted test methods previously promulgated by EPA. Because all of these methods are generally accepted and are widely used by State and local agencies for determining compliance with similar rules, EPA believes it would be impracticable and potentially confusing to put in place methods that vary from what is already accepted. As a result, EPA believes it is unnecessary and inappropriate to consider alternative technical standards. Nevertheless, EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in these regulations.

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 13, 2002.

Christine Todd Whitman,

Administrator.

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

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is amended by revising subpart C to read as follows:

Subpart C—General Federal Implementation Plan Provisions

Sec.

49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

49.121 Introduction.
49.122 Delegation of authority to a Tribe.
49.123 General provisions.
49.124 Rule for limiting visible emissions.
49.125 Rule for limiting the emissions of particulate matter.
49.126 Rule for limiting fugitive particulate matter emissions.
49.127 Rule for woodwaste burners.
49.128 Rule for limiting particulate matter emissions from wood products industry sources.
49.129 Rule for limiting emissions of sulfur dioxide.
49.130 Rule for limiting sulfur in fuels.
49.131 General rule for open burning.
49.132 Rule for open burning permits.
49.133 Rule for agricultural burning permits.
49.134 Rule for forestry burning permits.
49.135 Rule for emissions detrimental to human health and welfare.
49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
49.137 Rule for air pollution episodes.
49.138 Rule for the registration of air pollution sources and the reporting of emissions.
49.139 Rule for non-Title V operating permits.
49.140–49.200 [Reserved]

Subpart C—General Federal Implementation Plan Provisions

§§ 49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

§ 49.121 Introduction.

(a) *What is the purpose of these rules?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these rules developed?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' were developed through consultation with the Indian Tribes located in Idaho, Oregon, and Washington. The rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these rules applicable to sources on a particular Indian reservation?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules into effect for that reservation. Rules shall be promulgated into effect through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this Part. These ''General Rules for Application to Indian Reservations in EPA Region 10'' will not apply to air pollution sources located on newly established Tribal trust lands located outside the exterior boundaries of an Indian reservation until after they are promulgated into effect through notice and comment rulemaking.

§ 49.122 Delegation of authority to a Tribe.

(a) *What is the purpose of this rule?* The purpose of this rule, § 49.122, is to establish the process by which the Regional Administrator may delegate to an Indian Tribe the authority to administer all, or a portion of, the rules that have been promulgated into effect in Subpart M of this Part for a particular Indian reservation. This section provides for administrative delegation and does not affect the eligibility criteria under 40 CFR 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request delegation?* In order to be delegated authority to administer the rules that are in effect in Subpart M of this Part for a particular Indian reservation, the authorized representative of a Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific rules and provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the rules and provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, adequate resources to carry out the aspects of the rules and provisions for which delegation is requested.

(c) *How is the delegation of authority accomplished?*

(1) A Delegation of Authority Agreement will set forth the terms and conditions of the delegation, will specify the rules and provisions that the Tribe shall be authorized to implement, and shall be entered into by the Regional Administrator and the Tribe. The Regional Administrator will not delegate authority to a Tribe for areas for which EPA believes the Indian reservation status is in question. The Agreement will become effective upon the date that both the Regional Administrator and the authorized representative of the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Act, to the extent specified in the Agreement, for administering the rules in effect in Subpart M of this Part for the particular Indian reservation and shall act as the Regional Administrator as that term is used in these regulations.

(2) A Delegation of Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe.

(d) *How will any delegation of authority be publicized?* The Regional Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of authority to a Tribe to administer all or a portion of the rules in Subpart M of this Part that apply for an Indian reservation and will indicate such delegation in the implementation plan for the Indian reservation. The Regional Administrator shall also publish an announcement of the delegation in local newspapers.

§ 49.123 General provisions.

(a) *Definitions.* The following definitions apply for the purposes of the ''General Rules for Application to Indian Reservations in EPA Region 10''. Terms not defined herein have the meaning given to them in the Act.

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Actual emissions means the actual rate of emissions, in tons per year, of an air pollutant from an air pollution source. For an existing source, the actual emissions are the actual rate of emissions for the most recently completed calendar year and must be calculated using the actual operating hours, production rates, and types of materials processed, stored, or combusted during that calendar year. For a new source that has not operated for a complete calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

Agricultural burning means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

Air pollutant means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the

particular purpose for which the term air pollutant is used.

Air pollution source means any building, structure, facility, installation, activity, or equipment that emits, or may emit, an air pollutant.

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

(1) The applicable standards in 40 CFR parts 60, 61, 62 and 63;

(2) The applicable implementation plan emission limitations, including those with a future compliance date; or

(3) The emissions rates specified in Federally-enforceable permit conditions.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

Burn barrel means a cylindrical steel vessel, no greater than 55 gallons in size, with an open top, bottom air holes, and equipped with a steel spark screen, used for burning combustible household waste.

Coal means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials (ASTM) in ASTM Method D388–99, Standard Classification of Coals by Rank.

Combustible household waste means paper, paper products, cardboard, food packaging, plastic containers, garbage, rags, wood, and other combustible waste materials resulting from general residential activities, but does not include the following household wastes: tires; rubber materials or products; plastic materials or products (except containers); asphalt or composition roofing, or any other asphaltic material or product; tar or tarpaper; petroleum products; paints; timbers treated with preservatives; pesticides, herbicides, or fertilizers; insulated wire; batteries; light bulbs; materials containing mercury; or materials containing asbestos.

Combustion source means any source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

Continuous emissions monitoring system (CEMS) means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous opacity monitoring system (COMS) means the total equipment used to sample, analyze, and provide a permanent record of opacity.

Distillate fuel oil means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Emission means a direct or indirect release into the atmosphere of any air pollutant; or the air pollutants released into the atmosphere.

Emission factor means an estimate of the rate at which an air pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity.

Emission unit means any part of an air pollution source that emits, or may emit air pollutants into the atmosphere.

Federally enforceable means enforceable by the Administrator under the Act.

Fuel means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

Fuel oil means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

Forestry or silvicultural burning means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

Fugitive dust means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

Fugitive particulate matter means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

Garbage means food wastes.

Gaseous fuel means any fuel that exists in a gaseous state at standard conditions, including but not limited to natural gas, propane, fuel gas, process gas, and landfill gas.

Grate cleaning means removing ash from fireboxes.

Hardboard means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

Heat input means the total gross calorific value (where gross calorific value is measured by ASTM Method D240–92(1997)e2, D1826–94(1998), D5865–99a, or E711–87(1996)) of all fuels burned.

Implementation plan means a Tribal implementation plan approved by EPA pursuant to this Part or 40 CFR Part 51, or a Federal implementation plan promulgated by EPA in this Part or in 40 CFR Part 52 that applies in Indian country, or a combination of Tribal and Federal implementation plans.

Incinerator means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Marine vessel means a waterborne craft, ship, or barge.

Mobile sources means locomotives, aircraft, motor vehicles, non-road vehicles, non-road engines, and marine vessels.

Motor vehicle means any self-propelled vehicle designed for transporting people or property on a street or highway.

New air pollution source means an air pollution source that begins actual construction after the effective date of the ''General Rules for Application to Indian Reservations in EPA Region 10''.

Noncombustibles means materials that are not flammable, capable of catching fire, or burning.

Non-road engine means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely

for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Non-road vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Oil-fired boiler means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Open burning means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

Owner or operator means any person who owns, leases, operates, controls or supervises an air pollution source.

Particleboard means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

Particulate matter means any airborne finely divided solid or liquid material, other than uncombined water.

Permit to construct or construction permit means a permit issued by the Regional Administrator pursuant to 40 CFR 52.10 or 52.21, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51, Subpart I, authorizing the construction or modification of a stationary source.

Permit to operate or operating permit means a permit issued by the Regional Administrator pursuant to § 49.139 or 40 CFR Part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR Part 51 or 40 CFR Part 70, authorizing the operation of a stationary source.

Plywood means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

PM10 means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

Process source means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

Rated capacity means the maximum sustainable capacity of the equipment.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable rule.

Refuse means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

Regional Administrator means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

Residual fuel oil means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396–98, Standard Specification for Fuel Oils.

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

Soot blowing means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

Stack means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

Standard conditions means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

Start-up means the setting into operation of a piece of equipment.

Stationary source means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

Tempering oven means any facility used to bake hardboard following an oil treatment process.

Uncombined water means droplets of water that have not combined with hygroscopic particles or contain dissolved solids.

Used oil means petroleum products that have been recovered from another application.

Veneer means a single flat panel of wood not exceeding ¼ inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

Visible emissions means air pollutants in sufficient amount to be observable to the human eye.

Wood means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

Wood-fired boiler means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in

addition to, or exclusive of, steam or natural gas or propane combustion.

Woodwaste burner means a wigwam burner, teepee burner, silo burner, olivine burner, truncated cone burner, or other such wood waste burning device used by the wood products industry for the disposal of wood wastes by burning.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the ''General Rules for Application to Indian Reservations in EPA Region 10'' by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person subject to the ''General Rules for Application to Indian Reservations in EPA Region 10'' to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' precludes the Regional Administrator from requiring monitoring, recordkeeping and reporting, including monitoring, recordkeeping and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(1) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388–99, Standard Classification of Coals by Rank, IBR approved for § 49.123(a).

(ii) ASTM D396–98, Standard Specification for Fuel Oils, IBR approved for § 49.123(a) and § 49.130(d).

(iii) ASTM D240–92(1997)e2, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826–94(1998), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

(v) ASTM D5865–99a, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711–87(1996) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880–98, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294–98, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021–96, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177–89(1997), Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239–00, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492–90(1998), Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775–87(1996), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072–90(1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084–94(1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468–85(1995)e1, Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228–98 Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

§ 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this rule?* This rule, § 49.124, limits the visible emissions of air pollutants from air pollution sources operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10 and to detect the violation of any other rules and regulations.

(b) *Who is affected by this rule?* This rule, § 49.124, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this rule?* This rule, § 49.124, does not apply to open burning, agricultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State or local government, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?*

(1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive 6-minute period, unless paragraph (d)(2) or (d)(3) of § 49.124 applies to the air pollution source.

(2) The visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

(3) The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 minutes in any 8 consecutive hours, but must not exceed 60% opacity at any time.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the opacity limits is EPA Method 9 of Appendix A of 40 CFR Part 60. A complete description of this method is found in Appendix A.

(2) An alternative reference method for determining compliance is a COMS that complies with Performance Specification 1 found in Appendix B of 40 CFR Part 60.

(3) This rule, § 49.124, does not require any person to conduct Method 9, of Appendix A of 40 CFR Part 60, opacity readings or to install a COMS unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.124, are defined in § 49.123 General provisions: Act, agricultural activities, air pollutant, air pollution source, ambient air, coal, continuous opacity monitoring system (COMS), distillate fuel oil, emission, fuel, fuel oil, fugitive dust, gaseous fuel, grate cleaning, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, oil-fired boiler, opacity, open burning, particulate matter, permit to construct, permit to operate, PM10, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, solid fuel-fired boiler, soot blowing, stack, standard conditions, start-up, stationary source, uncombined water, used oil, visible emissions, and wood.

§ 49.125 Rule for limiting the emissions of particulate matter.

(a) *What is the purpose of this rule?* This rule, § 49.125, limits the amount of particulate matter that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.125, applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this rule?* This rule, § 49.125, does not apply to woodwaste burners, furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, and mobile sources.

(d) *What are the particulate matter limits for sources?*

(1) Particulate matter emissions from a combustion source (except for wood-fired boilers) must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Particulate matter emissions from a wood-fired boiler must not exceed an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven (7) percent oxygen, during any three (3) hour period.

(3) Particulate matter emissions from a process source must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot) during any three (3) hour period.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits for a combustion source, wood-fired boiler, or process source is EPA Method 5. A complete description of this method is found in Appendix A of 40 CFR Part 60.

(2) This rule, § 49.125, does not require any person to conduct a Method 5 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.125, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, particulate matter, permit to construct, permit to operate, PM10, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, uncombined water, used oil, wood, wood-fired boiler, and woodwaste burner.

§ 49.126 Rule for limiting fugitive particulate matter emissions.

(a) *What is the purpose of this rule?* This rule, § 49.126, limits the amount of fugitive particulate matter that can be emitted from air pollution sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.126, applies to any person who owns or operates a source of fugitive particulate matter emissions.

(c) *What is exempted from this rule?* This rule, § 49.126, does not apply to activities associated with single family residences or residential buildings with four or fewer dwelling units, agricultural activities, or public roads owned or maintained by any Federal, Tribal, State or local government.

(d) *What are the requirements for sources of fugitive particulate matter emissions?*

(1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

(2) Reasonable precautions include, but are not limited to the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of buildings or structures,

construction operations, grading of roads, or clearing of land.

(ii) Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces that can create airborne dust.

(iii) Full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals is not sufficient or appropriate to prevent particulate matter from becoming airborne.

(iv) Implementation of good housekeeping practices to avoid or minimize the accumulation of dusty materials that have the potential to become airborne, and the prompt cleanup of spilled or accumulated materials.

(v) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

(vi) Adequate containment during sandblasting or other similar operations.

(vii) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.

(viii) The prompt removal from paved streets of earth or other material that does or may become airborne.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.126, must:

(i) Periodically survey the air pollution source during typical operating conditions to determine if there are sources of fugitive particulate matter emissions. This must be done at least once each calendar quarter, and must be done weekly if dry or dusty materials are handled at the air pollution source. Document the results of the survey, including the date and time of the survey and identification of any sources of fugitive particulate matter emissions found.

(ii) If sources of fugitive particulate matter emissions are present, determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions.

(iii) Prepare, and update as necessary following each periodic survey, a written plan that specifies the reasonable precautions to be taken and the procedures to be followed to prevent fugitive particulate matter emissions.

(iv) Implement the reasonable precautions and procedures plan, and maintain and operate the source to minimize fugitive particulate matter emissions.

(v) Maintain records for five years that document the periodic surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

(2) The Regional Administrator may require specific actions to prevent fugitive particulate matter emissions, or impose conditions to maintain and operate the air pollution source to minimize fugitive particulate matter emissions, in a permit to construct or a permit to operate for the source.

(3) A prudent approach to complying with this rule, § 49.126, requires that the owner or operator consider all environmental implications of any particular measures. Efforts to comply with this rule cannot be used as a reason for not complying with other environmental rules, or in the absence of such rules, creating other environmental problems.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.126, are defined in § 49.123 General provisions: Agricultural activities, air pollutant, air pollution source, ambient air, emission, fugitive dust, fugitive particulate matter, owner or operator, particulate matter, permit to construct, permit to operate, PM10, Regional Administrator, stack, and uncombined water.

§ 49.127 Rule for woodwaste burners.

(a) *What is the purpose of this rule?* This rule, § 49.127, phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners), and in the interim, limits the visible emissions from woodwaste burners operating within the Indian reservation in order to control emissions of particulate matter to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.127, applies to any person who owns or operates a woodwaste burner.

(c) *What are the requirements for woodwaste burners?*

(1) The owner or operator of a woodwaste burner must shut down and dismantle the woodwaste burner by no later than 2 years after the effective date of this rule, § 49.127. Until the woodwaste burner is shut down, visible emissions from the woodwaste burner must not exceed 20% opacity, averaged over any consecutive 6-minute period.

(2) Until the woodwaste burner is shut down, only wood waste generated onsite may be burned or disposed of in the woodwaste burner.

(3) If there is no reasonably available alternative method of disposal for the wood waste other than by burning it onsite in a woodwaste burner, the owner or operator of the woodwaste burner that is in compliance with the opacity limit in paragraph (c)(1) of this section, may apply to the Regional Administrator for an extension of the 2-year deadline. If the Regional Administrator finds that there is no reasonably available alternative method of disposal, then a 2-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator.

(d) *What is the reference method for determining compliance with the opacity limit?*

(1) The reference method for determining compliance with the opacity limit is EPA Method 9. A complete description of this method is found in 40 CFR Part 60, Appendix A.

(2) This rule, § 49.127, does not require any person to conduct Method 9 opacity readings unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.127, must submit a plan to shut down and dismantle the woodwaste burner to the Regional Administrator within 180 days after the effective date of this rule, § 49.127. Unless an extension has been granted by the Regional Administrator, the woodwaste burner must be shut down and dismantled within 2 years after the effective date of this rule, § 49.127. The owner or operator of the woodwaste burner must notify the Regional Administrator that the woodwaste burner has been shut down and dismantled within 30 days after completion.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.127, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, opacity, owner or operator, particulate matter, permit to construct, permit to operate, PM10, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

§ 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(a) *What is the purpose of this rule?* This rule, § 49.128, limits the amount of particulate matter that can be emitted from certain wood products industry sources within the Indian reservation in order to control ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.128, applies to any person who owns or operates any of the following wood products industry sources:

(1) Veneer manufacturing operations;

(2) Plywood manufacturing operations;

(3) Particleboard manufacturing operations; and

(4) Hardboard manufacturing operations.

(c) *What are the particulate matter limits for wood products industry sources?* These particulate matter limits are in addition to, and not in lieu of, the particulate matter limits for combustion sources and process sources.

(1) *Veneer Dryers at Veneer Manufacturing Operations and Plywood Manufacturing Operations.*

(i) Particulate matter emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(ii) Particulate matter emissions from steam heated veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(iii) Particulate matter emissions from wood fired veneer dryers must not exceed a total of 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis) and 0.2 pounds per 1000 pounds of steam generated in boilers, prorated for the amount of combustion gases routed to the veneer dryer, one-hour average.

(2) *Wood Particle Dryers at Particleboard Manufacturing Operation.* Particulate matter emissions from wood particle dryers must not exceed a total of 0.4 pounds per 1000 square feet of board produced by the plant (3/4 inch basis), one-hour average.

(3) *Press/Cooling Vents at Hardboard Manufacturing Operations.* Particulate matter emissions from hardboard press/cooling vents must not exceed 0.3 pounds per 1000 square feet of hardboard produced (1/8 inch basis), one-hour average.

(4) *Tempering Ovens at Hardboard Manufacturing Operations.* A person must not operate any hardboard tempering oven unless all gases and vapors are collected and treated in a fume incinerator capable of raising the temperature of the gases and vapors to at least 1500 degrees Fahrenheit for 0.3 seconds or longer.

(d) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the particulate matter limits is EPA Method 202. A complete description of this method is found in 40 CFR Part 51, Appendix M.

(2) This rule, § 49.128, does not require any person to conduct a Method 202 source test unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.128, are defined in § 49.123 General provisions: Act, combustion source, emissions, hardboard, particleboard, particulate matter, permit to construct, permit to operate, plywood, PM10, press/cooling vent, process source, tempering oven, veneer, veneer dryer, wood, and wood-fired veneer dryer.

§ 49.129 Rule for limiting emissions of sulfur dioxide.

(a) *What is the purpose of this rule?* This rule, § 49.129, limits the amount of sulfur dioxide (SO_2) that can be emitted from certain air pollution sources within the Indian reservation in order to control ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.129, applies to any person who owns or operates an air pollution source that emits, or could emit, SO_2 to the atmosphere.

(c) *What is exempted from this rule?* This rule, § 49.129, does not apply to furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, and mobile sources.

(d) *What are the sulfur dioxide limits for sources?*

(1) Sulfur dioxide emissions from a combustion source must not exceed an average of 500 parts per million by volume, on a dry basis and corrected to seven (7) percent oxygen, during any three (3) hour period.

(2) Sulfur dioxide emissions from a process source must not exceed an average of 500 parts per million by volume, on a dry basis, during any three (3) hour period.

(e) *What are the reference methods for determining compliance?*

(1) The reference methods for determining compliance with the SO_2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each Method. A complete description of these methods are found in 40 CFR Part 60, Appendix A.

(2) An alternative reference method is a continuous emissions monitoring system (CEMS) that complies with Performance Specification 2 found in 40 CFR Part 60, Appendix B.

(3) This rule, § 49.129, does not require any person to conduct Method 6, 6A, 6B, or 6C of Appendix A of 40 CFR Part 60 source tests or to install a continuous emissions monitoring system (CEMS) unless specifically required by the Regional Administrator in a permit to construct or permit to operate.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.129, are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, continuous emissions monitoring system (CEMS), distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, open burning, permit to construct, permit to operate, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, used oil, wood, and woodwaste burner.

§ 49.130 Rule for limiting sulfur in fuels.

(a) *What is the purpose of this rule?* This rule, § 49.130, limits the amount of sulfur contained in fuels that are burned at stationary sources within the Indian reservation in order to control emissions of sulfur dioxide (SO_2) to the atmosphere and ground-level concentrations of SO_2.

(b) *Who is affected by this rule?* This rule, § 49.130, applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, or gaseous fuel within the Indian reservation.

(c) *What is exempted from this rule?* This rule, § 49.130, does not apply to fuel oils used exclusively for mobile sources, such as automotive and marine diesel fuels.

(d) *What are the sulfur limits for fuels?* A person must not sell, distribute, use, or make available for use any fuel oil, coal, solid fuel, or gaseous fuel that contains more than the following amounts of sulfur:

(1) For distillate fuel oil—0.3 percent by weight for ASTM Grade 1 fuel oil;

(2) For distillate fuel oil—0.5 percent by weight for ASTM Grade 2 fuel oil;

(3) For residual fuel oil—1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;

(4) For used oil—2.0 percent sulfur by weight;

(5) For coal—1.0 percent sulfur by weight;

(6) For solid fuels—2.0 percent sulfur by weight;

(7) For gaseous fuels—1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

(e) *What are the reference methods for determining compliance?* The reference methods for determining the amount of sulfur in a fuel are as follows:

(1) Sulfur content in fuel oil—ASTM methods D2880–98, D4294–98, and D6021–96;

(2) Sulfur content in coal—ASTM methods D3177–89(1997), D4239–00, and D2492–90(1998);

(3) Sulfur content in solid fuels—ASTM method E775–87(1996);

(4) Sulfur content in gaseous fuels—ASTM methods D1072–90(1999), D3246–96, D4084–94(1999), D5504–98, D4468–85(1995)e1, D2622–98, and D6228–98.

(f) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.130, must:

(i) For fuel oils, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel oil. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using EPA Methods 11 or 16. Complete descriptions of these Methods are found in 40 CFR Part 60, Appendix A. If only pipeline natural gas is used, then keep records showing that only pipeline quality natural gas was used.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. The owner or operator of a coal or solid fuel-fired source may apply to the Regional Administrator for a waiver of this provision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five (5) years and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.130, are defined in § 49.123 General provisions: Act, air pollutant, ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, non-road engine, non-road vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, standard conditions, stationary source, and used oil.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this rule?* This rule, § 49.131, limits the types of materials that can be open burned within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.131, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.131:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite;

(5) With permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service shall ensure that the structure does not contain any asbestos or asbestos containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(6) With permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe;

(7) Open burning for the disposal of diseased animals or infested material by order of a public health official.

(d) *What are the requirements for open burning?*

(1) A person must not open burn, or allow the open burning of, the following materials:

(i) Garbage;

(ii) Dead animals or parts of dead animals;

(iii) Junked motor vehicles or any materials resulting from a salvage operation;

(iv) Tires or rubber materials or products;

(v) Plastics;

(vi) Asphalt or composition roofing, or any other asphaltic material or product;

(vii) Tar, tarpaper, petroleum products, or paints;

(viii) Paper or cardboard other than what is necessary to start a fire;

(ix) Lumber or timbers treated with preservatives;

(x) Construction debris or demolition waste;

(xi) Pesticides, herbicides, fertilizers, or other chemicals;

(xii) Insulated wire;

(xiii) Batteries;

(xiv) Light bulbs;

(xv) Materials containing mercury (thermometers for example);

(xvi) Asbestos or materials containing asbestos;

(xvii) Pathogenic wastes;

(xviii) Hazardous wastes; or

(xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard and will continue to exceed that level for at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the National Weather Service issues an air stagnation advisory, or the Regional Administrator declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to § 49.137 Air pollution episodes.

(4) Nothing in this rule, § 49.131, exempts or excuses any person from

complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.131, must conduct open burning as follows:

(i) Prohibited materials must not be open burned;

(ii) All materials to be open burned must be kept as dry as possible through the use of a cover or dry storage;

(iii) Before igniting a burn, noncombustibles must be separated from the materials to be open burned to the greatest extent practicable;

(iv) Natural or artificially induced draft must be present;

(v) To the greatest extent practicable, materials to be open burned must be separated from the grass or peat layer; and

(vi) A fire must not be allowed to smolder.

(2) A person must not initiate any open burning subject to this rule when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued by the National Weather Service; or

(iii) An air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Any person conducting open burning subject to this rule, § 49.131, when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.131, are defined in § 49.123 General provisions: Air pollutant, ambient air, burn barrel, combustible household wastes, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.132 Rule for general open burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.132, establishes a permitting program for open burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.132, applies to any person who conducts open burning.

(c) *What is exempted from this rule?* The following open fires are exempted from this rule, § 49.132:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry or silvicultural burning;

(5) Agricultural burning; and

(6) Burn barrels located at single family residences or residential buildings with four or fewer dwelling units that are only used to dispose of combustible household wastes generated onsite.

(d) *What are the requirements for open burning?*

(1) A person must apply for and obtain a permit for the open burn, have the permit available on site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) A person must comply with the § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.132, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.132, must submit an application to the Regional Administrator for each open burn. An application must be submitted in writing at least one working day, and no earlier than 5 working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over that burning will be conducted.

(v) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water.

(vi) The requested date (or dates if the duration of the burn is more than one day) that the proposed open burning would be conducted.

(vii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed open burning is consistent with this rule (§ 49.132) and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this rule (§ 49.132), § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), and to protect the public health and welfare.

(3) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.

(4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the opening burning permit programs of surrounding jurisdictions.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.132, are defined in § 49.123 General provisions: Agricultural burning, air pollutant, ambient air, burn barrel, combustible household wastes, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.133 Rule for agricultural burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.133, establishes a permitting program for agricultural burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.133, applies to any person who conducts agricultural burning.

(c) *What are the requirements for agricultural burning?*

(1) A person must apply for and obtain a permit for the agricultural burn, have the permit available onsite during the agricultural burn, and conduct the

agricultural burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.133, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule, § 49.133, must submit an application to the Regional Administrator for each proposed agricultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed agricultural burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed agricultural burning.

(iii) A plot plan showing the location of the proposed agricultural burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of agricultural wastes proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile or stack burn, open field or broadcast burn, windrow burn, mobile field sanitizer, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and plowed firebreaks.

(vii) The requested date(s) that the proposed agricultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed agricultural burning is consistent with this rule, § 49.133, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the agricultural burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed agricultural burning can be conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the open burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.133, are defined in § 49.123 General provisions: Agricultural burning or agricultural burn, air pollutant, ambient air, emission, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.134 Rule for forestry burning permits.

(a) *What is the purpose of this rule?* This rule, § 49.134, establishes a permitting program for forestry burning within the Indian reservation in order to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of PM10.

(b) *Who is affected by this rule?* This rule, § 49.134, applies to any person who conducts forestry burning.

(c) *What are the requirements for forestry burning?*

(1) A person must apply for and obtain a permit for the forestry burn, have the permit available onsite during the forestry burn, and conduct the forestry burning in accordance with the terms and conditions of the permit.

(2) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(3) Nothing in this rule, § 49.134, exempts or excuses any person from complying with applicable laws and ordinances of other governmental jurisdictions responsible for fire control.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this rule must submit an application to the Regional Administrator for each forestry burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed forestry burning will occur. If there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed forestry burning.

(iii) A plot plan showing the location of the proposed forestry burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of forestry residues proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile burn, broadcast burn, windrow burn, understory burn, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and firebreaks.

(vii) The requested date(s) that the proposed forestry burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed forestry burning is consistent with this rule, § 49.134, and § 49.131 General rule for open burning (or the EPA-approved Tribal open burning rule), the Regional Administrator may issue a preliminary burn permit.

(3) On the morning of the day that the forestry burning is to be conducted (or on Friday morning if the burn is to be conducted on a weekend, or on the morning of the last workday before a holiday), the person responsible for the burning must contact the Regional Administrator to receive final approval for the burn. Final approval can be obtained either verbally or in writing and will authorize burning to be conducted in accordance with the preliminary burn permit.

(4) When reviewing an application, the Regional Administrator shall take into consideration the size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed forestry burning can be

conducted without causing an adverse impact on air quality, final approval may be granted.

(5) The Regional Administrator, to the extent practical, will consult with and coordinate final approvals with the opening burning permit programs of surrounding jurisdictions.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.134, are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, Regional Administrator, stack, and uncombined water.

§ 49.135 Rule for emissions detrimental to human health and welfare.

(a) *What is the purpose of this rule?* This rule, § 49.135, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to human health and welfare.

(b) *Who is affected by this rule?* This rule, § 49.135, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is, or would likely be, injurious to human health and welfare.

(2) If the Regional Administrator makes either of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.135, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.135, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.135, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.135, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

Tribal Alternative Rule

§ 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(a) *What is the purpose of this rule?* This rule, § 49.136, is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to persons, property, or cultural or traditional resources.

(b) *Who is affected by this rule?* This rule, § 49.136, applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard;

(ii) Is, or would likely be, injurious to human health and welfare, animal or plant life, or property;

(iii) Unreasonably interferes with the enjoyment of life or property; or

(iv) Is, or would likely be, damaging to unique Tribal cultural or traditional resources.

(2) If the Regional Administrator makes any of the above determinations, then the Regional Administrator may require the owner or operator of the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this rule, § 49.136, affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require the owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this rule, § 49.136, shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this rule need to do?* A person subject to this rule, § 49.136, must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.136, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, and stationary source.

§ 49.137 Rule for air pollution episodes.

(a) *What is the purpose of this rule?* This rule, § 49.137, establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This rule is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this rule?* This rule, § 49.137, applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this rule?*

(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency shall exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is attaining, or has attained, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory shall be declared whenever the National Weather Service issues an atmospheric stagnation advisory.

(ii) *Air pollution alert.* An air pollution alert shall be declared when any one of the following levels is

reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O_3)—400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O_3)—800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency shall be declared when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10)—500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO)—46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2)—2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O_3)—1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2)—3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency shall remain in effect until the criteria for that level is no longer met. At such time, the Regional Administrator will make a new determination and shall make an appropriate declaration of the new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator shall request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory or air pollution alert sources of air pollutants shall be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

(4) *Mandatory curtailment of emissions by order of the Regional Administrator.*

(i) Open burning must cease in accordance with the requirements of § 49.131 General rule for open burning.

(ii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.137, are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, fuel, motor vehicle, open burning, and Regional Administrator.

§ 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(a) *What is the purpose of this rule?* This rule, § 49.138, allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this rule?* This rule, § 49.138, applies to any person who owns or operates an air pollution source except those exempted below.

(c) *What is exempted from this rule?* This rule, § 49.138, does not apply to the following air pollution sources:

(1) Mobile sources;

(2) Single family residences, and residential buildings with four or fewer dwelling units;

(3) Air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the Act and do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(4) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(6) Cooking of food, except for retail and wholesale businesses that both cook and sell cooked food (restaurants, for example);

(7) Consumer use of office equipment and products;

(8) Janitorial services and consumer use of janitorial products;

(9) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment, such as automobile repair shops or appliance repair shops;

(10) Agricultural activities and forestry activities, including agricultural burning and forestry burning; and

(11) Open burning.

(d) *What are the requirements of this rule?* Any person who owns or operates an air pollution source subject to this rule must register the source with the Regional Administrator as specified below.

(e) *Are there additional requirements that must be met?* A person subject to this rule, § 49.138, must register an air pollution source as follows:

(1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this rule must register the air pollution source with the Regional Administrator by no later than one year after the effective date of this rule. The owner or operator of a new air pollution source must register with the Regional Administrator within 90 days after beginning operation. Submitting an initial registration does not relieve the owner

or operator from the requirement to obtain a permit to construct if the new air pollution source is subject to those rules.

(2) *Annual re-registration.* After initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year. The re-registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the Regional Administrator.

(3) *Information to include in initial registration and annual re-registration (all that are applicable).*

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes and a related flow chart.

(vii) Identification of emission units and air pollutant generating activities.

(viii) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance and direction of the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis.

(x) Type and quantity of raw materials used on a daily and annual basis.

(xi) Estimates of the total actual emissions for the air pollution source of the following air pollutants: particulate matter emissions, PM10 emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds. Include all of the calculations for the estimates.

(xii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(xiii) Any other information specifically requested by the Regional Administrator.

(4) *Procedure for estimating emissions.* The initial registration and annual re-registration must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(5) *Report of relocation.* The owner or operator of an air pollution source must report any relocation of the source to the Regional Administrator no later than 30 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator from the requirement to obtain a permit to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(6) *Report of change of ownership.* The owner or operator of an air pollution source must report any change of ownership to the Regional Administrator within 90 days after the change in ownership is effective.

(7) *Report of closure.* The owner or operator of an air pollution source must submit a report of closure to the Regional Administrator within 90 days after the cessation of operations.

(8) *Certification of truth and accuracy.* All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.138, are defined in § 49.123 General provisions: Act, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, fuel, marine vessel, mobile source, motor vehicle, new air pollution source, non-road engine, non-road vehicle, open burning, owner or operator, particulate matter, permit to construct, PM10, rated capacity, Regional Administrator, stack, stationary source, and uncombined water.

§ 49.139 Rule for non-Title V operating permits.

(a) *What is the purpose of this rule?* This rule, § 49.139, establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this rule?*

(1) This rule, § 49.139, applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR Part 71, or a Tribal operating permit program approved pursuant to 40 CFR Part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1).

(c) *What are the procedures for obtaining an owner-requested operating permit?*

(1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit shall submit an application to the Regional Administrator requesting such limitation. The application must contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator shall determine if it contains the information specified in paragraph (d) of this section and if so, shall deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it shall be returned to the owner or operator along

with a description of the necessary information that must be submitted in order for the application to be deemed complete.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the proposed limitations and their effect on the actual emissions and/or potential to emit of the air pollution source.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and shall provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?*

(1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this rule.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit. Include all of the calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation. Include all of the calculations for the estimates.

(vii) Any other information specifically requested by the Regional Administrator.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?*

(1) Whenever the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source shall be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide whatever information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this rule, § 49.139.

(3) The Regional Administrator shall prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator shall provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and shall

provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator shall provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice shall be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices shall also be made in the Tribal newspaper.

(iii) Copies of the notice shall be provided to the owner or operator of the air pollution source, the Tribal governing body, and the State, local, and Tribal air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments shall be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator shall review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include the responses to all comments received during the public comment period.

(7) The final permit to operate and final technical support document shall be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document shall be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate shall be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this rule.* The following terms, that are used in this rule, § 49.139, are defined in § 49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.200 [Reserved]

3. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9861 through 49.9870 to read as follows:

Subpart M—Implementation Plans for Tribes—Region X

Implementation Plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon

§ 49.9861 Identification of plan.

This section and §§ 49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.

§ 49.9862 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Burns Paiute Indian Colony.

§ 49.9863 Legal authority. [Reserved]

§ 49.9864 Source surveillance. [Reserved]

§ 49.9865 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Burns Paiute Indian Colony is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9866 Contents of implementation plan.

The implementation plan for the Reservation of the Burns Paiute Indian Colony consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9867 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9868 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9869 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9870 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Burns Paiute Indian Colony:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9871–49.9890 [Reserved]

4. Subpart M of Part 49 is amended by adding an undesignated center heading

and §§ 49.9891 through 49.9900 to read as follows:

Implementation Plan for the Confederated Tribes of the Chehalis Reservation, Washington

§ 49.9891 Identification of plan.

This section and §§ 49.9892 through 49.9920 contain the implementation plan for the Confederated Tribes of the Chehalis Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Chehalis Reservation.

§ 49.9892 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Chehalis Reservation.

§ 49.9893 Legal authority. [Reserved]

§ 49.9894 Source surveillance. [Reserved]

§ 49.9895 Classification of regions for episode plans.

The air quality control region which encompasses the Chehalis Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.9896 Contents of implementation plan.

The implementation plan for the Chehalis Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9897 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9898 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9899 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9900 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Chehalis Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9901–49.9920 [Reserved]

5. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9921 through 49.9930 to read as follows:

Implementation Plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho

§ 49.9921 Identification of plan.

This section and §§ 49.9922 through 49.9950 contain the implementation plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Coeur D'Alene Reservation.

§ 49.9922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Coeur D'Alene Reservation.

§ 49.9923 Legal authority. [Reserved]

§ 49.9924 Source surveillance. [Reserved]

§ 49.9925 Classification of regions for episode plans.

The air quality control region which encompasses the Coeur D'Alene Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.9926 Contents of implementation plan.

The implementation plan for the Coeur D'Alene Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9930 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Coeur D'Alene Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9931–49.9950 [Reserved]

6. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9951 through 49.9960 to read as follows:

Implementation Plan for the Confederated Tribes of the Colville Reservation, Washington

§ 49.9951 Identification of plan.

This section and §§ 49.9952 through 49.9980 contain the implementation plan for the Confederated Tribes of the Colville Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Colville Reservation.

§ 49.9952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Colville Reservation.

§ 49.9953 Legal authority. [Reserved]

§ 49.9954 Source surveillance. [Reserved]

§ 49.9955 Classification of regions for episode plans.

The air quality control region which encompasses the Colville Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9956 Contents of implementation plan.

The implementation plan for the Colville Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to human health and welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§ 49.9957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Colville Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to human health and welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9961–49.9980 [Reserved]

7. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9981 through 49.9990 to read as follows:

Implementation Plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon

§ 49.9981 Identification of plan.

This section and §§ 49.9982 through 49.10010 contain the implementation plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9983 Legal authority. [Reserved]

§ 49.9984 Source surveillance. [Reserved]

§ 49.9985 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9986 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9991–49.10010 [Reserved]

8. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10011 through 49.10020 to read as follows:

Implementation Plan for the Coquille Tribe of Oregon

§ 49.10011 Identification of plan.

This section and §§ 49.10012 through 49.10040 contain the implementation plan for the Coquille Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Coquille Tribe.

§ 49.10012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Coquille Tribe.

§ 49.10013 Legal authority. [Reserved]

§ 49.10014 Source surveillance. [Reserved]

§ 49.10015 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Coquille Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10016 Contents of implementation plan.

The implementation plan for the Reservation of the Coquille Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Coquille Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10021–49.10040 [Reserved]

9. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10041 through 49.10050 to read as follows:

Implementation Plan for the Cow Creek Band of Umpqua Indians of Oregon

§ 49.10041 Identification of plan.

This section and §§ 49.10042 through 49.10100 contain the implementation

plan for the Cow Creek Band of Umpqua Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10043 Legal authority. [Reserved]

§ 49.10044 Source surveillance. [Reserved]

§ 49.10045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Cow Creek Band of Umpqua Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10046 Contents of implementation plan.

The implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10051–49.10100 [Reserved]

10. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10101 through 49.10110 to end as follows:

Implementation Plan for the Confederated Tribes of the Grand Ronde Community of Oregon

§ 49.10101 Identification of plan.

This section and §§ 49.10102 through 49.10130 contain the implementation plan for the Confederated Tribes of the Grand Ronde Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10103 Legal authority.[Reserved]

§ 49.10104 Source surveillance. [Reserved]

§ 49.10105 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Grand Ronde Community is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10106 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10111–49.10130 [Reserved]

11. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10131 through 49.10140 to read as follows:

Implementation Plan for the Hoh Indian Tribe of the Hoh Indian Reservation, Washington

§ 49.10131 Identification of plan.

This section and §§ 49.10132 through 49.10160 contain the implementation plan for the Hoh Indian Tribe of the Hoh Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Hoh Indian Reservation.

§ 49.10132 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Hoh Indian Reservation.

§ 49.10133 Legal authority. [Reserved]

§ 49.10134 Source surveillance. [Reserved]

§ 49.10135 Classification of regions for episode plans.

The air quality control region which encompasses the Hoh Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10136 Contents of implementation plan.

The implementation plan for the Hoh Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10137 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10138 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10139 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10140 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Hoh Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10141–49.10160 [Reserved]

12. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10161 through 49.10170 to read as follows:

Implementation Plan for the Jamestown S'Klallam Tribe of Washington

§ 49.10161 Identification of plan.

This section and §§ 49.10162 through 49.10190 contain the implementation plan for the Jamestown S'Klallam Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10162 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10163 Legal authority. [Reserved]

§ 49.10164 Source surveillance. [Reserved]

§ 49.10165 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Jamestown S'Klallam Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10166 Contents of implementation plan.

The implementation plan for the Reservation of the Jamestown S'Klallam Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10167 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10168 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10169 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10170 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Jamestown S'Klallam Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10171–49.10190 [Reserved]

13. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10191 through 49.10200 to read as follows:

Implementation Plan for the Kalispel Indian Community of the Kalispel Reservation, Washington

§ 49.10191 Identification of plan.

This section and §§ 49.1019192 through 49.10220 contain the implementation plan for the Kalispel Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Kalispel Reservation.

§ 49.10192 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Kalispel Reservation.

§ 49.10193 Legal authority. [Reserved]

§ 49.10194 Source surveillance. [Reserved]

§ 49.10195 Classification of regions for episode plans.

The air quality control region which encompasses the Kalispel Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10196 Contents of implementation plan.

The implementation plan for the Kalispel Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10197 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10198 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10199 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10200 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Kalispel Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10201–49.10220 [Reserved]

14. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10221 through 49.10230 to read as follows:

Implementation Plan for the Klamath Indian Tribe of Oregon

§ 49.10221 Identification of plan.

This section and §§ 49.10222 through 49.10250 contain the implementation plan for the Klamath Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Klamath Indian Tribe.

§ 49.10222 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Klamath Indian Tribe.

§ 49.10223 Legal authority. [Reserved]

§ 49.10224 Source surveillance. [Reserved]

§ 49.10225 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Klamath Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10226 Contents of implementation plan.

The implementation plan for the Reservation of the Klamath Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10227 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10228 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10229 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10230 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Klamath Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10231–49.10250 [Reserved]

15. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10251 through 49.10260 to read as follows:

Implementation Plan for the Kootenai Tribe of Idaho

§ 49.10251 Identification of plan.

This section and §§ 49.10252 through 49.10280 contain the implementation plan for the Kootenai Tribe of Idaho. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Kootenai Tribe of Idaho.

§ 49.10252 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Kootenai Tribe of Idaho.

§ 49.10253 Legal authority. [Reserved]

§ 49.10254 Source surveillance. [Reserved]

§ 49.10255 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Kootenai Tribe of Idaho is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10256 Contents of implementation plan.

The implementation plan for the Reservation of the Kootenai Tribe of Idaho consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10257 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10258 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10259 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10260 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Reservation of the Kootenai Tribe of Idaho:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.103261–49.10280 [Reserved]

16. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10281 through 49.10290 to read as follows:

Implementation Plan for the Lower Elwha Tribal Community of the Lower Elwha Reservation Washington

§ 49.10281 Identification of plan.

This section and §§ 49.10282 through 49.10310 contain the implementation plan for the Lower Elwha Tribal Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lower Elwha Reservation.

§ 49.10282 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lower Elwha Reservation.

§ 49.10283 Legal authority. [Reserved]

§ 49.10284 Source surveillance. [Reserved]

§ 49.10285 Classification of regions for episode plans.

The air quality control region which encompasses the Lower Elwha Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10286 Contents of implementation plan.

The implementation plan for the Lower Elwha Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10287 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10288 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10289 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10290 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lower Elwha Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10291–49.10310 [Reserved]

17. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10311 through 49.10320 to read as follows:

Implementation Plan for the Lummi Tribe of the Lummi Reservation, Washington

§ 49.10311 Identification of plan.

This section and §§ 49.10312 through 49.10340 contain the implementation plan for the Lummi Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lummi Reservation.

§ 49.10312 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lummi Reservation.

§ 49.10313 Legal authority. [Reserved]

§ 49.10314 Source surveillance. [Reserved]

§ 49.10315 Classification of regions for episode plans.

The air quality control region which encompasses the Lummi Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10316 Contents of implementation plan.

The implementation plan for the Lummi Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10317 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10318 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10319 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10320 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lummi Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10321–49.10340 [Reserved]

18. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10341 through 49.10350 to read as follows:

Implementation Plan for the Makah Indian Tribe of the Makah Indian Reservation, Washington

§ 49.10341 Identification of plan.

This section and §§ 49.10342 through 49.10370 contain the implementation plan for the Makah Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Makah Indian Reservation.

§ 49.10342 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Makah Indian Reservation.

§ 49.10343 Legal authority. [Reserved]

§ 49.10344 Source surveillance. [Reserved]

§ 49.10345 Classification of regions for episode plans.

The air quality control region which encompasses the Makah Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10346 Contents of implementation plan.

The implementation plan for the Makah Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10347 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10348 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10349 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10350 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Makah Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10351–49.10370 [Reserved]

19. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10371 through 49.10380 as follows:

Implementation Plan for the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington

§ 49.10371 Identification of plan.

This section and §§ 49.10372 through 49.10400 contain the implementation plan for the Muckleshoot Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Muckleshoot Reservation.

§ 49.10372 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Muckleshoot Reservation.

§ 49.10373 Legal authority. [Reserved]

§ 49.10374 Source surveillance. [Reserved]

§ 49.10375 Classification of regions for episode plans.

The air quality control region which encompasses the Muckleshoot Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10376 Contents of implementation plan.

The implementation plan for the Muckleshoot Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10377 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10378 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10379 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10380 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Muckleshoot Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10381–49.10400 [Reserved]

20. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10401 through 49.10410 as follows:

Implementation Plan for the Nez Perce Tribe of Idaho

§ 49.10401 Identification of plan.

This section and §§ 49.10402 through 49.10430 contain the implementation plan for the Nez Perce Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nez Perce Reservation.

§ 49.10402 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nez Perce Reservation.

§ 49.10403 Legal authority. [Reserved]

§ 49.10404 Source surveillance. [Reserved]

§ 49.10405 Classification of regions for episode plans.

The air quality control region which encompasses the Nez Perce Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10406 Contents of implementation plan.

The implementation plan for the Nez Perce Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10407 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10408 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10409 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nez Perce Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.127 Rule for woodwaste burners.
(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.
(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(h) Section 49.130 Rule for limiting sulfur in fuels.
(i) Section 49.131 General rule for open burning.
(j) Section 49.132 Rule for open burning permits.
(k) Section 49.133 Rule for agricultural burning permits.
(l) Section 49.134 Rule for forestry burning permits.
(m) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.
(n) Section 49.137 Rule for air pollution episodes.
(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(p) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10411–49.10430 [Reserved]

21. Subpart M of Part 49 is amended by adding an undesignated center

heading and §§ 49.10431 through 49.10440 to read as follows:

Implementation Plan for the Nisqually Indian Tribe of the Nisqually Reservation, Washington

§ 49.10431 Identification of plan.

This section and §§ 49.10432 through 49.10460 contain the implementation plan for the Nisqually Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nisqually Reservation.

§ 49.10432 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nisqually Reservation.

§ 49.10433 Legal authority. [Reserved]

§ 49.10434 Source surveillance. [Reserved]

§ 49.10435 Classification of regions for episode plans.

The air quality control region which encompasses the Nisqually Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10436 Contents of implementation plan.

The implementation plan for the Nisqually Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10437 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10438 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10439 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10440 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nisqually Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10441–49.10460 [Reserved]

22. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10461 through 49.10470 to read as follows:

Implementation Plan for the Nooksack Indian Tribe of Washington

§ 49.10461 Identification of plan.

This section and §§ 49.10462 through 49.10490 contain the implementation plan for the Nooksack Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Nooksack Indian Tribe.

§ 49.10462 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Nooksack Indian Tribe.

§ 49.10463 Legal authority. [Reserved]

§ 49.10464. Source surveillance. [Reserved]

§ 49.10465 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Nooksack Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10466 Contents of implementation plan.

The implementation plan for the Reservation of the Nooksack Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10467 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10468 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10469 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10470 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the

implementation plan for the Reservation of the Nooksack Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10471–49.10490 [Reserved]

23. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10491 through 49.10500 to read as follows:

Implementation Plan for the Port Gamble Indian Community of the Port Gamble Reservation, Washington

§ 49.10491 Identification of plan.

This section and §§ 49.10492 through 49.10520 contain the implementation plan for the Port Gamble Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Gamble Reservation.

§ 49.10492 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Gamble Reservation.

§ 49.10493 Legal authority. [Reserved]

§ 49.10494 Source surveillance. [Reserved]

§ 49.10495 Classification of regions for episode plans.

The air quality control region which encompasses the Port Gamble Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10496 Contents of implementation plan.

The implementation plan for the Port Gamble Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10497 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10498 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10499 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10500 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Gamble Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10501–49.10520 [Reserved]

24. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10521 through 49.10530 as follows:

Implementation Plan for the Puyallup Tribe of the Puyallup Reservation, Washington

§ 49.10521 Identification of plan.

This section and §§ 49.10522 through 49.10550 contain the implementation plan for the Puyallup Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply to lands in trust that are within the 1873 survey area of the Puyallup Tribe (Puyallup Reservation), consistent with the Puyallup Tribe of Indians Land Claims Settlement Act, ratified by Congress in 1989 (25 U.S.C. 1773).

§ 49.10522 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the lands in trust that are within the Puyallup Reservation.

§ 49.10523 Legal authority. [Reserved]

§ 49.10524 Source surveillance. [Reserved]

§ 49.10525 Classification of regions for episode plans.

The air quality control region which encompasses the lands in trust that are within the Puyallup Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10526. Contents of implementation plan.

The implementation plan for the lands in trust that are within the Puyallup Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10527 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10528 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10529 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10530 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the lands in trust that are within the Puyallup Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10531–49.10550 [Reserved]

25. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10551 through 49.10560 to read as follows:

Implementation Plan for the Quileute Tribe of the Quileute Reservation, Washington

§ 49.10551 Identification of plan.

This section and §§ 49.10552 through 49.10580 contain the implementation plan for the Quileute Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quileute Reservation.

§ 49.10552 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quileute Reservation.

§ 49.10553 Legal authority. [Reserved]

§ 49.10554 Source surveillance. [Reserved]

§ 49.10555 Classification of regions for episode plans.

The air quality control region which encompasses the Quileute Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10556 Contents of implementation plan.

The implementation plan for the Quileute Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10557 EPA-approved tribal rules and plans. [Reserved]

§ 49.10558 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10559 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10560 Federally-promulgated regulations and federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quileute Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10561–49.10580 [Reserved]

26. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10581 through 49.10590 to read as follows:

Implementation Plan for the Quinault Tribe of the Quinault Reservation, Washington

§ 49.10581 Identification of plan.

This section and §§ 49.10582 through 49.10640 contain the implementation plan for the Quinault Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quinault Reservation.

§ 49.10582 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quinault Reservation.

§ 49.10583 Legal authority. [Reserved]

§ 49.10584 Source surveillance. [Reserved]

§ 49.10585 Classification of regions for episode plans.

The air quality control region which encompasses the Quinault Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10586 Contents of implementation plan.

The implementation plan for the Quinault Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10587 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10588 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10589 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10590 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quinault Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10591–49.10640 [Reserved]

27. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10641 through 49.10650 to read as follows:

Implementation Plan for the Sauk-Suiattle Indian Tribe of Washington

§ 49.10641 Identification of plan.

This section and §§ 49.10642 through 49.10670 contain the implementation plan for the Sauk-Suiattle Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Sauk-Suiattle Tribe.

§ 49.10642 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Sauk-Suiattle Tribe.

§ 49.10643 Legal authority. [Reserved]

§ 49.10644 Source surveillance. [Reserved]

§ 49.10645 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Sauk-Suiattle Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10646 Contents of implementation plan.

The implementation plan for the Reservation of the Sauk-Suiattle Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10647 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10648 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10649 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10650 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Sauk-Suiattle Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10651–49.10670 [Reserved]

28. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10671 through 49.10680 to read as follows:

Implementation Plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

§ 49.10671 Identification of plan.

This section and §§ 49.10672 through 49.10700 contain the implementation plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Shoalwater Bay Indian Reservation.

§ 49.10672 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoalwater Bay Indian Reservation.

§ 49.10673 Legal authority. [Reserved]

§ 49.10674 Source surveillance. [Reserved]

§ 49.10675 Classification of regions for episode plans.

The air quality control region which encompasses the Shoalwater Bay Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10676 Contents of implementation plan.

The implementation plan for the Shoalwater Bay Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10677 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10678 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10679 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10680 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoalwater Bay Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10681–49.10700 [Reserved]

29. Subpart M of Part 49 is amended by revising the undesignated center heading and §§ 49.10701 and 49.10702 to read as follows:

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho

§ 49.10701 Identification of plan.

This section and §§ 49.10702 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Fort Hall Indian Reservation.

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Fort Hall Indian Reservation.

30. Subpart M of Part 49 is amended by revising §§ 49.10704 through 49.10706 to read as follows:

§ 49.10704 Source surveillance. [Reserved]

§ 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.10706 Contents of implementation plan.

The implementation plan for the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

31. Subpart M of Part 49 is amended by revising §§ 49.10709 through 49.10710 to read as follows:

§ 49.10709 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10710 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Fort Hall Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

32. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10731 through 49.10740 to read as follows:

Implementation Plan for the Confederated Tribes of the Siletz Reservation, Oregon

§ 49.10731 Identification of plan.

This section and §§ 49.10732 through 49.10760 contain the implementation plan for the Confederated Tribes of the Siletz Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Siletz Reservation.

§ 49.10732 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Siletz Reservation.

§ 49.10733 Legal authority. [Reserved]

§ 49.10734 Source surveillance. [Reserved]

§ 49.10735 Classification of regions for episode plans.

The air quality control region which encompasses the Siletz Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	III
Sulfur oxides	III

§ 49.10736 Contents of implementation plan.

The implementation plan for the Siletz Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10737 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10738 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10739 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10740 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Siletz Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permit.

§§ 49.10741–49.10760 [Reserved]

33. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10761 through 49.10770 to read as follows:

Implementation Plan for the Skokomish Indian Tribe of the Skokomish Reservation, Washington

§ 49.10761 Identification of plan.

This section and §§ 49.10762 through 49.10820 contain the implementation plan for the Skokomish Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Skokomish Reservation.

§ 49.10762 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Skokomish Reservation.

§ 49.10763 Legal authority. [Reserved]

§ 49.10764 Source surveillance. [Reserved]

§ 49.10765 Classification of regions for episode plans.

The air quality control region which encompasses the Skokomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10766 Contents of implementation plan.

The implementation plan for the Skokomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10767 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10768 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10769 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10770 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Skokomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10771–49.10820 [Reserved]

34. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10821 through 49.10830 to read as follows:

Implementation Plan for the Spokane Tribe of the Spokane Reservation, Washington

§ 49.10821 Identification of plan.

This section and §§ 49.10822 through 49.10850 contain the implementation plan for the Spokane Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Spokane Reservation.

§ 49.10822 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Spokane Reservation.

§ 49.10823 Legal authority. [Reserved]

§ 49.10824 Source surveillance. [Reserved]

§ 49.10825 Classification of regions for episode plans.

The air quality control region which encompasses the Spokane Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10826 Contents of implementation plan.

The implementation plan for the Spokane Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10827 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10828 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10829 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10830 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Spokane Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10831–49.10850 [Reserved]

35. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10851 through 49.10860 to read as follows:

Implementation Plan for the Squaxin Island Tribe of the Squaxin Island Reservation, Washington

§ 49.10851 Identification of plan.

This section and §§ 49.10852 through 49.10880 contain the implementation

plan for the Squaxin Island Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Squaxin Island Reservation.

§ 49.10852 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Squaxin Island Reservation.

§ 49.10853 Legal authority. [Reserved]

§ 49.10854 Source surveillance. [Reserved]

§ 49.10855 Classification of regions for episode plans.

The air quality control region which encompasses the Squaxin Island Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10856 Contents of implementation plan.

The implementation plan for the Squaxin Island Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10857 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10858 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10859 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10860 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Squaxin Island Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10861–49.10880 [Reserved]

36. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10881 through 49.10890 to read as follows:

Implementation Plan for the Stillaguamish Tribe of Washington

§ 49.10881 Identification of plan.

This section and §§ 49.10882 through 49.10920 contain the implementation plan for the Stillaguamish Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Stillaguamish Tribe.

§ 49.10882 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Stillaguamish Tribe.

§ 49.10883 Legal authority. [Reserved]

§ 49.10884 Source surveillance. [Reserved]

§ 49.10885 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Stillaguamish Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10886 Contents of implementation plan.

The implementation plan for the Reservation of the Stillaguamish Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10887 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10888 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10889 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10890 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Stillaguamish Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10891–49.10920 [Reserved]

37. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10921 through 49.10930 to read as follows:

Implementation Plan for the Suquamish Indian Tribe of the Port Madison Reservation, Washington

§ 49.10921 Identification of plan.

This section and §§ 49.10922 through 49.10950 contain the implementation plan for the Suquamish Indian Tribe of the Port Madison Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Madison Reservation.

§ 49.10922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Madison Reservation.

§ 49.10923 Legal authority. [Reserved]

§ 49.10924 Source surveillance. [Reserved]

§ 49.10925 Classification of regions for episode plans.

The air quality control region which encompasses the Port Madison Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10926 Contents of implementation plan.

The implementation plan for the Port Madison Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Madison Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10931–49.10950 [Reserved]

38. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10951 through 49.10960 to read as follows:

Implementation Plan for the Swinomish Indians of the Swinomish Reservation, Washington

§ 49.10951 Identification of plan.

This section and §§ 49.10952 through 49.10980 contain the implementation plan for the Swinomish Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Swinomish Reservation.

§ 49.10952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Swinomish Reservation.

§ 49.10953 Legal authority. [Reserved]

§ 49.10954 Source surveillance. [Reserved]

§ 49.10955 Classification of regions for episode plans.

The air quality control region which encompasses the Swinomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10956 Contents of implementation plan.

The implementation plan for the Swinomish Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to human health and welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Swinomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10961–49.10980 [Reserved]

39. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10981 through 49.10990 to read as follows:

Implementation Plan for the Tulalip Tribes of the Tulalip Reservation, Washington

§ 49.10981 Identification of plan.

This section and §§ 49.10982 through 49.11010 contain the implementation plan for the Tulalip Tribes. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Tulalip Reservation.

§ 49.10982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Tulalip Reservation.

§ 49.10983 Legal authority. [Reserved]

§ 49.10984 Source surveillance. [Reserved]

§ 49.10985 Classification of regions for episode plans.

The air quality control region which encompasses the Tulalip Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10986 Contents of implementation plan.

The implementation plan for the Tulalip Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Tulalip Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10991–49.11010 [Reserved]

40. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11011 through 49.11020 to read as follows:

Implementation Plan for the Confederated Tribes of the Umatilla Reservation, Oregon

§ 49.11011 Identification of plan.

This section and §§ 49.11012 through 49.11040 contain the implementation plan for the Confederated Tribes of the Umatilla Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Umatilla Reservation.

§ 49.11012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Umatilla Reservation.

§ 49.11013 Legal authority. [Reserved]

§ 49.11014 Source surveillance. [Reserved]

§ 49.11015 Classification of regions for episode plans.

The air quality control region which encompasses the Umatilla Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11016 Contents of implementation plan.

The implementation plan for the Umatilla Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry burning permits.

(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Umatilla Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry burning permits.

(k) Section 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11021–49.11040 [Reserved]

41. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11041 through 49.11050 to read as follows:

Implementation Plan for the Upper Skagit Indian Tribe of Washington

§ 49.11041 Identification of plan.

This section and §§ 49.11042 through 49.11070 contain the implementation plan for the Upper Skagit Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Upper Skagit Indian Tribe.

§ 49.11042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Upper Skagit Indian Tribe.

§ 49.11043 Legal authority. [Reserved]

§ 49.11044 Source surveillance. [Reserved]

§ 49.11045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Upper Skagit Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.11046 Contents of implementation plan.

The implementation plan for the Reservation of the Upper Skagit Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Upper Skagit Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11051–49.11070 [Reserved]

42. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11071 through 49.11080 to read as follows:

Implementation Plan for the Confederated Tribes of the Warm Springs Reservation of Oregon

§ 49.11071 Identification of plan.

This section and §§ 49.11072 through 49.11100 contain the implementation plan for the Confederated Tribes of the Warm Springs Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Warm Springs Reservation.

§ 49.11072 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Warm Springs Reservation.

§ 49.11073 Legal authority. [Reserved]

§ 49.11074 Source surveillance. [Reserved]

§ 49.11075 Classification of regions for episode plans.

The air quality control region which encompasses the Warm Springs Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11076 Contents of implementation plan.

The implementation plan for the Warm Springs Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11077 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11078 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11079 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11080 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Warm Springs Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11081–49.11100 [Reserved]

43. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11101 through 49.11110 to read as follows:

Implementation Plan for the Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington

§ 49.11101 Identification of plan.

This section and §§ 49.11102 through 49.11130 contain the implementation plan for the Confederated Tribes and Bands of the Yakama Indian Nation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Yakama Reservation.

§ 49.11102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Yakama Reservation.

§ 49.11103 Legal authority. [Reserved]

§ 49.11104 Source surveillance. [Reserved]

§ 49.11105 Classification of regions for episode plans.

The air quality control region which encompasses the Yakama Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	IIII
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.11106 Contents of implementation plan.

The implementation plan for the Yakama Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in

accordance with the requirements of § 49.139.

§ 49.11110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Yakama Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to human health and welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11111–49.11130 [Reserved]

§§ 49.11131–49.17810 [Reserved]

44. Subpart M of Part 49 is amended by revising the ''Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections'' to read as follows:

Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

Indian tribe	Refer to the following sections in subpart M
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	§§ 49.9861 to 49.9890
Chehalis Reservation, Washington—Confederated Tribes of the	§§ 49.9891 to 49.9920
Coeur d'Alene Tribe of the Coeur D'Alene Reservation, Idaho	§§ 49.9921 to 49.9950
Colville Reservation, Washington—Confederated Tribes of the	§§ 49.9951 to 49.9980
Coos, Lower Umpqua and Siuslaw Indians of Oregon—Confederated Tribes of the	§§ 49.9981 to 49.10010
Coquille Tribe of Oregon	§§ 49.10011 to 49.10040
Cow Creek Band of Umpqua Indians of Oregon	§§ 49.10041 to 49.10100
Grand Ronde Community of Oregon—Confederated Tribes of the	§§ 49.10101 to 49.10130
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	§§ 49.10131 to 49.10160
Jamestown S'Klallam Tribe of Washington	§§ 49.10161 to 49.10190
Kalispel Indian Community of the Kalispel Reservation, Washington	§§ 49.10191 to 49.10220
Klamath Indian Tribe of Oregon	§§ 49.10221 to 49.10250
Kootenai Tribe of Idaho	§§ 49.10251 to 49.10280
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington	§§ 49.10281 to 49.10310
Lummi Tribe of the Lummi Reservation, Washington	§§ 49.10311 to 49.10340
Makah Indian Tribe of the Makah Indian Reservation, Washington	§§ 49.10341 to 49.10370
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	§§ 49.10371 to 49.10400
Nez Perce Tribe of Idaho	§§ 49.10401 to 49.10430
Nisqually Indian Tribe of the Nisqually Reservation, Washington	§§ 49.10431 to 49.10460
Nooksack Indian Tribe of Washington	§§ 49.10461 to 49.10490
Port Gamble Indian Community of the Port Gamble Reservation, Washington	§§ 49.10491 to 49.10520
Puyallup Tribe of the Puyallup Reservation, Washington	§§ 49.10521 to 49.10550
Quileute Tribe of the Quileute Reservation, Washington	§§ 49.10551 to 49.10580
Quinault Tribe of the Quinault Reservation, Washington	§§ 49.10581 to 49.10640
Sauk-Suiattle Indian Tribe of Washington	§§ 49.10641 to 49.10670
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington	§§ 49.10671 to 49.10700
Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho	§§ 49.10701 to 49.10730
Siletz Reservation, Oregon—Confederated Tribes of the	§§ 49.10731 to 49.10760
Skokomish Indian Tribe of the Skokomish Reservation, Washington	§§ 49.10761 to 49.10820
Spokane Tribe of the Spokane Reservation, Washington	§§ 49.10821 to 49.10850
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	§§ 49.10851 to 49.10880
Stillaguamish Tribe of Washington	§§ 49.10881 to 49.10920
Suquamish Indian Tribe of the Port Madison Reservation, Washington	§§ 49.10921 to 49.10950
Swinomish Indians of the Swinomish Reservation, Washington	§§ 49.10951 to 49.10980
Tulalip Tribes of the Tulalip Reservation, Washington	§§ 49.10981 to 49.11010
Umatilla Reservation, Oregon—Confederated Tribes of the	§§ 49.11011 to 49.11040
Upper Skagit Indian Tribe of Washington	§§ 49.11041 to 49.11070
Warm Springs Reservation of Oregon—Confederated Tribes of the	§§ 49.11071 to 49.11100
Yakama Indian Nation of the Yakama Reservation, Washington—Confederated Tribes and Bands of the	§§ 49.11101 to 49.11130

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Part III

Court Services and Offender Supervision Agency for the District of Columbia

28 CFR Part 802

Freedom of Information, Privacy Act and Other Disclosure of Records; Proposed Rule and Notice

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 802

[CSOSA–0003–P]

RIN 3225–AA01

Freedom of Information, Privacy Act and Other Disclosure of Records

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is proposing to adopt regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for the production of records in response to a subpoena or other legal demand for testimony. The regulations also identify Privacy Act systems of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the Agency and that adequate safeguards are in place to protect the privacy rights of individuals.

DATES: Comments due by May 14, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov).*

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is proposing to adopt regulations (28 CFR part 802) on the disclosure of records maintained by CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency''). CSOSA previously published its organizational regulations (28 CFR part 800) in the **Federal Register** on January 8, 2001 (66 FR 1259). As noted in these organizational regulations, PSA is an independent entity within CSOSA.

Summary of Regulatory Provisions

Subpart A of the proposed regulations provides a general introduction. Subpart B covers procedures for Freedom of Information Act (FOIA) requests; subpart C covers procedures for Privacy Act requests; subpart D covers disclosures in response to subpoenas or other legal demands; and subpart E covers exemptions to CSOSA and PSA Privacy Act systems of records.

Freedom of Information Act Requests

The general guidelines for disclosure (§ 802.3) under the FOIA note that a record must be in the possession and control of the agency at the time of the request to be considered subject to release under the regulations. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. Hard copy of electronic records which are subject to FOIA, but which are available to the public through an established distribution system, the **Federal Register**, or the Internet at CSOSA's web site (*www.csosa.gov*), normally do not need to be processed under the FOIA. CSOSA will process such requests under the FOIA only if the requester insists on such processing.

Definitions for certain terms used in the subpart are contained in § 802.4. The procedures for submitting and processing FOIA requests are contained in § 802.5. Section 802.6 explains how CSOSA handles requests for documents which relate to or were created by another agency.

Section 802.7 covers the denial of a request. This section also explains how the requester may appeal the denial. Section 802.8 explains how to request expedited processing. Section 802.9 covers procedures for the disclosure of business information which may have been provided to the Agency. The business submitter (any entity which provided the business information to the Agency and which has a proprietary interest in the information) will receive notice of the FOIA request and have an opportunity to object to disclosure. Section 802.10 contains the fee schedule for FOIA requests.

Privacy Act Requests

The regulations in subpart C are intended to let you know how you can determine whether CSOSA or PSA maintains records about you, how you can obtain access to your records, and how to have your records corrected or amended.

Definitions for certain terms used in the subpart are contained in § 802.12. Section 802.13 explains how to verify your identity when making a request for your own records and how to document that you have consent when you make a request for information concerning another individual. The procedures for submitting and processing requests for access to records are contained in § 802.14. Section 802.15 covers the denial of a request. Section 802.16 explains how the requester may appeal the denial. Section 802.17 explains how CSOSA or PSA handle requests for documents which relate to or were created by another agency.

Section 802.18 explains how you may request to correct or amend a record about you which the Agency maintains. Section 802.19 contains procedures for appealing a denial to correct or amend your record.

Section 802.20 contains the procedures for accounting for disclosures, and § 802.21 notes your appeal rights for a denial of a request for an accounting. Fees for Privacy Act requests are described in § 802.22. Section 802.23 explains the Agency's policy on the use and disclosure of social security numbers.

Subpoenas or Other Legal Demands for Testimony or Production or Disclosure of Records or Other Information

Subpart D contains procedures for the production of records in response to subpoenas or demands of courts or other authorities in connection with a proceeding to which the Agency is not a party. These regulations establish a systematic means by which the Agency can evaluate requests for production of official agency information. The regulations are intended to: (1) Conserve Agency employee's time for conducting official business, (2) minimize the possibility of involving the Agency in controversial issues that are not related to the mission of the Agency, (3) prevent the possibility that the public will misconstrue variances between personal opinions of Agency employees and Agency policy, (4) avoid spending the government's time and money for private purposes, (5) preserve the integrity of the administrative process, and (6) protect confidential, sensitive information and the deliberative process of the Agency.

Exemption of Record Systems

The Privacy Act permits specific systems of records to be exempt from some of its requirements. Subpart E identifies these exemptions and explains the basis for making the exemptions. CSOSA exemptions are contained in § 802.28; PSA exemptions are contained in § 802.29. The full text of CSOSA and PSA systems of records appear in a separate notice document in today's **Federal Register**.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 802

Freedom of information; Privacy; Probation and parole.

Jasper Ormond,

Interim Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 802 as set forth below.

PART 802—DISCLOSURE OF RECORDS

Subpart A—General

Sec.
802.1 Introduction.

Subpart B—Freedom of Information Act

802.2 Purpose and scope.
802.3 Guidelines for disclosure.
802.4 Definitions.
802.5 Freedom of Information Act requests.
802.6 Documents from other agencies.
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Subpart C—Privacy Act

802.11 Purpose and scope.
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802.13 Verifying your identity.
802.14 Requests for access to records.
802.15 Denial of request.
802.16 Administrative appeal.
802.17 Documents from other agencies.
802.18 Correction or amendment of record.
802.19 Appeal of denial to correct or amend.
802.20 Accounting of disclosures.
802.21 Appeals.
802.22 Fees.
802.23 Use and disclosure of social security numbers.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

802.24 Purpose and scope.
802.25 Definitions.
802.26 Receipt of demand.
802.27 Compliance/noncompliance.

Subpart E—Exemption of record systems under the Privacy Act

802.28 Exemption of the Court Services and Offender Supervision System—limited access.
802.29 Exemption of the Pretrial Services Agency System.

Authority: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

Subpart A—General

§ 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.

Subpart B—Freedom of Information Act

§ 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

§ 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available

to the public through an established distribution system or through the **Federal Register** or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

§ 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.* (1) Requests for any record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Freedom of Information Request.''

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

§ 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest

protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.* (1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Freedom of Information Act Appeal.''

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

§ 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''widespread and exceptional media interest'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked ''Expedited Processing Appeal.''

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

§ 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such

notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) All other requesters. Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.*

(1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission

and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.*

(1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.*

(1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed $250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total $10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by $0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) $7.00 per quarter hour for clerical staff;

(ii) $10.00 per quarter hour for professional staff; and

(iii) $14.00 per quarter hour for managerial personnel.

(3) *Assessment exclusions.* Only fees in excess of $10.00 will be assessed. This means that the total cost must be greater than $10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

Subpart C—Privacy Act

§ 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

§ 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger print or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full

name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C. 552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is permitted under FOIA, e.g. ''public information,'' when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the **Federal Register**.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the **Federal Register**.

§ 802.14 Requests for access to records.

(a) *Submission, processing, and release procedures.*

(1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Privacy Act Request.''

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope ''Privacy Act Request.''

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing. Every effort will be made to respond to the requester within the time limit set under the governing disclosure statute.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

§ 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with § 802.16(e); and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (a)(1) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

§ 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part;

(2) There has been an adverse determination of the requester's category as provided in § 802.9(d);

(3) A request for fee waiver or reduction has been denied; or

(4) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Privacy Act Appeal.''

(c) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

§ 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked ''Privacy Act Correction Request.'' Your request should indicate:

(a) The system of records from which the record is retrieved;

(b) The particular record which you want to correct or amend;

(c) Whether you want to add, delete or substitute information in the records; and

(d) Your reasons for believing that your record should be corrected or amended.

§ 802.19 Appeal of denial to correct or amend.

(a) Agency staff may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the **Federal Register** and exempted from the Privacy Act provisions requiring amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, ''PRIVACY APPEAL—DENIAL OF CORRECTION,'' and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

(i) That your request has been refused and the reason;

(ii) That this refusal is the Agency's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

§ 802.20 Accounting of disclosures.

(a) We will maintain an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that, we will not make an accounting for:

(1) Disclosures of public information;

(2) Disclosures made within the agency; and

(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

§ 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

§ 802.22 Fees.

The Agency shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under the Freedom of Information Act (See § 802.10).

§ 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

§ 802.25 Definitions.

Demand means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

Employee includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

Legal Proceeding includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) The agency will consider the following factors in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 et. seq.;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) Employment Profile (CSOSA–14).

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain

access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain

this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

§ 802.29 Exemption of the Pretrial Services Agency System.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)-(3), (4)(G)-(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA–1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA–2).

(iii) Interview and Treatment Files (CSOSA/PSA–3).

(iv) Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for

relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved].

[FR Doc. 02–6091 Filed 3–14–02; 8:45 am]

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Federal Register

Friday,
March 15, 2002

Part III

Court Services and Offender Supervision Agency for the District of Columbia

28 CFR Part 802

Freedom of Information, Privacy Act and Other Disclosure of Records; Proposed Rule and Notice

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 802

[CSOSA–0003–P]

RIN 3225–AA01

Freedom of Information, Privacy Act and Other Disclosure of Records

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is proposing to adopt regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for the production of records in response to a subpoena or other legal demand for testimony. The regulations also identify Privacy Act systems of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the Agency and that adequate safeguards are in place to protect the privacy rights of individuals.

DATES: Comments due by May 14, 2002.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov).*

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') is proposing to adopt regulations (28 CFR part 802) on the disclosure of records maintained by CSOSA or the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency''). CSOSA previously published its organizational regulations (28 CFR part 800) in the **Federal Register** on January 8, 2001 (66 FR 1259). As noted in these organizational regulations, PSA is an independent entity within CSOSA.

Summary of Regulatory Provisions

Subpart A of the proposed regulations provides a general introduction. Subpart B covers procedures for Freedom of Information Act (FOIA) requests; subpart C covers procedures for Privacy Act requests; subpart D covers disclosures in response to subpoenas or other legal demands; and subpart E covers exemptions to CSOSA and PSA Privacy Act systems of records.

Freedom of Information Act Requests

The general guidelines for disclosure (§ 802.3) under the FOIA note that a record must be in the possession and control of the agency at the time of the request to be considered subject to release under the regulations. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. Hard copy of electronic records which are subject to FOIA, but which are available to the public through an established distribution system, the **Federal Register**, or the Internet at CSOSA's web site (*www.csosa.gov*), normally do not need to be processed under the FOIA. CSOSA will process such requests under the FOIA only if the requester insists on such processing.

Definitions for certain terms used in the subpart are contained in § 802.4. The procedures for submitting and processing FOIA requests are contained in § 802.5. Section 802.6 explains how CSOSA handles requests for documents which relate to or were created by another agency.

Section 802.7 covers the denial of a request. This section also explains how the requester may appeal the denial. Section 802.8 explains how to request expedited processing. Section 802.9 covers procedures for the disclosure of business information which may have been provided to the Agency. The business submitter (any entity which provided the business information to the Agency and which has a proprietary interest in the information) will receive notice of the FOIA request and have an opportunity to object to disclosure. Section 802.10 contains the fee schedule for FOIA requests.

Privacy Act Requests

The regulations in subpart C are intended to let you know how you can determine whether CSOSA or PSA maintains records about you, how you can obtain access to your records, and how to have your records corrected or amended.

Definitions for certain terms used in the subpart are contained in § 802.12. Section 802.13 explains how to verify your identity when making a request for your own records and how to document that you have consent when you make a request for information concerning another individual. The procedures for submitting and processing requests for access to records are contained in § 802.14. Section 802.15 covers the denial of a request. Section 802.16 explains how the requester may appeal the denial. Section 802.17 explains how CSOSA or PSA handle requests for documents which relate to or were created by another agency.

Section 802.18 explains how you may request to correct or amend a record about you which the Agency maintains. Section 802.19 contains procedures for appealing a denial to correct or amend your record.

Section 802.20 contains the procedures for accounting for disclosures, and § 802.21 notes your appeal rights for a denial of a request for an accounting. Fees for Privacy Act requests are described in § 802.22. Section 802.23 explains the Agency's policy on the use and disclosure of social security numbers.

Subpoenas or Other Legal Demands for Testimony or Production or Disclosure of Records or Other Information

Subpart D contains procedures for the production of records in response to subpoenas or demands of courts or other authorities in connection with a proceeding to which the Agency is not a party. These regulations establish a systematic means by which the Agency can evaluate requests for production of official agency information. The regulations are intended to: (1) Conserve Agency employee's time for conducting official business, (2) minimize the possibility of involving the Agency in controversial issues that are not related to the mission of the Agency, (3) prevent the possibility that the public will misconstrue variances between personal opinions of Agency employees and Agency policy, (4) avoid spending the government's time and money for private purposes, (5) preserve the integrity of the administrative process, and (6) protect confidential, sensitive information and the deliberative process of the Agency.

Exemption of Record Systems

The Privacy Act permits specific systems of records to be exempt from some of its requirements. Subpart E identifies these exemptions and explains the basis for making the exemptions. CSOSA exemptions are contained in § 802.28; PSA exemptions are contained in § 802.29. The full text of CSOSA and PSA systems of records appear in a separate notice document in today's **Federal Register**.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 802

Freedom of information; Privacy; Probation and parole.

Jasper Ormond,

Interim Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 802 as set forth below.

PART 802—DISCLOSURE OF RECORDS

Subpart A—General

Sec.
802.1 Introduction.

Subpart B—Freedom of Information Act

802.2 Purpose and scope.
802.3 Guidelines for disclosure.
802.4 Definitions.
802.5 Freedom of Information Act requests.
802.6 Documents from other agencies.
802.7 Denial of request.
802.8 Expedited processing.
802.9 Business information.
802.10 Fee schedule.

Subpart C—Privacy Act

802.11 Purpose and scope.
802.12 Definitions.
802.13 Verifying your identity.
802.14 Requests for access to records.
802.15 Denial of request.
802.16 Administrative appeal.
802.17 Documents from other agencies.
802.18 Correction or amendment of record.
802.19 Appeal of denial to correct or amend.
802.20 Accounting of disclosures.
802.21 Appeals.
802.22 Fees.
802.23 Use and disclosure of social security numbers.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

802.24 Purpose and scope.
802.25 Definitions.
802.26 Receipt of demand.
802.27 Compliance/noncompliance.

Subpart E—Exemption of record systems under the Privacy Act

802.28 Exemption of the Court Services and Offender Supervision System—limited access.
802.29 Exemption of the Pretrial Services Agency System.

Authority: 5 U.S.C. 301, 552, 552a; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

Subpart A—General

§ 802.1 Introduction.

This part contains regulations of the Court Services and Offender Supervision Agency for the District of Columbia (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and provide for the production of records in response to a demand from a court or other non-congressional authority in connection with a proceeding to which the Agency is not a party.

Subpart B—Freedom of Information Act

§ 802.2 Purpose and scope.

The purpose of this subpart is to establish procedures for the release of records in the possession of the Agency pursuant to the provisions of the FOIA.

§ 802.3 Guidelines for disclosure.

(a) The authority to release or deny access to records and information under the FOIA is limited to the General Counsel and his or her designee.

(b) An agency record will be released in response to a written request, unless a valid legal exemption to disclosure is asserted.

(1) Any applicable exemption to disclosure which is provided under the FOIA in 5 U.S.C. 552 may be asserted.

(2) A record must exist and be in the possession and control of the agency at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(3) Hard copy of electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available

to the public through an established distribution system or through the **Federal Register** or the Internet, normally need not be processed under the provisions of the FOIA. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA.

§ 802.4 Definitions.

As used in this subpart, the following terms have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Appeal* means a request for a review of the agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(c) *Business information* means trade secrets or other commercial or financial information.

(d) *Business submitter* means any entity which provides business information to the Agency and which has a proprietary interest in the information.

(e) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. Proprietary (or copyrighted) software is not an agency record.

(f) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(g) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(h) *Electronic records* mean those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(i) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(j) *Requester* means any person who makes a request for access to records.

(k) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(l) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 802.5 Freedom of Information Act requests.

(a) *Submission, processing, and release procedures.* (1) Requests for any record (including policy) ordinarily will be processed pursuant to the Freedom of Information Act, 5 U.S.C. 552. Your request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Freedom of Information Request.''

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope ''Freedom of Information Act Request.''

(3) Generally, all FOIA requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

(4) You must state in your request a firm agreement to pay the fees for search, duplication, and review as may ultimately be determined. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and will be considered to the extent that such request is made in accordance with § 802.4(b) and provides supporting information to be measured against the fee waiver standard set forth in § 802.9(g). The requester shall be notified in writing of the decision to grant or deny the fee waiver. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to you after deletion of the exempt portions.

(2) You will be notified of the decision on the request within 20 days after its receipt (excluding Saturdays, Sundays, and legal public holidays).

§ 802.6 Documents from other agencies.

(a) *Documents from or relating to Federal agencies.* (1) When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(2) When a FOIA request is received for a record created by the Agency that includes information originated by another federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.7 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest

protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with paragraph (c) of this section; and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (c) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(c) *Administrative appeal.* (1) A requester may appeal an initial determination when:

(i) Access to records has been denied in whole or in part;

(ii) There has been an adverse determination of the requester's category as provided in § 802.10(d);

(iii) A request for fee waiver or reduction has been denied; or

(iv) It has been determined that no responsive records exist.

(2) Appeals must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Freedom of Information Act Appeal.''

(3) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you.

§ 802.8 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever staff determines that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester must fully explain the circumstances warranting such an expected threat so that the Agency may make a reasoned determination.

(2) With respect to a request made by a person primarily engaged in disseminating information, a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''widespread and exceptional media interest'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. The requester must adequately explain the matter or activity and why it is necessary to provide the records being sought on an expedited basis.

(b) If you seek expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(c) The determination as to whether to grant or deny the request for expedited processing will be made, and the requester notified, within ten days after the date of the request. Because a decision to take a FOIA request out of order delays other requests, simple fairness demands that such a decision be made by the FOIA Officer only upon careful scrutiny of truly exceptional circumstances. The decision will be made solely based on the information contained in the initial letter requesting expedited processing.

(d) Appeals of initial determinations to deny expedited processing must be made promptly. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 2004 and must be clearly marked ''Expedited Processing Appeal.''

(e) The General Counsel will make an appeal determination regarding expedited processing as soon as practicable.

§ 802.9 Business information.

(a) *In general.* Business information provided to the Agency by a business submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. Any claim of confidentiality must be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(b) *Notice to business submitters.* The Agency will provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) Notice of a request for business information falling within paragraph (c)(2)(i) or (ii) of this section will be required for a period of not more than ten years after the date of submission unless the business submitter had requested, and provided acceptable justification for, a specific notice period of greater duration.

(2) The Agency shall provide a business submitter with notice of receipt of a request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Agency shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide a detailed statement of any objection to disclosure. Such statement shall specify why the business submitter believes the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph might itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such

notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that staff may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* The Agency will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a decision to disclose business information over the objection of a business submitter is made, the Agency shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the Agency shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 802.10 Fee schedule.

(a) The fees described in this section conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(b) The term *direct costs* means those expenditures the agency actually makes in searching for, review (in the case of commercial requesters), and duplicating documents to respond to a FOIA request.

(c) Fees shall be charged in accordance with the schedule contained in paragraph (i) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(1) Services were performed without charge;

(2) The fees were waived or reduced in accordance with paragraph (f) of this section.

(d) Specific levels of fees are prescribed for each of the following categories of requesters.

(1) *Commercial use requesters.* These requesters are assessed charges, which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Agency is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Agency may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) All other requesters. Requesters who do not fit any of the categories described in paragraphs (d)(1) through (3) of this section shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Agency may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in a systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication.

(e) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to paragraph (g) of this section.

(f) *Waiver or reduction of fees.*

(1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the current fee waiver policy guidance issued by the Department of Justice.

(2) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency, Office of the General Counsel, 633 Indiana Avenue, NW., Washington, DC 20004 within 30 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays and holidays).

(3) Appeals from an adverse determination of the requester's category as described in paragraphs (d)(1) through (3) of this section shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission

and the Agency's own records. Appeals shall be addressed in writing to the office or officer specified in § 802.7(c)(2) within 30 days of the receipt of the Agency's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and holidays).

(g) *Advance notice of fees.*

(1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250.00, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester will also be given an opportunity to reformulate the request in an attempt to reduce fees.

(h) *Form of payment.*

(1) Payment may be made by check or money order payable to the Treasury of the United States.

(2) The Court Services and Offender Supervision Agency reserves the right to request prepayment after a request is processed and before documents are released in the following circumstances.

(i) When costs are estimated or determined to exceed $250.00, the Agency shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require the requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(ii) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or the pending request. Whenever interest is charged, the Agency shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717.

(i) *Amounts to be charged for specific services.* The fees for services performed by an employee of the Agency shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge; the first two hours of search time free; or charge which total $10.00 or less. Fees for the copies are to be calculated as follows:

(i) The duplication cost is calculated by multiplying the number of pages in excess of 100 by $0.25.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The cost of search time is calculated by multiplying the number of quarter hours in excess of two hours by the following rates for the staff conducting the search:

(i) $7.00 per quarter hour for clerical staff;

(ii) $10.00 per quarter hour for professional staff; and

(iii) $14.00 per quarter hour for managerial personnel.

(3) *Assessment exclusions.* Only fees in excess of $10.00 will be assessed. This means that the total cost must be greater than $10.00, either for the cost of the search (for time in excess of two hours), for the cost of duplication (for pages in excess of 100), or for both costs combined.

(j) *Searches for electronic records.* The Agency shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(k) *Aggregating requests.* When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency shall aggregate any such requests and charge accordingly.

Subpart C—Privacy Act

§ 802.11 Purpose and scope.

The regulations in this subpart apply to all records which are contained in a system of records maintained by the Agency and which are retrieved by an individual's name or personal identifier. This subpart implements the Privacy Act by establishing Agency policy and procedures providing for the maintenance of and guaranteed access to records. Under these procedures:

(a) You can ask us whether we maintain records about you or obtain access to your records; and

(b) You may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

§ 802.12 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Agency* has the meaning as defined in 5 U.S.C. 552(e).

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Agency. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger print or a photograph.

(e) *System of records* means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) *Routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) *Request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(i) *Request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(j) *Request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 802.13 Verifying your identity.

(a) *Requests for your own records.* When you make a request for access to records about yourself, you must verify your identity. You must state your full

name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(b) *Requests on behalf of another.* Information that concerns an individual and that is contained in a system of records maintained by the Agency shall not be disclosed to any person, or to another agency, except under the provisions of the Privacy Act, 5 U.S.C. 552a, or the Freedom of Information Act, 5 U.S.C. 552.

(c) *Disclosure criteria.* Staff may disclose information from an agency system of records only if one or more of the following criteria apply:

(1) With the written consent of the individual to whom the record pertains.

(2) Pursuant to a specific exception listed under the Privacy Act (5 U.S.C. 552a(b)). For example, specific exceptions allow disclosure:

(i) To employees within the Agency who have a need for the record in the performance of their duties.

(ii) If disclosure is permitted under FOIA, e.g. ''public information,'' when the public interest in disclosure of the information outweighs the privacy interest involved.

(iii) For a routine use described in the agency system of records as published in the **Federal Register**.

(A) The published notices for these systems describe the records contained in each system and the routine uses for disclosing these records without first obtaining the consent of the person to whom the records pertain.

(B) CSOSA publishes notices of system of records, including all pertinent routine uses, in the **Federal Register**.

§ 802.14 Requests for access to records.

(a) *Submission, processing, and release procedures.*

(1) Requests for any agency record about yourself ordinarily will be processed pursuant to the Privacy Act, 5 U.S.C. 552a. Such a request must be made in writing and addressed to the FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The requester should clearly mark on the face of the letter and the envelope ''Privacy Act Request.''

(2) Your request will be considered received as of the date it is received by the FOIA Office. For quickest possible handling, you should mark both your request letter and the envelope ''Privacy Act Request.''

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Agency will be able to locate the records in response to your request. If a determination is made that your request does not reasonably describe records, the Agency will tell you either what additional information is needed or why your request is otherwise insufficient. You will be given the opportunity to discuss your request so that you may modify it to meet the requirements of this section.

(1) If a document contains information exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after deletion of the exempt portions.

(2) A requester will be notified of the decision on the request in writing. Every effort will be made to respond to the requester within the time limit set under the governing disclosure statute.

(3) Generally, all Privacy Act requests will be processed in the approximate order of receipt, unless the requester shows exceptional circumstances exist to justify an expedited response (see § 802.8).

§ 802.15 Denial of request.

(a) *Denial in whole or in part.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(1) State the FOIA exemptions relied on in not granting the request;

(2) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(3) Set forth the name and title or position of the responsible official;

(4) Advise the requester of the right to administrative appeal in accordance with § 802.16(e); and

(5) Specify the official or office to which such appeal shall be submitted.

(b) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the determination that no records exist (i.e., to challenge the adequacy of the search for responsive records) in accordance with paragraph (a)(1) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

§ 802.16 Administrative appeal.

(a) A requester may appeal an Agency initial determination when:

(1) Access to records has been denied in whole or in part;

(2) There has been an adverse determination of the requester's category as provided in § 802.9(d);

(3) A request for fee waiver or reduction has been denied; or

(4) It has been determined that no responsive records exist.

(b) Appeals of initial determinations must be made within 30 days of the receipt of the letter denying the request. Both the envelope and the letter of appeal should be sent to the Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Room 1220, Washington, DC 20004 and must be clearly marked ''Privacy Act Appeal.''

(c) The General Counsel will make an appeal determination within 20 days (excluding Saturdays, Sundays, and holidays) from the date of receipt of the appeal. However, for a good reason, this time limit may be extended up to an additional 10 days. If, after review, the General Counsel determines that additional information should be released, it will accompany the appeal response. If, after review, the General Counsel determines to uphold the initial review, we will inform you of that decision.

§ 802.17 Documents from other agencies.

(a)(1) *Documents from or pertaining to Federal agencies.* When a request for records includes a document from another Federal agency, the document will be referred to the originating Federal agency for a determination of its releasability. The requester will be informed of the referral. This is not a denial of a Privacy Act request; thus no appeal rights accrue to the requester.

(2) When a Privacy Act request is received for a record created by the Agency that includes information originated by another Federal agency, the record will be referred to the originating agency for review and recommendation on disclosure. The Agency will not release any such record without prior consultation with the originating agency.

(b) *Documents from non-Federal agencies.* When a request for records includes a document from a non-Federal agency, CSOSA staff must make a determination of its releasability.

§ 802.18 Correction or amendment of records.

This section applies to all records kept by the Agency except for records of earnings. If you believe your record is not accurate, relevant, timely, or complete, you may request that your record be corrected or amended. A request for correction or amendment must identify the particular record in question, state the correction or amendment sought, and set forth the justification for the correction. To amend or correct your record, you should write to the Office of the General Counsel identified in § 802.14(a)(1). You should submit any available evidence to support your request. Both the request and the envelope must be clearly marked ''Privacy Act Correction Request.'' Your request should indicate:

(a) The system of records from which the record is retrieved;

(b) The particular record which you want to correct or amend;

(c) Whether you want to add, delete or substitute information in the records; and

(d) Your reasons for believing that your record should be corrected or amended.

§ 802.19 Appeal of denial to correct or amend.

(a) Agency staff may grant or deny requests for correction of agency records. One basis for denial may be that the records are contained in an agency system of records that has been published in the **Federal Register** and exempted from the Privacy Act provisions requiring amendment and correction.

(1) Any denial of a request for correction should contain a statement of the reason for denial and notice to the requester that the denial may be appealed to the General Counsel by filing a written appeal.

(2) The appeal should be marked on the face of the letter and the envelope, ''PRIVACY APPEAL—DENIAL OF CORRECTION,'' and be addressed to the Office of the General Counsel, address cited at § 802.14(a)(1).

(3) The General Counsel will review your request within 30 days from the date of receipt. However, for a good reason, this time limit may be extended. If, after review, the General Counsel determines that the record should be corrected, the record will be corrected. If, after review, the General Counsel refuses to amend the record exactly as you requested, we will inform you:

(i) That your request has been refused and the reason;

(ii) That this refusal is the Agency's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record.

(b) Requests for correction of records prepared by other federal agencies shall be forwarded to that agency for appropriate action and the requester will be immediately notified of the referral in writing.

(c) When the request is for correction of non-Federal records, the requester will be advised to write to that non-Federal entity.

§ 802.20 Accounting of disclosures.

(a) We will maintain an accounting of all disclosures of a record for five years or until the record is destroyed, whichever is longer, except that, we will not make an accounting for:

(1) Disclosures of public information;

(2) Disclosures made within the agency; and

(3) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of the disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. Your request should be in accordance with the procedures in § 802.14. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record, excepting disclosures made for an authorized civil or criminal law enforcement agency as provided by subsection (c)(3) of the Privacy Act. You will be required to provide reasonable identification.

§ 802.21 Appeals.

You may appeal a denial of a request for an accounting to the Office of the General Counsel in the same manner as a denial of a request for access to records (See § 802.16) and the same procedures will be followed.

§ 802.22 Fees.

The Agency shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under the Freedom of Information Act (See § 802.10).

§ 802.23 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* If the Agency requests an individual to disclose his or her social security account number, we shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it.

Subpart D—Subpoenas or Other Legal Demands for Testimony or the Production or Disclosure of Records or Other Information

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency (''CSOSA'' or ''Agency'') and the District of Columbia Pretrial Services Agency (''PSA'' or ''Agency'') follow in response to a demand from a Federal, state, or local administrative body for the production and disclosure of material in connection with a proceeding to which the Agency is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

§ 802.25 Definitions.

Demand means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

Employee includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired while working at the Agency, such as sensitive or confidential agency information.

Legal Proceeding includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) An employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) If the court or other authority declines to stay the effect of the demand pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) The agency will consider the following factors in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 et. seq.;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 802.28 Exemption of the Court Services and Offender Supervision Agency System—limited access.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(3), (4)(G)–(I), (5) and (8), (f) and (g):

(i) Background Investigation (CSOSA–2).

(ii) Supervision Offender Case File (CSOSA–9).

(iii) Pre-Sentence Investigations (CSOSA–10).

(iv) Supervision & Management Automated Record Tracking (SMART) (CSOSA–11).

(v) Recidivism Tracking Database (CSOSA–12).

(vi) Employment Profile (CSOSA–14).

(vii) Substance Abuse Treatment Database (CSOSA–15).

(viii) Screener (CSOSA–16).

(ix) Sex Offender Registry (CSOSA–18).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain

access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b)(1) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)–(e)(3), (4)(H), (5), (8) and (g):

(i) Office of Professional Responsibility Record (OPR) (CSOSA–17).

(ii) [Reserved].

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation, and reveal investigative interest by not only the OPR but also by the recipient agency. Since release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, release could result in activities that would impede or compromise law enforcement such as: the destruction of documentary evidence; improper influencing of witnesses; endangerment of the physical safety of confidential sources, witnesses, and law enforcement personnel; fabrication of testimony; and flight of the subject from the area. In addition, release of disclosure accounting could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(iii) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could provide the subject of an investigation with information concerning law enforcement activities such as that relating to an actual or potential criminal, civil or regulatory violation; the existence of an investigation; the nature and scope of the information and evidence obtained as to his activities; the identity of confidential sources, witnesses, and law enforcement personnel; and information that may enable the subject to avoid detection or apprehension. Such disclosure would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(iv) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OPR for the following reasons:

(A) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations in which use is made of properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(B) During the course of any investigation, the OPR may obtain information concerning actual or potential violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OPR should retain

this information as it may aid in establishing patterns of criminal activity, and can provide valuable leads for Federal and other law enforcement agencies.

(C) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(v) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(A) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(B) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

(C) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(vi) From subsection (e)(3) because the application of this provision would provide the subject of an investigation with substantial information which could impede or compromise the investigation. Providing such notice to a subject of an investigation could interfere with an undercover investigation by revealing its existence, and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(vii) From subsection (e)(5) because the application of this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as an investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigation report, and thereby impede effective law enforcement.

(viii) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigation techniques, procedures, and/or evidence.

(ix) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1), and (k)(2) of the Privacy Act.

§ 802.29 Exemption of the Pretrial Services Agency System.

The Privacy Act permits specific systems of records to be exempt from some of its requirements.

(a)(1) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1)-(3), (4)(G)-(I), (5) and (8), (f) and (g):

(i) Automated Bail Agency Database (ABADABA) (CSOSA/PSA–1).

(ii) Drug Test Management System (DTMS) (CSOSA/PSA–2).

(iii) Interview and Treatment Files (CSOSA/PSA–3).

(iv) Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6).

(2) Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because offenders will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and CSOSA/PSA responsibilities.

(ii) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(iii) From subsection (d), (e)(4)(G) through (e)(4)(I), (f) and (g) because exemption from this subsection is essential to protect internal processes by which CSOSA/PSA personnel are able to formulate decisions and policies with regard to offenders, to prevent disclosure of information to offenders that would jeopardize legitimate correctional interests of rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(iv) From subsection (e)(1) because primary collection of information directly from offenders about criminal history or criminal records is highly impractical and inappropriate.

(A) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevancy and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(C) In interviewing individuals or obtaining other forms of evidence or information during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(v) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his/her own activities.

(vi) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(vii) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(viii) Those sections would otherwise require CSOSA to notify an individual of investigatory materials contained in a record pertaining to him/her, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), and (H)); make available to him/her any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Agency (section 552(e)(1)). In addition, screening for

relevancy to Agency purposes, a correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned.

(b) [Reserved].

[FR Doc. 02–6091 Filed 3–14–02; 8:45 am]

BILLING CODE 3129–01–U

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Privacy Act of 1974; Notice of New Systems

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) gives notice that it proposes to establish the following new systems of records for itself and for the Pretrial Services Agency, an independent entity within CSOSA.

Public Affairs File (CSOSA–1). Information in this system relates to matters for which the Office of Legislative, Intergovernmental and Public Affairs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include handling and responding to inquiries from Congress, the DC City Council and the news media. This system covers records relating to Congressional inquiries relating to CSOSA and its employees (identified in the system description below).

Background Investigation (CSOSA–2). Information in this system relates to matters for which the Security Office has responsibility pursuant to Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736. Responsibilities include providing investigatory information for employee suitability determinations to include FBI and name checks. This system covers records relating to CSOSA employee background checks (identified in the system description below).

Employee Credential System (CSOSA–3). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing investigatory information for employee suitability determinations. This system covers records relating to issuance of CSOSA employee credentials (identified in the system description below).

Proximity Card System (CSOSA–4). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing security determinations for agency employees. This system covers records relating to CSOSA employee access to agency offices.

Budget System (CSOSA–5). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing payroll projections for budget purposes. This system covers records relating to CSOSA payroll and budget projections and to track employees by organizations within CSOSA (identified in the system description below).

Payroll and Leave Records (CSOSA–6). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to CSOSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Records (CSOSA–7). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 CFR, part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to CSOSA employee time and attendance, leave category, leave balances and organization code.

Training Management System (CSOSA–8). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing training to agency employees. This system covers records relating to CSOSA employee training, class schedules and attendance.

Supervision Offender Case File (CSOSA–9). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Pre-sentence Investigations (CSOSA–10). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing the sentencing judge with criminal and social history investigations on defendants. This system covers records relating to defendants sentenced in the District of Columbia Superior Court (identified in the system description below).

Supervision & Management Automated Record Tracking (SMART) (CSOSA–11). Information in this system relates to matters for which CSOSA has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Recidivism Tracking Database (CSOSA–12). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders' employment in the community (identified in the system description below).

Freedom of Information-Privacy Acts System (CSOSA–13). Information in this system relates to matters for which the Office of the General Counsel has responsibility pursuant to 5 U.S.C. 552 and 552a. Responsibilities include providing legal representation and legal advice, ethics advice and processing of FOIA/PA requests for agency records. This system covers records relating to CSOSA FOIA/PA requests and responses (identified in the system description below).

Employment Profile Database (CSOSA–14). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders employment in the community (identified in the system description below).

Substance Abuse Treatment Database (CSOSA–15). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system

covers records relating to offender substance abuse treatment (identified in the system description below).

Screener Database (CSOSA–16). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offender risk assessments (identified in the system description below).

Office of Professional Responsibility Record (OPR) (CSOSA–17). Information in this system relates to matters for which the Office of Professional Responsibility has oversight pursuant to 5 U.S.C. 301. Responsibilities include auditing, inspecting and investigating agency programs and employee misconduct and preventing waste, fraud and abuse in agency programs. This system covers records relating to CSOSA OPR investigations of staff misconduct (identified in the system description below).

Sex Offender Registry (CSOSA–18). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280. Responsibilities include sex offender registration and sentencing commission issues for individuals sentenced as District of Columbia offenders. This system covers records relating to, for example, sex offender registration (identified in the system description below).

Drug Free Workplace Program (CSOSA–19). Information in this system relates to matters for which Management and Administration has responsibility pursuant to Executive Order 12564. Responsibilities include providing finance and budget information as well as security information for employee suitability determinations. This system covers records relating to CSOSA employee and applicant drug testing (identified in the system description below).

Automated Bail Agency Database (ABA DABA) (CSOSA/PSA–1). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Drug Test Management System (DTMS) (CSOSA/PSA–2). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Interview and Treatment Files (CSOSA/PSA–3). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Payroll Files (CSOSA/PSA–4). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to PSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Files (CSOSA/PSA–5). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 CFR, Part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to PSA employee time and attendance, leave category, leave balances and organization code.

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges and municipal and traffic violations (identified in the system description below).

A rule document promulgating exemptions for these systems appears in the Proposed Rules Section of today's **Federal Register**.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by April 15, 2002. The public, OMB and Congress are invited to send written comments to Renee Barley, FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

In accordance with Privacy Act requirements, CSOSA has provided a report on the proposed systems to OMB and Congress.

Dated: March 7, 2002.

Jasper Ormond,

Interim Director, Court Services and Offender Supervision Agency.

Court Services and Offender Supervision Agency for the District of Columbia (Including Pretrial Services Agency)

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CSOSA–1

SYSTEM NAME:

Public Affairs File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Office of Legislative, Intergovernmental and Public Affairs Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the United States Congress and the District of Columbia (D.C.) City Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Inquiries from Members of Congress and D.C. City Council; (2) Replies to congressional and D.C. City Council inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

This system is maintained to provide a history of congressional and D.C. City Council inquiries. Also, to provide the capability to control and track correspondence to ensure a timely response and/or any other required action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Primary use of the system is limited to the Office of Legislative, Intergovernmental and Public Affairs staff and to officials who need access to perform official duties. Records in this system may be disclosed as follows:

A. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee, contractor, vendor employed by or offender under supervision of CSOSA and/or PSA.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, State, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.,* the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA or PSA and/or who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.,* debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in hardcopy (paper copies).

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the congressional staff member or D.C. City Council member.

SAFEGUARDS:

Information is stored in file cabinets in secured offices or in guarded buildings, and accessed only by authorized, screened personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the incoming and outgoing correspondence from congressional and/or D.C. City Council members and CSOSA and/or PSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–2

SYSTEM NAME:

Background Investigation.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Background Investigation Files and Background Investigation Database) maintain records on: (1) Current and former employees of CSOSA; (2) Current or former contract employees; and (3) Applicants for employment with CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing investigative material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment; (2) FBI and other agency name checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736.

PURPOSE(S):

To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances and evaluations of qualifications for performance of contractual services for the Court Services and Offender Supervision Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member(s) in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

H. To disclose information to consumer reporting agencies to obtain commercial credit reports.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the employee, applicant or contractor.

SAFEGUARDS:

The information is stored in GSA approved security containers, which use GP–1 combination locks in a guarded building. Electronic information is stored on a computer which is password protected in a locked office.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (j),

(k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–3

SYSTEM NAME:

Employee Credential System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each employee issued an agency credential with badge or medallion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to maintain a record of each individual issued an agency credential as well as the accountability of each badge and medallion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional member or staff in response to an inquiry made at the request of an employee employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a stand-alone computer system in a room which is protected by a control access device.

RETRIEVABILITY:

Information is retrieved by the name and/or social security number of the employee.

SAFEGUARDS:

See storage procedures above.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number or similar information). The address is the same as indicated in the notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by employees of CSOSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–4

SYSTEM NAME:

Proximity Card System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees and (2) current or former contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and proximity card number for each current or former employee or contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to track each individual issued an agency proximity card and their associated access control level, as well as the accountability of each card. Also used to ensure the physical security of the employee and work environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record

of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose to other government agencies and to the public whether an individual is a current employee of CSOSA.

C. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

D. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

E. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

H. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is retrieved by the name and/or identification number of the individual.

SAFEGUARDS:

The information is stored on a computer system that is password protected and located in a room with limited access.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by employees whose files are on record as authorized and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–5

SYSTEM NAME:

Budget System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each individual employed by the agency. Each record contains the name, social security number, position title, salary and benefits of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to make payroll projections for budget purposes and to track employees by organization within CSOSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. To the appropriate Federal, state, local, foreign or other public authority

responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a personal computer which is password protected.

RETRIEVABILITY:

The information can be retrieved by the name and/or personal identifier of the employee.

SAFEGUARDS:

The information is maintained on a server with limited access by user-ID and password.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided by employees and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–6

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 CFR 550.

PURPOSE(S):

Document employee salary, tax and related information and to track and document employee leave transfers, reinstatements and other leave issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place

of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

N. Information may be disclosed to the General Accounting Office during a records management audit or inspection pursuant to GAO's audit authority.

O. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in individual folders or on computer.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

This information is maintained on either a password protected computer or filed in a locked file cabinet in a private office.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency; (2) information obtained from current and former employers; (3) National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–7

SYSTEM NAME:

Time and Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting

individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders. Electronic access to the information is maintained on a password protected computer.

RETRIEVABILITY:

Information is retrieved by the name of the individual employee.

SAFEGUARDS:

Information is either locked in a file cabinet or in offices that are locked.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–8

SYSTEM NAME:

Training Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the type and dates of training programs for CSOSA employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track individual employees and their training history, class schedules, attendance and to ensure prerequisites have been met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information is maintained to assist in performing the administrative functions of the Training and Career Development Office and is used to prepare class directories, class rosters and statistical reports.

B. To provide information to a congressional or D.C. City Council member from the record of an individual in response to an inquiry from that congressional or D.C. City Council member made at the request of the employee or contractor.

C. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

D. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders and electronically.

RETRIEVABILITY:

Information is retrieved by the name of the individual.

SAFEGUARDS:

The manual records are maintained in locked file cabinets and the automated portion is maintained on a password-protected computer

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of

employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are now or were employees of the agency; (2) individuals from other Federal, state and local agencies, and (3) individuals from formally established schools who may train agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–9

SYSTEM NAME:

Supervision Offender Case File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. See 28 CFR part 800, Appendix A for field office addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole, supervised release and/or probation supervision. These offenders were sentenced by the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain but are not limited to presentence information, sentencing information, institutional adjustment (parole only), treatment records, compliance orders, field notes, PD–163 (police report), judgment and commitment orders, program reports, psychiatric reports, assessments, Parole Board and judicial decisions and post-release information to include risk assessment, substance abuse testing, referrals, offender reporting forms, progress and behavior reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is maintained and used to determine risk/needs assessment, supervision documentation, case management and documentation of the offenders' compliance with release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or member or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. To provide information to employers or prospective employers concerning an offender's criminal history and other pertinent information where there is a foreseeable risk of harm unless prohibited by 42 CFR part 2.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in file folders.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or by the DC Department of Corrections (DCDC) number.

SAFEGUARDS:

Information is maintained manually in file cabinets which are kept in locked offices.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations, and findings of agency staff and treatment staff; and (6) employers and/or social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5

U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–10

SYSTEM NAME:

Pre-sentence Investigations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole and/or probation supervision. These offenders were sentenced in the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain but are not limited to D.C. Superior Court information, offender information, details of the casework performed by CSOSA staff and a completed copy of the pre-sentence report (investigation).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

At the direction of a sentencing judge, criminal and social histories investigations of defendants are performed by staff to aid the judge in the disposition of the defendant's criminal case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender, supervised by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders or electronically on password protected computers or on microfilm.

RETRIEVABILITY:

Information is retrieved by the name of the individual, case number assigned or police department identification (PDID) number.

SAFEGUARDS:

Information is kept in a locked file room with access by authorized personnel only.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC, 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff; and (6) employers, schools (primary and secondary), colleges/universities, social agencies and public defenders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–11

SYSTEM NAME:

Supervision & Management Automated Record Tracking (SMART)

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders sentenced by the D.C. Superior Court and currently on parole and/or probation or supervised release.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Identification Data Records:* Stores client's base record containing identification, socio-demographical and case status information (i.e., DCDC number, name, aliases, police department ID number, social security

number, date of birth, current location, full term date, parole/probation/probation eligibility date, date of parole/probation or probation status, date off parole/probation or probation status.)

2. *Substance Abuse Data Records:* Stores substance abuse testing information on up to four illegal drugs for each client if applicable.

3. *Release Data Records:* Stores information on each time the client is released from D.C. Department of Corrections custody, if applicable.

4. *Special Events Data Records:* Stores special event information for each client while incarcerated through supervision until the sentence expires.

5. *File Folder Tracking Data Records:* Stores information on last time a client's case folder was checked out of the file room, by whom and for what reason.

6. *Reports Received Data Records:* Stores information on all reports received by the USPC and/or Superior Court except for Face Sheets, PV Face Sheets, Reports of Alleged Violations and Work Release Violations.

7. *Work Release Violation Reports Data Records:* Stores information on Work Release Violation reports received by the USPC and/or Superior Court.

8. *Reports of Alleged Violations Data Records:* Stores information on all Reports of Alleged Violations received by the USPC and/or Superior Court including date report prepared, and the state where alleged violations were committed.

9. *Sentence Data Records:* Stores information on new and updated Face Sheets (FS) received by the USPC and/or Superior Court including date update received, prepared, minimum aggregate sentence, maximum aggregate sentence, full term date, mandatory release/short term date parole/probation eligibility date, reason PED was changed, maximum supervision date.

10. *Offense Data Record:* Stores offense information listed on new Face Sheet received by the USPC and/or Superior Court including Court's case number, date sentenced, minimum sentence, maximum sentence, whether consecutive or concurrent sentence, type of sentence.

11. *Detainer Data Records:* Stores detainer information listed on Face Sheets received by the USPC and/or Superior Court including jurisdiction placing detainer, and the date detainer was logged.

12. *Conduct Credit Data Records:* Stores conduct credit information listed on Face Sheets received by the USPC and/or Superior Court including date started credit time, number of days credited, number of days forfeited, number of forfeited days restored, and remaining number of days balance.

13. *Time Credit Data Records:* Stores time credit information listed on new and updated Face Sheets received by the USPC and/or Superior Court including type of time credit, date time credit started, date time credit ended, and the number of days credited.

14. *Parole/probation Violator Face Sheet Data Records:* Stores information on Parole/probation Violator Face Sheets (PV–FS) received by the USPC and/or Superior Court including date PV-FS prepared, date PV–FS received, case number (assigned by the Court), full term date, mandatory release/short term date, maximum date of supervision, time owed, and the date warrant executed.

15. *Hearing Calendar Data Records:* Stores list of hearing and non-hearing events scheduled for USPC Members and Hearing Examiners. Include name of hearing official, date of event, and the docket number.

16. *Hearing Data Records:* Stores information on each client's scheduled hearing. A record is added to the file each time a client is scheduled for a hearing. Includes hearing docket number, type of consideration, the hearing outcome, the hearing recommendation, date case into office docket, and the date case came out of office docket.

17. *Non-Hearing Data Records:* Stores information each time a case is presented to the USPC through a non-hearing docket. Includes non-hearing docket number, date office docket prepared, date into office docket, date out of office docket, analyst who reviewed the case, type of consideration, outcome of the review, and the analyst's recommendation.

18. *USPC and/or Superior Court Order Data Records:* Stores USPC and/or Superior Court Order information for every case presented to the USPC and/or Superior Court for review thru a hearing or non-hearing docket. A minimum of one record is added to the file per case per docket. Includes disposition, date USPC and/or Superior Court made decision, and any special conditions/instructions.

19. *Conditions Data Records:* Stores information on special conditions and instructions imposed by the USPC and/or Superior Court, or a Community Supervision officer.

20. *Parole/probation Certificates Data Records:* Stores information on parole/probation certificates issued by the USPC and/or Superior Court. Only one certificate can be issued per USPC and/or Superior Court Order. Includes hearing/non-hearing docket number, date certificate was issued, and the type of certificate issued.

21. *Parole/probation Plan Data Records:* Stores information on parole/probation plan requested and plan status. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes type of plan requested, date plan was requested, person requested plan, and the plan/report due date.

22. *Case Assignment Data Records:* Stores parole/probation supervision case assignment information for each client granted parole/probation. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes parole/probation supervision unit assigned, date parole/probation unit assigned, community supervision officer (CSO) assigned, date CSO assigned, CSO's phone number, and the supervision level assigned.

23. *Field Contact Data Records:* Stores field supervision information for scheduled and unscheduled contacts between parolee/probationer and the CSO. Date CSO made contact. Includes type of contact, location where contact was established, and the purpose of contact.

24. *Order to Appear for Revocation Data Records:* Stores information on Orders to Appear for Revocation issued by the USPC and/or Superior Court on non-hearing cases presented for review. Includes date PDS issued OAR, hearing/non-hearing docket number, date PSS received OAR, date OAR sent to CSO, and the date served OAR returned to PDS.

25. *OAR Contact Data Records:* Stores information on attempts to service the OAR issued by the USPC and/or Superior Court.

26. *Warrant Issued Data Records:* Stores information on warrant issued by the USPC and/or Superior Court as a result of a Report of Alleged Violation.

27. *Notice of Rights Data Records:* Stores information on Notices Of Rights that must be served by the USPC and/or Superior Court as a result of a warrant being executed.

28. *Housing Data Records:* Stores residence information verified by parole/probation officers as part of a client's parole/probation plan and case supervision. Includes street address.

29. *Job/Employment Data Records:* Stores employment information verified by CSOs as part of a client's parole/probation plan and case supervision. For each job held, a record is added to

the file. Includes job description and employer.

30. *Programs Data Records:* Stores information on academic, vocational and/or treatment programs in which the client enrolls/participates. Includes program name, date started program, date finished program, and the type of program.

31. *Narcotics Data Records:* Stores information on urine test surveillance program in which a client must participate as a condition for parole/probation. For each urine sample collected, a record is added to the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The District of Columbia parole/probation statute authorizes to USPC and/or Superior Court of Parole/probation (integrated into CSOSA on August 5, 1997 by the National Capital Revitalization and Self-Government Act—D.C. Code 24–1231) to determine if and when to terminate parole/probation or conditional release or to modify the terms or conditions of parole/probation or conditional release. Also see D.C. Code 24–201.2, D.C. Code 24–205, D.C. Code 24–201.3, 28 DCMR 217.x

PURPOSE(S):

Information maintained in the system is used to assist the Court Services and Offender Supervision Agency (CSOSA), USPC and/or Superior Court in monitoring the compliance with conditions of release of parolees, probationers, and supervised releasees, in measuring adjustment to and progress under community supervision and in protecting the safety of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Member of Congress or congressional office staff member or D.C. Council member or D.C. Council office staff member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. To any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation to the extent necessary to accomplish their assigned duties.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To Federal, state, and local authorities participating in the JUSTIS database system through database access to limited information to permit a determination of an individual's status on parole, probation, or supervised release and the assigned supervision officer to the extent necessary for the accomplishment of the participating authorities' assigned duties. The participants in the JUSTIS database that will have limited access to CSOSA's SMART information are the Federal Bureau of Prisons, the D.C. Department of Corrections, the D.C. Superior Court, the Metropolitan Police Department, the D.C. Pretrial Services Agency, the United States Attorney's Office for the District of Columbia, the United States Marshals Service, and the United States Parole Commission.

F. To provide an information source for contract or treatment facilities that provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The SMART database and processing programs are hosted on servers, which are managed by CSOSA IT Staff. The system provides online data entry and query in a real-time fashion using preformatted input/output screens.

RETRIEVABILITY:

Information can be retrieved by name, DCDC number, PDID number, Social Security Number, FBI number, and Interstate Compact Number. 22

SAFEGUARDS:

The server room is locked; access to the servers are restricted and end users must have a valid User ID and password before they can gain access to the one processing program they have been authorized to use.

RETENTION AND DISPOSAL:

Information in this system will be destroyed 20 years after date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Technology Officer, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–12

SYSTEM NAME:

Recidivism Tracking Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), type of supervision, offense code, docket number, source of information, pretrial release status, police service area and arrest and conviction information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all official incidents of recidivism by offenders under the jurisdiction of the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in paper format and electronically on a computer which is password protected.

RETRIEVEABILITY:

Information is retrieved by the name, DCDC or PDID number assigned to the individual.

SAFEGUARDS:

The electronic database is protected by a password and only authorized staff have access. Paper copies are maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender, (2) agency staff, (3) treatment facilities, (4) Federal, state and local law enforcement agencies, (5) U.S. Parole Commission and (6) Federal, state and local courts and court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–13

SYSTEM NAME:

Freedom of Information-Privacy Acts System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals or organizations who have requested access to information pursuant to the Freedom of Information Act or Privacy Act; (2) individuals who have made a request to access or correct records pertaining to themselves; and (3) persons who, on behalf of another individual, have made a request to access or correct that individual's records.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records contain Freedom of Information Act and Privacy Act requests for CSOSA/PSA records requested and any other correspondence or internal memoranda related to the processing of these requests. Records will also contain such data as the name of requester, address of requester, subject of request. (2) Documents relevant to appeals and litigation under the Freedom of Information Act and Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a.

PURPOSE(S):

To assist CSOSA staff in carrying out their responsibilities under the Freedom of Information Act and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Public information permitted to be released to the news media and the public may be made available unless it is determined that release of the specific information in the context of a

particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office, Member of Congress or member of the D.C. City Council in response to an inquiry made at the request of an employee, contractor, vendor or offender (current and/or former) employed by or under supervision of CSOSA and/or PSA.

C. Information may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency or for the purpose of consulting with that agency as to the propriety of access or correction.

D. Records may be disseminated to any appropriate Federal, state, local or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records.

E. Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record may be disclosed to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests are stored in a locked file cabinet. Automated information is contained on a password-protected computer.

RETRIEVABILITY:

Requests are retrieved and filed under the name and/or personal identifier of the requester or subject of the request.

SAFEGUARDS:

Access to records is limited to CSOSA staff who have a need for the records to perform their official duties. Request files are stored in a locked file cabinet.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the individuals and/or companies making requests, the system of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–14

SYSTEM NAME:

Employment Profile, Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervision information to include the police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, phone number, address, conviction information, dates supervision begins and ends, education, restrictions, expenses, interests and needs of the offender.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track the employment status of offenders. This information is examined to assess the number of employment slots needed for offenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name, social security number, PDID number or DCDC number.

SAFEGUARDS:

Electronic information is maintained on a password-protected computer. Manual information is maintained in a locked file cabinet in a secured office.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender and (2) evaluation, observations and findings of agency staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–15

SYSTEM NAME:

Substance Abuse Treatment Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under the supervision of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), supervision status, date referred for treatment, social security number, FBI number, employment status, education level, date of birth, sex, race, reason for referral and drug test information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To assist staff in tracking offenders through the treatment continuum.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or DCDC or PDID number assigned to the offender.

SAFEGUARDS:

Electronic information is stored on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g)

of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–16

SYSTEM NAME:

Screener Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under CSOSA supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, date of birth, race, sex, type of supervision, offense code, age, education, home address, employment information, criminal history, history of substance abuse and level of supervision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all screeners (risk assessments) conducted on offenders under the agency's supervision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically at the University of Maryland, 4511 Knox Road, Suite 301, College Park, MD 20740 and paper copies are stored in a locked file and in the offender's supervision file.

RETRIEVABILITY:

Information can be retrieved by the name of the offender and the DCDC or PDID assigned to the offender.

SAFEGUARDS:

Paper copies are maintained in locked files in locked offices, accessible only by unique employee numeric code.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–17

SYSTEM NAME:

Office of Professional Responsibility Record.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Professional Responsibility (OPR) will maintain records on the following categories of individuals:

(1) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OPR including current or former employees; current and former consultants, contractors and subcontractors with whom the agency has contracted and their employees; and such other individuals or entities in association with CSOSA as it relates to alleged

violation(s) of CSOSA's rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of CSOSA; and (2) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by CSOSA or by other agencies, by constituent units of CSOSA, or by members of the general public as potential subjects of or parties to an investigation under the jurisdiction of OPR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including: (1) Letters, memoranda and other documents citing complaints of alleged criminal, civil or administrative misconduct; and (2) Investigative files which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Office of Professional Responsibility (OPR) for the Court Services and Offender Supervision Agency (CSOSA) will maintain this system of records in order to conduct its responsibilities pursuant to 5 U.S.C. 301. The OPR is directed to conduct and supervise investigations relating to programs and operations of CSOSA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

A. In the event that records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or other pursuant thereto, or if records indicate a violation or potential violation of a contract, the relevant records may be disclosed to the appropriate agency, whether Federal, state, local, foreign or international, charged with the responsibility of investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation or order, or with enforcing such contract.

B. A record may be disclosed to a Federal, state, local, foreign or international agency, or to an individual or organization when necessary to elicit information which will assist an investigation, inspection or audit.

C. A record may be disclosed to a Federal, state, local, foreign or international agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to an OPR decision concerning the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or revocation of a license, grant or other benefit.

D. A record may be disclosed to a Federal, state, local, foreign or international agency in response to its request in connection with the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, letting of a contract or the issuance or revocation of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

E. A record may be disclosed to a Member of Congress or D.C. City Council member or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To provide relevant information to Federal, local, state and foreign courts, court personnel and probation officials.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in a locked, fireproof safe and electronically on a password-protected computer.

RETRIEVABILITY:

Entries are arranged numerically and/or alphabetically and are retrieved with reference to the surname of the individual covered by this system of records or the assigned case number.

SAFEGUARDS:

Information and/or manual records are stored in a locked, fireproof safe and office automation equipment in a secured office and accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of 10 years after final review.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Professional Responsibility, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempted from this requirement

pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing. Include in this request the full name of the individual involved, his or her current address, date and place of birth, notarized signature, and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall clearly and concisely state which information is being contested, the reason for contesting it and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of the investigations; individuals with whom the subjects of investigations are associated; current and former CSOSA employees; officials of Federal, state, local and foreign law enforcement and non-law enforcement agencies; private citizens, witnesses; confidential and nonconfidential informants; and public source materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Director has exempted this system from subsections (c)(3) and (4), (d), (e)(1) through (e)(3), (4)(H), (5) and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–18

SYSTEM NAME:

Sex Offender Registry.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former sex offenders, sentenced by a court in the District of Columbia and those offenders sentenced as a sex offender in other jurisdictions who live, work or attend school within the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and identifying information, including, but not limited to, photograph, fingerprints, physical description and identifying marks or characteristics, aliases, identifying numbers assigned by law enforcement agencies, home, work and school address, type of automobile owned by offender, criminal history, crime for which offender was convicted, the official version of the offense and the presentence report, the sentence that was imposed and when the offender was released into the community.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11280 as amended by the District of Columbia Appropriations Act, 2000, and the District of Columbia Sex Offender Registration Act of 1999, 24 DC Code Sections 1117–1137.

PURPOSE(S):

Pursuant to delegation by Congress, the Court Services and Offender Supervision Agency will exercise the powers and functions for the District of Columbia relating to sex offender registration as provided in the District of Columbia Sex Offender Registration Act of 1999.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an agency investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, pretrial, parole and/or probation officials to the extent necessary to accomplish their assigned duties.

G. To provide information to Federal, state and local law enforcement agencies responsible for monitoring, enforcing and/or implementing a Federal, state or local statute or regulation related to sex offenders.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in individual file folders and electronically on a password-protected computer.

RETRIEVABILITY:

Information can be retrieved by the name and/or personal identifier assigned to the offender.

SAFEGUARDS:

Information is maintained manually in a locked file cabinet and electronic information is maintained on a password-protected computer with limited access.

RETENTION AND DISPOSAL:

Records will be maintained until the death of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of

Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal parole or probation services; (4) Federal, state and local courts or court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–19

SYSTEM NAME:

Drug Free Workplace Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Drug Free Workplace Program Files and Drug Free Workplace Program Database) maintain records of each individual who has provided a urine specimen for testing. It also includes employees determined by the Agency to fill a designated testing position subject to random urinalysis testing as well as individuals who have volunteered to be part of the random pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record contains the name, social security number, date of birth as well as the collection information, reason for testing, types of drugs tested for and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564, Drug-Free Federal Workplace.

PURPOSE(S):

The information is used to make employment or continued employment determinations. The database is used to randomly select individuals for urinalysis testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is either stored in locked bar file cabinets fitted with combination locks or stored on a stand-alone computer in a room which is protected by a control access device.

RETRIEVABILITY:

The information is retrieved by the name of the individual or by the assigned drug test control number.

SAFEGUARDS:

Information is limited to those agency employees with a need-to-know and is stored in an office protected by a control access device.

RETENTION AND DISPOSAL:

Information is maintained in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure

above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–1

SYSTEM NAME:

Automated Bail Agency Database (ABA DABA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The database is housed at the Metropolitan Police Department, 300 Indiana Avenue, NW., and the application is used at the following locations: 633, 601, 500 and 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information and defendants' personal references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, Sections 11231–11234 and Sections 11271–11280.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office member in response to an inquiry made at the request of a current or former offender under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information, except substance abuse and mental health treatment information, relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys and/or corrections, parole, other pretrial and probation officials.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is currently stored on the Metropolitan Police Department's mainframe.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases, PDID, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Information is maintained in a building which has 24-hour security.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; (6) evaluation, observations and findings of agency staff, treatment staff and other social service agencies/staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–2

SYSTEM NAME:

Drug Test Management System (DTMS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004. The main server is located at 500 Indiana Avenue, NW., Room C–225 and the application is on workstations at all PSA and Community Supervision Services locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Substance abuse testing and treatment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and Sections 11271–11260 and 5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, make recommendations for sentencing, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney of record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is maintained on a computer which is password-protected and accessed by the personal identifier assigned.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers and by an ''A'' number.

SAFEGUARDS:

Information is maintained on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant and Offender, (2) treatment facility staff, (3) Federal, state and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–3

SYSTEM NAME:

Interview and Treatment Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004, 500 Indiana Avenue, NW., 601 Indiana Avenue, NW., 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview information, criminal history and treatment assessments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys, and corrections, probation, parole and/or other pretrial officials except substance abuse and mental health treatment information.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (paper copies) are maintained in locked file cabinets.

RETRIEVABILITY:

Information can be retrieved by the name of the individual or by the Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Files are kept in locked drawers and behind locked doors.

RETENTION AND DISPOSAL:

Records will be retained for 5 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant, (2) Federal and local law enforcement agencies, (3) family and friends, (4) substance abuse treatment and medical facilities, and (5) Federal and local courts, (6) Federal, state and local corrections, pretrial, probation and parole agencies, and (7) evaluation, observations and findings of agency staff, treatment staff and other social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–4

SYSTEM NAME:

Payroll Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 5 CFR part 550.

PURPOSE(S):

Document employee salary, tax and related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center, to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information

contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

N. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

The information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency, and (2) Information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–5

SYSTEM NAME:

Time and Attendance Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of pay and leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual folders and electronically on a computer and computer disks.

RETRIEVABILITY:

Information can be retrieved by the name and/or social security number of the individual.

SAFEGUARDS:

Information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–6

SYSTEM NAME:

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and (2) Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information to include assessments, testing and treatment, defendants' personal references and interview information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11260; 5 U.S.C. 301 and DC Code 23, sections 1301–1309.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor and supervise compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored electronically. Only authorized personnel have access to the information.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers, ''A'' number, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

The server room is locked; access to the server is restricted and end users must have a valid User ID and password before they can gain access.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendants; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; and (6) evaluation, observations and findings of agency staff, treatment providers and other social services agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 02–6092 Filed 3–14–02; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Privacy Act of 1974; Notice of New Systems

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) gives notice that it proposes to establish the following new systems of records for itself and for the Pretrial Services Agency, an independent entity within CSOSA.

Public Affairs File (CSOSA–1). Information in this system relates to matters for which the Office of Legislative, Intergovernmental and Public Affairs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include handling and responding to inquiries from Congress, the DC City Council and the news media. This system covers records relating to Congressional inquiries relating to CSOSA and its employees (identified in the system description below).

Background Investigation (CSOSA–2). Information in this system relates to matters for which the Security Office has responsibility pursuant to Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736. Responsibilities include providing investigatory information for employee suitability determinations to include FBI and name checks. This system covers records relating to CSOSA employee background checks (identified in the system description below).

Employee Credential System (CSOSA–3). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing investigatory information for employee suitability determinations. This system covers records relating to issuance of CSOSA employee credentials (identified in the system description below).

Proximity Card System (CSOSA–4). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing security determinations for agency employees. This system covers records relating to CSOSA employee access to agency offices.

Budget System (CSOSA–5). Information in this system relates to matters for which Management and Administration has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing payroll projections for budget purposes. This system covers records relating to CSOSA payroll and budget projections and to track employees by organizations within CSOSA (identified in the system description below).

Payroll and Leave Records (CSOSA–6). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to CSOSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Records (CSOSA–7). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 CFR, part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to CSOSA employee time and attendance, leave category, leave balances and organization code.

Training Management System (CSOSA–8). Information in this system relates to matters for which Human Resources Management has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing training to agency employees. This system covers records relating to CSOSA employee training, class schedules and attendance.

Supervision Offender Case File (CSOSA–9). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Pre-sentence Investigations (CSOSA–10). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing the sentencing judge with criminal and social history investigations on defendants. This system covers records relating to defendants sentenced in the District of Columbia Superior Court (identified in the system description below).

Supervision & Management Automated Record Tracking (SMART) (CSOSA–11). Information in this system relates to matters for which CSOSA has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33 and 5 U.S.C. 301. Responsibilities include providing supervision for individuals sentenced as District of Columbia offenders who are under parole and/or probation supervision. This system covers records relating to, for example, risk/needs assessment, supervision documentation and case management (identified in the system description below).

Recidivism Tracking Database (CSOSA–12). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders' employment in the community (identified in the system description below).

Freedom of Information-Privacy Acts System (CSOSA–13). Information in this system relates to matters for which the Office of the General Counsel has responsibility pursuant to 5 U.S.C. 552 and 552a. Responsibilities include providing legal representation and legal advice, ethics advice and processing of FOIA/PA requests for agency records. This system covers records relating to CSOSA FOIA/PA requests and responses (identified in the system description below).

Employment Profile Database (CSOSA–14). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offenders employment in the community (identified in the system description below).

Substance Abuse Treatment Database (CSOSA–15). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system

covers records relating to offender substance abuse treatment (identified in the system description below).

Screener Database (CSOSA–16). Information in this system relates to matters for which Community Justice Programs has responsibility pursuant to 5 U.S.C. 301. Responsibilities include providing community relations and partnerships and treatment management. This system covers records relating to offender risk assessments (identified in the system description below).

Office of Professional Responsibility Record (OPR) (CSOSA–17). Information in this system relates to matters for which the Office of Professional Responsibility has oversight pursuant to 5 U.S.C. 301. Responsibilities include auditing, inspecting and investigating agency programs and employee misconduct and preventing waste, fraud and abuse in agency programs. This system covers records relating to CSOSA OPR investigations of staff misconduct (identified in the system description below).

Sex Offender Registry (CSOSA–18). Information in this system relates to matters for which Community Supervision Services has responsibility pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280. Responsibilities include sex offender registration and sentencing commission issues for individuals sentenced as District of Columbia offenders. This system covers records relating to, for example, sex offender registration (identified in the system description below).

Drug Free Workplace Program (CSOSA–19). Information in this system relates to matters for which Management and Administration has responsibility pursuant to Executive Order 12564. Responsibilities include providing finance and budget information as well as security information for employee suitability determinations. This system covers records relating to CSOSA employee and applicant drug testing (identified in the system description below).

Automated Bail Agency Database (ABA DABA) (CSOSA/PSA–1). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Drug Test Management System (DTMS) (CSOSA/PSA–2). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Interview and Treatment Files (CSOSA/PSA–3). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges (identified in the system description below).

Payroll Files (CSOSA/PSA–4). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101. Responsibilities include providing personnel management services to the agency. This system covers records relating to PSA employee name and other personal identifying information as well as salaries, leave balances, withholdings and financial allotments (identified in the system description below).

Time and Attendance Files (CSOSA/PSA–5). Information in this system relates to matters for which the PSA Human Resources has responsibility pursuant to 5 CFR, Part 630. Responsibilities include maintaining time and attendance reports, leave slips and audit reports on agency employees. This system covers records relating to PSA employee time and attendance, leave category, leave balances and organization code.

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM) (CSOSA/PSA–6). Information in this system relates to matters for which PSA has responsibility pursuant the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, section 11231–11234 and section 11271–11280, 5 U.S.C. 301 and D.C. Code 23, sections 1301–1309. Responsibilities include supervision and monitoring of defendants on pretrial release. This system covers records relating to District of Columbia defendants charged with federal and local misdemeanor and felony charges and municipal and traffic violations (identified in the system description below).

A rule document promulgating exemptions for these systems appears in the Proposed Rules Section of today's **Federal Register**.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by April 15, 2002. The public, OMB and Congress are invited to send written comments to Renee Barley, FOIA Officer, Office of the General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

In accordance with Privacy Act requirements, CSOSA has provided a report on the proposed systems to OMB and Congress.

Dated: March 7, 2002.

Jasper Ormond,

Interim Director, Court Services and Offender Supervision Agency.

Court Services and Offender Supervision Agency for the District of Columbia (Including Pretrial Services Agency)

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CSOSA–1

SYSTEM NAME:

Public Affairs File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Office of Legislative, Intergovernmental and Public Affairs Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the United States Congress and the District of Columbia (D.C.) City Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Inquiries from Members of Congress and D.C. City Council; (2) Replies to congressional and D.C. City Council inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

This system is maintained to provide a history of congressional and D.C. City Council inquiries. Also, to provide the capability to control and track correspondence to ensure a timely response and/or any other required action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Primary use of the system is limited to the Office of Legislative, Intergovernmental and Public Affairs staff and to officials who need access to perform official duties. Records in this system may be disclosed as follows:

A. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee, contractor, vendor employed by or offender under supervision of CSOSA and/or PSA.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, State, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.,* the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA or PSA and/or who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.,* debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in hardcopy (paper copies).

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the congressional staff member or D.C. City Council member.

SAFEGUARDS:

Information is stored in file cabinets in secured offices or in guarded buildings, and accessed only by authorized, screened personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the incoming and outgoing correspondence from congressional and/or D.C. City Council members and CSOSA and/or PSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–2

SYSTEM NAME:

Background Investigation.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Background Investigation Files and Background Investigation Database) maintain records on: (1) Current and former employees of CSOSA; (2) Current or former contract employees; and (3) Applicants for employment with CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records containing investigative material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment; (2) FBI and other agency name checks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450 and 5 CFR parts 5, 731, 732 and 736.

PURPOSE(S):

To provide investigatory information for determinations concerning compliance with Federal personnel regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances and evaluations of qualifications for performance of contractual services for the Court Services and Offender Supervision Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member(s) in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

H. To disclose information to consumer reporting agencies to obtain commercial credit reports.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is arranged and retrieved alphabetically by the name of the employee, applicant or contractor.

SAFEGUARDS:

The information is stored in GSA approved security containers, which use GP–1 combination locks in a guarded building. Electronic information is stored on a computer which is password protected in a locked office.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORD ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(H).

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(I).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (j),

(k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–3

SYSTEM NAME:

Employee Credential System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each employee issued an agency credential with badge or medallion.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to maintain a record of each individual issued an agency credential as well as the accountability of each badge and medallion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional member or staff in response to an inquiry made at the request of an employee employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. Information permitted to be released to the news media and that may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a stand-alone computer system in a room which is protected by a control access device.

RETRIEVABILITY:

Information is retrieved by the name and/or social security number of the employee.

SAFEGUARDS:

See storage procedures above.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number or similar information). The address is the same as indicated in the notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information is provided by employees of CSOSA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–4

SYSTEM NAME:

Proximity Card System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees and (2) current or former contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and proximity card number for each current or former employee or contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to track each individual issued an agency proximity card and their associated access control level, as well as the accountability of each card. Also used to ensure the physical security of the employee and work environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record

of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose to other government agencies and to the public whether an individual is a current employee of CSOSA.

C. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

D. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

E. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

H. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

I. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is maintained manually in file jackets in hardcopy (paper copies) and electronically.

RETRIEVABILITY:

Information is retrieved by the name and/or identification number of the individual.

SAFEGUARDS:

The information is stored on a computer system that is password protected and located in a room with limited access.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by employees whose files are on record as authorized and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–5

SYSTEM NAME:

Budget System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Management and Administration Division, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains a record of each individual employed by the agency. Each record contains the name, social security number, position title, salary and benefits of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The information is used to make payroll projections for budget purposes and to track employees by organization within CSOSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. To the appropriate Federal, state, local, foreign or other public authority

responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored on a personal computer which is password protected.

RETRIEVABILITY:

The information can be retrieved by the name and/or personal identifier of the employee.

SAFEGUARDS:

The information is maintained on a server with limited access by user-ID and password.

RETENTION AND DISPOSAL:

The information is retained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided by employees and information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–6

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 CFR 550.

PURPOSE(S):

Document employee salary, tax and related information and to track and document employee leave transfers, reinstatements and other leave issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place

of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

N. Information may be disclosed to the General Accounting Office during a records management audit or inspection pursuant to GAO's audit authority.

O. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in individual folders or on computer.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

This information is maintained on either a password protected computer or filed in a locked file cabinet in a private office.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency; (2) information obtained from current and former employers; (3) National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–7

SYSTEM NAME:

Time and Attendance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member or D.C. City Council member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee or contractor.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting

individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders. Electronic access to the information is maintained on a password protected computer.

RETRIEVABILITY:

Information is retrieved by the name of the individual employee.

SAFEGUARDS:

Information is either locked in a file cabinet or in offices that are locked.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–8

SYSTEM NAME:

Training Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the type and dates of training programs for CSOSA employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track individual employees and their training history, class schedules, attendance and to ensure prerequisites have been met.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information is maintained to assist in performing the administrative functions of the Training and Career Development Office and is used to prepare class directories, class rosters and statistical reports.

B. To provide information to a congressional or D.C. City Council member from the record of an individual in response to an inquiry from that congressional or D.C. City Council member made at the request of the employee or contractor.

C. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

D. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders and electronically.

RETRIEVABILITY:

Information is retrieved by the name of the individual.

SAFEGUARDS:

The manual records are maintained in locked file cabinets and the automated portion is maintained on a password-protected computer

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Office of Human Resources, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of

employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are now or were employees of the agency; (2) individuals from other Federal, state and local agencies, and (3) individuals from formally established schools who may train agency employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA–9

SYSTEM NAME:

Supervision Offender Case File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. See 28 CFR part 800, Appendix A for field office addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole, supervised release and/or probation supervision. These offenders were sentenced by the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain but are not limited to presentence information, sentencing information, institutional adjustment (parole only), treatment records, compliance orders, field notes, PD–163 (police report), judgment and commitment orders, program reports, psychiatric reports, assessments, Parole Board and judicial decisions and post-release information to include risk assessment, substance abuse testing, referrals, offender reporting forms, progress and behavior reports and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is maintained and used to determine risk/needs assessment, supervision documentation, case management and documentation of the offenders' compliance with release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or member or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. To provide information to employers or prospective employers concerning an offender's criminal history and other pertinent information where there is a foreseeable risk of harm unless prohibited by 42 CFR part 2.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in file folders.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or by the DC Department of Corrections (DCDC) number.

SAFEGUARDS:

Information is maintained manually in file cabinets which are kept in locked offices.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations, and findings of agency staff and treatment staff; and (6) employers and/or social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5

U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–10

SYSTEM NAME:

Pre-sentence Investigations.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former District of Columbia offenders under parole and/or probation supervision. These offenders were sentenced in the D.C. Superior Court.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain but are not limited to D.C. Superior Court information, offender information, details of the casework performed by CSOSA staff and a completed copy of the pre-sentence report (investigation).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

At the direction of a sentencing judge, criminal and social histories investigations of defendants are performed by staff to aid the judge in the disposition of the defendant's criminal case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender, supervised by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual file folders or electronically on password protected computers or on microfilm.

RETRIEVABILITY:

Information is retrieved by the name of the individual, case number assigned or police department identification (PDID) number.

SAFEGUARDS:

Information is kept in a locked file room with access by authorized personnel only.

RETENTION AND DISPOSAL:

Information will be maintained for 20 years after expiration of parole and/or probation supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC, 20001.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation agencies; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff; and (6) employers, schools (primary and secondary), colleges/universities, social agencies and public defenders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–11

SYSTEM NAME:

Supervision & Management Automated Record Tracking (SMART)

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders sentenced by the D.C. Superior Court and currently on parole and/or probation or supervised release.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Identification Data Records:* Stores client's base record containing identification, socio-demographical and case status information (i.e., DCDC number, name, aliases, police department ID number, social security

number, date of birth, current location, full term date, parole/probation/probation eligibility date, date of parole/probation or probation status, date off parole/probation or probation status.)

2. *Substance Abuse Data Records:* Stores substance abuse testing information on up to four illegal drugs for each client if applicable.

3. *Release Data Records:* Stores information on each time the client is released from D.C. Department of Corrections custody, if applicable.

4. *Special Events Data Records:* Stores special event information for each client while incarcerated through supervision until the sentence expires.

5. *File Folder Tracking Data Records:* Stores information on last time a client's case folder was checked out of the file room, by whom and for what reason.

6. *Reports Received Data Records:* Stores information on all reports received by the USPC and/or Superior Court except for Face Sheets, PV Face Sheets, Reports of Alleged Violations and Work Release Violations.

7. *Work Release Violation Reports Data Records:* Stores information on Work Release Violation reports received by the USPC and/or Superior Court.

8. *Reports of Alleged Violations Data Records:* Stores information on all Reports of Alleged Violations received by the USPC and/or Superior Court including date report prepared, and the state where alleged violations were committed.

9. *Sentence Data Records:* Stores information on new and updated Face Sheets (FS) received by the USPC and/or Superior Court including date update received, prepared, minimum aggregate sentence, maximum aggregate sentence, full term date, mandatory release/short term date parole/probation eligibility date, reason PED was changed, maximum supervision date.

10. *Offense Data Record:* Stores offense information listed on new Face Sheet received by the USPC and/or Superior Court including Court's case number, date sentenced, minimum sentence, maximum sentence, whether consecutive or concurrent sentence, type of sentence.

11. *Detainer Data Records:* Stores detainer information listed on Face Sheets received by the USPC and/or Superior Court including jurisdiction placing detainer, and the date detainer was logged.

12. *Conduct Credit Data Records:* Stores conduct credit information listed on Face Sheets received by the USPC and/or Superior Court including date started credit time, number of days credited, number of days forfeited, number of forfeited days restored, and remaining number of days balance.

13. *Time Credit Data Records:* Stores time credit information listed on new and updated Face Sheets received by the USPC and/or Superior Court including type of time credit, date time credit started, date time credit ended, and the number of days credited.

14. *Parole/probation Violator Face Sheet Data Records:* Stores information on Parole/probation Violator Face Sheets (PV–FS) received by the USPC and/or Superior Court including date PV-FS prepared, date PV–FS received, case number (assigned by the Court), full term date, mandatory release/short term date, maximum date of supervision, time owed, and the date warrant executed.

15. *Hearing Calendar Data Records:* Stores list of hearing and non-hearing events scheduled for USPC Members and Hearing Examiners. Include name of hearing official, date of event, and the docket number.

16. *Hearing Data Records:* Stores information on each client's scheduled hearing. A record is added to the file each time a client is scheduled for a hearing. Includes hearing docket number, type of consideration, the hearing outcome, the hearing recommendation, date case into office docket, and the date case came out of office docket.

17. *Non-Hearing Data Records:* Stores information each time a case is presented to the USPC through a non-hearing docket. Includes non-hearing docket number, date office docket prepared, date into office docket, date out of office docket, analyst who reviewed the case, type of consideration, outcome of the review, and the analyst's recommendation.

18. *USPC and/or Superior Court Order Data Records:* Stores USPC and/or Superior Court Order information for every case presented to the USPC and/or Superior Court for review thru a hearing or non-hearing docket. A minimum of one record is added to the file per case per docket. Includes disposition, date USPC and/or Superior Court made decision, and any special conditions/instructions.

19. *Conditions Data Records:* Stores information on special conditions and instructions imposed by the USPC and/or Superior Court, or a Community Supervision officer.

20. *Parole/probation Certificates Data Records:* Stores information on parole/probation certificates issued by the USPC and/or Superior Court. Only one certificate can be issued per USPC and/or Superior Court Order. Includes hearing/non-hearing docket number, date certificate was issued, and the type of certificate issued.

21. *Parole/probation Plan Data Records:* Stores information on parole/probation plan requested and plan status. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes type of plan requested, date plan was requested, person requested plan, and the plan/report due date.

22. *Case Assignment Data Records:* Stores parole/probation supervision case assignment information for each client granted parole/probation. When the USPC and/or Superior Court grant parole/probation, a record is added to the file if the DCDC number does not already exist. Otherwise, the existing record is updated. Includes parole/probation supervision unit assigned, date parole/probation unit assigned, community supervision officer (CSO) assigned, date CSO assigned, CSO's phone number, and the supervision level assigned.

23. *Field Contact Data Records:* Stores field supervision information for scheduled and unscheduled contacts between parolee/probationer and the CSO. Date CSO made contact. Includes type of contact, location where contact was established, and the purpose of contact.

24. *Order to Appear for Revocation Data Records:* Stores information on Orders to Appear for Revocation issued by the USPC and/or Superior Court on non-hearing cases presented for review. Includes date PDS issued OAR, hearing/non-hearing docket number, date PSS received OAR, date OAR sent to CSO, and the date served OAR returned to PDS.

25. *OAR Contact Data Records:* Stores information on attempts to service the OAR issued by the USPC and/or Superior Court.

26. *Warrant Issued Data Records:* Stores information on warrant issued by the USPC and/or Superior Court as a result of a Report of Alleged Violation.

27. *Notice of Rights Data Records:* Stores information on Notices Of Rights that must be served by the USPC and/or Superior Court as a result of a warrant being executed.

28. *Housing Data Records:* Stores residence information verified by parole/probation officers as part of a client's parole/probation plan and case supervision. Includes street address.

29. *Job/Employment Data Records:* Stores employment information verified by CSOs as part of a client's parole/probation plan and case supervision. For each job held, a record is added to

the file. Includes job description and employer.

30. *Programs Data Records:* Stores information on academic, vocational and/or treatment programs in which the client enrolls/participates. Includes program name, date started program, date finished program, and the type of program.

31. *Narcotics Data Records:* Stores information on urine test surveillance program in which a client must participate as a condition for parole/probation. For each urine sample collected, a record is added to the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The District of Columbia parole/probation statute authorizes to USPC and/or Superior Court of Parole/probation (integrated into CSOSA on August 5, 1997 by the National Capital Revitalization and Self-Government Act—D.C. Code 24–1231) to determine if and when to terminate parole/probation or conditional release or to modify the terms or conditions of parole/probation or conditional release. Also see D.C. Code 24–201.2, D.C. Code 24–205, D.C. Code 24–201.3, 28 DCMR 217.x

PURPOSE(S):

Information maintained in the system is used to assist the Court Services and Offender Supervision Agency (CSOSA), USPC and/or Superior Court in monitoring the compliance with conditions of release of parolees, probationers, and supervised releasees, in measuring adjustment to and progress under community supervision and in protecting the safety of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Member of Congress or congressional office staff member or D.C. Council member or D.C. Council office staff member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. To any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation to the extent necessary to accomplish their assigned duties.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To Federal, state, and local authorities participating in the JUSTIS database system through database access to limited information to permit a determination of an individual's status on parole, probation, or supervised release and the assigned supervision officer to the extent necessary for the accomplishment of the participating authorities' assigned duties. The participants in the JUSTIS database that will have limited access to CSOSA's SMART information are the Federal Bureau of Prisons, the D.C. Department of Corrections, the D.C. Superior Court, the Metropolitan Police Department, the D.C. Pretrial Services Agency, the United States Attorney's Office for the District of Columbia, the United States Marshals Service, and the United States Parole Commission.

F. To provide an information source for contract or treatment facilities that provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The SMART database and processing programs are hosted on servers, which are managed by CSOSA IT Staff. The system provides online data entry and query in a real-time fashion using preformatted input/output screens.

RETRIEVABILITY:

Information can be retrieved by name, DCDC number, PDID number, Social Security Number, FBI number, and Interstate Compact Number. 22

SAFEGUARDS:

The server room is locked; access to the servers are restricted and end users must have a valid User ID and password before they can gain access to the one processing program they have been authorized to use.

RETENTION AND DISPOSAL:

Information in this system will be destroyed 20 years after date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Technology Officer, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) relatives, friends, and other community individuals; (5) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–12

SYSTEM NAME:

Recidivism Tracking Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), type of supervision, offense code, docket number, source of information, pretrial release status, police service area and arrest and conviction information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all official incidents of recidivism by offenders under the jurisdiction of the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in paper format and electronically on a computer which is password protected.

RETRIEVEABILITY:

Information is retrieved by the name, DCDC or PDID number assigned to the individual.

SAFEGUARDS:

The electronic database is protected by a password and only authorized staff have access. Paper copies are maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender, (2) agency staff, (3) treatment facilities, (4) Federal, state and local law enforcement agencies, (5) U.S. Parole Commission and (6) Federal, state and local courts and court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–13

SYSTEM NAME:

Freedom of Information-Privacy Acts System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals or organizations who have requested access to information pursuant to the Freedom of Information Act or Privacy Act; (2) individuals who have made a request to access or correct records pertaining to themselves; and (3) persons who, on behalf of another individual, have made a request to access or correct that individual's records.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records contain Freedom of Information Act and Privacy Act requests for CSOSA/PSA records requested and any other correspondence or internal memoranda related to the processing of these requests. Records will also contain such data as the name of requester, address of requester, subject of request. (2) Documents relevant to appeals and litigation under the Freedom of Information Act and Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 552a.

PURPOSE(S):

To assist CSOSA staff in carrying out their responsibilities under the Freedom of Information Act and the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Public information permitted to be released to the news media and the public may be made available unless it is determined that release of the specific information in the context of a

particular case would constitute an unwarranted invasion of personal privacy.

B. Disclosure may be made to a congressional office, Member of Congress or member of the D.C. City Council in response to an inquiry made at the request of an employee, contractor, vendor or offender (current and/or former) employed by or under supervision of CSOSA and/or PSA.

C. Information may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency or for the purpose of consulting with that agency as to the propriety of access or correction.

D. Records may be disseminated to any appropriate Federal, state, local or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records.

E. Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record may be disclosed to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual requests are stored in a locked file cabinet. Automated information is contained on a password-protected computer.

RETRIEVABILITY:

Requests are retrieved and filed under the name and/or personal identifier of the requester or subject of the request.

SAFEGUARDS:

Access to records is limited to CSOSA staff who have a need for the records to perform their official duties. Request files are stored in a locked file cabinet.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual who corresponded with the agency. Requesters should also reasonably specify the record contents being sought. The address is the same as indicated in the Notification procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

Information is derived from the individuals and/or companies making requests, the system of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. Although no exemption has been claimed for this system of records, certain information may be duplicative of records contained in another system of records which may have an exemption. In those circumstances, the exemption will still apply.

CSOSA–14

SYSTEM NAME:

Employment Profile, Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under agency supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervision information to include the police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, phone number, address, conviction information, dates supervision begins and ends, education, restrictions, expenses, interests and needs of the offender.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track the employment status of offenders. This information is examined to assess the number of employment slots needed for offenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name, social security number, PDID number or DCDC number.

SAFEGUARDS:

Electronic information is maintained on a password-protected computer. Manual information is maintained in a locked file cabinet in a secured office.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender and (2) evaluation, observations and findings of agency staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–15

SYSTEM NAME:

Substance Abuse Treatment Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under the supervision of CSOSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), supervision status, date referred for treatment, social security number, FBI number, employment status, education level, date of birth, sex, race, reason for referral and drug test information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To assist staff in tracking offenders through the treatment continuum.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel and probation officials unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained electronically and manually.

RETRIEVABILITY:

Information can be retrieved by the name of the offender or DCDC or PDID number assigned to the offender.

SAFEGUARDS:

Electronic information is stored on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of supervision.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g)

of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–16

SYSTEM NAME:

Screener Database.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former offenders under CSOSA supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, police department identification number (PDID), DC Department of Corrections number (DCDC), social security number, date of birth, race, sex, type of supervision, offense code, age, education, home address, employment information, criminal history, history of substance abuse and level of supervision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To track and detail all screeners (risk assessments) conducted on offenders under the agency's supervision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation unless prohibited by 42 CFR part 2.

C. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested unless prohibited by 42 CFR part 2.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation unless prohibited by 42 CFR part 2.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

F. To provide information relating to D.C. offenders to Federal, local and state courts, court personnel and probation officials to the extent necessary to accomplish their assigned duties unless prohibited by 42 CFR part 2.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906 unless prohibited by 42 CFR part 2.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored electronically at the University of Maryland, 4511 Knox Road, Suite 301, College Park, MD 20740 and paper copies are stored in a locked file and in the offender's supervision file.

RETRIEVABILITY:

Information can be retrieved by the name of the offender and the DCDC or PDID assigned to the offender.

SAFEGUARDS:

Paper copies are maintained in locked files in locked offices, accessible only by unique employee numeric code.

RETENTION AND DISPOSAL:

Records will be maintained for 20 years after expiration of sentence.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Justice Programs, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal probation services; (4) evaluation, observations and findings of agency staff and treatment staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–17

SYSTEM NAME:

Office of Professional Responsibility Record.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In connection with its investigative duties, the Office of Professional Responsibility (OPR) will maintain records on the following categories of individuals:

(1) Individuals or entities who are or have been the subject of inquiries or investigations conducted by OPR including current or former employees; current and former consultants, contractors and subcontractors with whom the agency has contracted and their employees; and such other individuals or entities in association with CSOSA as it relates to alleged

violation(s) of CSOSA's rules of conduct, the Civil Service merit system, and/or criminal or civil law, which may affect the integrity or physical facilities of CSOSA; and (2) Individuals who are witnesses; complainants; confidential or nonconfidential informants; and parties who have been identified by CSOSA or by other agencies, by constituent units of CSOSA, or by members of the general public as potential subjects of or parties to an investigation under the jurisdiction of OPR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including: (1) Letters, memoranda and other documents citing complaints of alleged criminal, civil or administrative misconduct; and (2) Investigative files which include: reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits or records obtained during investigations; prior criminal or noncriminal records of individuals as they relate to the investigations; reports from or to other law enforcement bodies; information obtained from informants and identifying data with respect to such informants; nature of allegations made against suspects and identifying data concerning such subjects; and public source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Office of Professional Responsibility (OPR) for the Court Services and Offender Supervision Agency (CSOSA) will maintain this system of records in order to conduct its responsibilities pursuant to 5 U.S.C. 301. The OPR is directed to conduct and supervise investigations relating to programs and operations of CSOSA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud, waste and abuse in such programs and operations. Accordingly, the records in this system are used in the course of investigating individuals and entities suspected of having committed illegal or unethical acts and in conducting related criminal prosecutions, civil proceedings or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

A. In the event that records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or other pursuant thereto, or if records indicate a violation or potential violation of a contract, the relevant records may be disclosed to the appropriate agency, whether Federal, state, local, foreign or international, charged with the responsibility of investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation or order, or with enforcing such contract.

B. A record may be disclosed to a Federal, state, local, foreign or international agency, or to an individual or organization when necessary to elicit information which will assist an investigation, inspection or audit.

C. A record may be disclosed to a Federal, state, local, foreign or international agency maintaining civil, criminal or other relevant information if necessary to obtain information relevant to an OPR decision concerning the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or revocation of a license, grant or other benefit.

D. A record may be disclosed to a Federal, state, local, foreign or international agency in response to its request in connection with the assignment, hiring or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, letting of a contract or the issuance or revocation of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

E. A record may be disclosed to a Member of Congress or D.C. City Council member or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and the request of, the individual who is the subject of the record.

F. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

G. To provide relevant information to Federal, local, state and foreign courts, court personnel and probation officials.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets in a locked, fireproof safe and electronically on a password-protected computer.

RETRIEVABILITY:

Entries are arranged numerically and/or alphabetically and are retrieved with reference to the surname of the individual covered by this system of records or the assigned case number.

SAFEGUARDS:

Information and/or manual records are stored in a locked, fireproof safe and office automation equipment in a secured office and accessed only by authorized personnel.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of 10 years after final review.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Professional Responsibility, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The Director of the Court Services and Offender Supervision Agency has exempted this system from the provisions of 5 U.S.C. 552a (e)(4)(G).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempted from this requirement

pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing. Include in this request the full name of the individual involved, his or her current address, date and place of birth, notarized signature, and any other identifying number or information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall clearly and concisely state which information is being contested, the reason for contesting it and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The subjects of the investigations; individuals with whom the subjects of investigations are associated; current and former CSOSA employees; officials of Federal, state, local and foreign law enforcement and non-law enforcement agencies; private citizens, witnesses; confidential and nonconfidential informants; and public source materials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Director has exempted this system from subsections (c)(3) and (4), (d), (e)(1) through (e)(3), (4)(H), (5) and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–18

SYSTEM NAME:

Sex Offender Registry.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Community Supervision Services, 300 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and/or former sex offenders, sentenced by a court in the District of Columbia and those offenders sentenced as a sex offender in other jurisdictions who live, work or attend school within the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal and identifying information, including, but not limited to, photograph, fingerprints, physical description and identifying marks or characteristics, aliases, identifying numbers assigned by law enforcement agencies, home, work and school address, type of automobile owned by offender, criminal history, crime for which offender was convicted, the official version of the offense and the presentence report, the sentence that was imposed and when the offender was released into the community.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11280 as amended by the District of Columbia Appropriations Act, 2000, and the District of Columbia Sex Offender Registration Act of 1999, 24 DC Code Sections 1117–1137.

PURPOSE(S):

Pursuant to delegation by Congress, the Court Services and Offender Supervision Agency will exercise the powers and functions for the District of Columbia relating to sex offender registration as provided in the District of Columbia Sex Offender Registration Act of 1999.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of a current and/or former offender under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. To any source from which information is requested in the course of an agency investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation and to identify the type of information requested.

D. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

E. To provide information source for contract or treatment facilities who provide services to offenders under CSOSA supervision to the extent necessary to accomplish their assigned duties.

F. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, pretrial, parole and/or probation officials to the extent necessary to accomplish their assigned duties.

G. To provide information to Federal, state and local law enforcement agencies responsible for monitoring, enforcing and/or implementing a Federal, state or local statute or regulation related to sex offenders.

H. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in individual file folders and electronically on a password-protected computer.

RETRIEVABILITY:

Information can be retrieved by the name and/or personal identifier assigned to the offender.

SAFEGUARDS:

Information is maintained manually in a locked file cabinet and electronic information is maintained on a password-protected computer with limited access.

RETENTION AND DISPOSAL:

Records will be maintained until the death of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Community Supervision Services, Court Services and Offender Supervision Agency, 300 Indiana Avenue, NW., Room 2132, Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of

Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j).

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Offender; (2) Federal, state and local law enforcement agencies; (3) state and Federal parole or probation services; (4) Federal, state and local courts or court personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA–19

SYSTEM NAME:

Drug Free Workplace Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The two systems (Drug Free Workplace Program Files and Drug Free Workplace Program Database) maintain records of each individual who has provided a urine specimen for testing. It also includes employees determined by the Agency to fill a designated testing position subject to random urinalysis testing as well as individuals who have volunteered to be part of the random pool.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each record contains the name, social security number, date of birth as well as the collection information, reason for testing, types of drugs tested for and laboratory results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12564, Drug-Free Federal Workplace.

PURPOSE(S):

The information is used to make employment or continued employment determinations. The database is used to randomly select individuals for urinalysis testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office or D.C. City Council member in response to an inquiry made at the request of an employee or contractor employed by CSOSA.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

C. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

D. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by CSOSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

E. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where CSOSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

F. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for CSOSA.

G. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is either stored in locked bar file cabinets fitted with combination locks or stored on a stand-alone computer in a room which is protected by a control access device.

RETRIEVABILITY:

The information is retrieved by the name of the individual or by the assigned drug test control number.

SAFEGUARDS:

Information is limited to those agency employees with a need-to-know and is stored in an office protected by a control access device.

RETENTION AND DISPOSAL:

Information is maintained in accordance with General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Management and Administration, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure

above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–1

SYSTEM NAME:

Automated Bail Agency Database (ABA DABA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004. The database is housed at the Metropolitan Police Department, 300 Indiana Avenue, NW., and the application is used at the following locations: 633, 601, 500 and 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information and defendants' personal references.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, Sections 11231–11234 and Sections 11271–11280.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office member in response to an inquiry made at the request of a current or former offender under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information, except substance abuse and mental health treatment information, relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys and/or corrections, parole, other pretrial and probation officials.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is currently stored on the Metropolitan Police Department's mainframe.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases, PDID, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Information is maintained in a building which has 24-hour security.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; (6) evaluation, observations and findings of agency staff, treatment staff and other social service agencies/staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–2

SYSTEM NAME:

Drug Test Management System (DTMS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004. The main server is located at 500 Indiana Avenue, NW., Room C–225 and the application is on workstations at all PSA and Community Supervision Services locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Substance abuse testing and treatment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and Sections 11271–11260 and 5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, make recommendations for sentencing, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney of record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic information is maintained on a computer which is password-protected and accessed by the personal identifier assigned.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers and by an ''A'' number.

SAFEGUARDS:

Information is maintained on a password-protected computer.

RETENTION AND DISPOSAL:

Records will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a (j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant and Offender, (2) treatment facility staff, (3) Federal, state and local law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–3

SYSTEM NAME:

Interview and Treatment Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004, 500 Indiana Avenue, NW., 601 Indiana Avenue, NW., 300 Indiana Avenue, NW., and 333 Constitution Avenue, NW.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview information, criminal history and treatment assessments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is used to determine bail, provide substance abuse treatment, monitor compliance with release conditions and report compliance with and violations of release conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants to Federal, local and state courts, court personnel, prosecutors, defense attorneys, and corrections, probation, parole and/or other pretrial officials except substance abuse and mental health treatment information.

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files (paper copies) are maintained in locked file cabinets.

RETRIEVABILITY:

Information can be retrieved by the name of the individual or by the Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

Files are kept in locked drawers and behind locked doors.

RETENTION AND DISPOSAL:

Records will be retained for 5 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as Records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendant, (2) Federal and local law enforcement agencies, (3) family and friends, (4) substance abuse treatment and medical facilities, and (5) Federal and local courts, (6) Federal, state and local corrections, pretrial, probation and parole agencies, and (7) evaluation, observations and findings of agency staff, treatment staff and other social service agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

CSOSA/PSA–4

SYSTEM NAME:

Payroll Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to the individual's name, social security number, age, sex, marital status, appointment, tenure, employment status and occupation series. These records also contain data as of the year to date and the most recent pay period with regard to leave earned, used and balances, withholdings and allotments to financial institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101 and 5 CFR part 550.

PURPOSE(S):

Document employee salary, tax and related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax their employee is based on a place of residence, place of employment or both.

I. To disclose information to the Department of Agriculture, National Finance Center, to effect distribution of pay according to employee directions and other authorized purposes.

J. Release information to the Internal Revenue Service (IRS). Information

contained in the system may be disclosed to the IRS to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

K. Information directly related to the identity of debtors and the history of claims contained in the system of records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt.

L. Information may be released about debtors to the U.S. Treasury or other Federal employers in order to effect salary or administrative offsets. Information contained in the system of records may be disclosed to an employer in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection Act have been taken.

M. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

N. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act. Disclosure may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored manually in individual folders.

RETRIEVABILITY:

Information is retrieved by the name or personal identifier of the individual.

SAFEGUARDS:

The information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Records Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Individuals who are current or former employees of the agency, and (2) Information obtained from current and former employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–5

SYSTEM NAME:

Time and Attendance Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of PSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance reports, leave slips and audit reports which contain the name, social security number, grade, leave category, leave balances and organization code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 630.

PURPOSE(S):

To provide control, reporting and accounting for employee leave and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To provide information to a congressional member from the record of an individual in response to an inquiry from that congressional member made at the request of the employee.

B. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the government is a party to the judicial or administrative proceeding.

C. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to a civil or criminal investigation.

D. Information may be disclosed to officials and employees of any Federal agency which requires information relevant to an agency decision concerning the hiring, appointment or retention of an employee; the issuance of a security clearance; the execution of a security or suitability investigation or the classification of a job.

E. Relevant information may be disclosed in a proceeding before an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, e.g., the Merit Systems Protection Board, the Federal Labor Relations Authority, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are employed by PSA and who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, e.g., debt collection activity, disciplinary and/or other appropriate personnel actions, and/or other law enforcement related actions, where appropriate.

F. To the appropriate Federal, state, local, foreign or other public authority responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where PSA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

G. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

H. To disclose information to the Department of Agriculture, National Finance Center to effect maintenance of pay and leave.

I. To disclose information to contractors, grantees, experts, consultants or volunteers performing or working on a contract, service or job for PSA.

J. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored manually in individual folders and electronically on a computer and computer disks.

RETRIEVABILITY:

Information can be retrieved by the name and/or social security number of the individual.

SAFEGUARDS:

Information is maintained in a locked file cabinet.

RETENTION AND DISPOSAL:

Information is maintained and disposed of in accordance with General Record Schedule 2 and the Code of Federal Regulations. The period of retention will not exceed 6 years and 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

To locate a specific record, you must provide the name of the individual and provide at least two items of identification (date of birth, employee identification number, dates of employment or similar information). The address is the same as indicated in the Notification procedures.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification procedure above and reasonably identify the record and specify the information to be contested.

RECORD SOURCE CATEGORIES:

(1) Current or former employee; (2) current or former Time and Attendance personnel; (3) current or former employer; (4) National Finance Center staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CSOSA/PSA–6

SYSTEM NAME:

Pretrial, Probation and Parole Realtime Information Systems Manager (PRISM).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Court Services and Offender Supervision Agency (CSOSA), Pretrial Services Agency (PSA), 633 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Defendants charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and (2) Individuals charged with federal and local misdemeanor and felony charges, municipal violations and traffic offenses in the District of Columbia and on probation and parole for local offenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes defendants' personal, health and demographic information, criminal histories, substance abuse information to include assessments, testing and treatment, defendants' personal references and interview information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105–33, sections 11231–11234 and sections 11271–11260; 5 U.S.C. 301 and DC Code 23, sections 1301–1309.

PURPOSE(S):

Information is used to set bail, provide substance abuse treatment, monitor and supervise compliance with release conditions, report compliance with and violations of release conditions and assist with sentencing decisions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Disclosure may be made to a congressional office in response to an inquiry made at the request of a current and/or former offender/defendant under CSOSA/PSA supervision.

B. Information may be disclosed to any civil or criminal law enforcement agency, whether Federal, state, or local or foreign, which requires information relevant to disposition of a criminal justice matter in accordance with 42 CFR 2.35.

C. To provide information relating to D.C. defendants and offenders to Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole and other pretrial officials (except substance abuse and mental health treatment information).

D. To provide information source for contract or treatment facilities who provide services to defendants under PSA supervision (except substance abuse and mental health treatment information).

E. To provide information to the attorney on record for the defendant (except substance abuse and mental health treatment information).

F. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is stored electronically. Only authorized personnel have access to the information.

RETRIEVABILITY:

Information can be retrieved by the name of the individual, aliases and PDID, temporary ID numbers, ''A'' number, Bail Agency ID (BAID) number, case docket number and Bail Agency Case Entry (BACE) number.

SAFEGUARDS:

The server room is locked; access to the server is restricted and end users must have a valid User ID and password before they can gain access.

RETENTION AND DISPOSAL:

Information will be retained for 20 years after disposition of charge(s).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the Freedom of Information Act Office, Court Services and Offender Supervision Agency, 633 Indiana Avenue, NW., Washington, DC 20004.

RECORDS ACCESS PROCEDURES:

The major part of this system is exempt from this requirement under 5 U.S.C. 552a(j). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as records access procedures above.

RECORD SOURCE CATEGORIES:

(1) Defendants; (2) Federal, state and local law enforcement agencies; (3) local, state and Federal corrections; (4) Federal, state and local probation, parole and pretrial services; (5) relatives, friends, and other community individuals; and (6) evaluation, observations and findings of agency staff, treatment providers and other social services agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) through (4)(I), (5), and (8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the system has been exempted from subsections (c)(3), (d) and (e)(1) pursuant to subsections (k)(1) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 02–6092 Filed 3–14–02; 8:45 am]

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Federal Register

Friday,
March 15, 2002

Part IV

Department of Housing and Urban Development

Public Housing Assessment System (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4710–N–05]

Public Housing Assessment Systems (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces to Public Housing Agencies (PHAs) and the public that PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be assessed under the PHAS in accordance with interim scoring procedures described in notices published in the **Federal Register** on November 26, 2001. This notice also addresses public comments received in response to a request for comments in the November 26, 2001, notices. The Department considered all comments but has decided to make no changes to the interim scoring procedures in response to the public comments. This notice also advises that if the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in **Federal Register**.

DATES: *Effective Date:* March 15, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center of the Office of Public and Indian Housing, Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, Telephone Technical Assistance Center as (888) 245–4860 (this is a toll free number) or Judy Wojciechowski, Director of PHAS Operations, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932 extension 3464. Persons with hearing or speech impairments may access these telephone numbers via TTY by calling the Federal Information Relay Service at (800) 887–8339. Additional information is available from the Real Estate Assessment Center Office of Public and Indian Housing Web site at *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2001, HUD published for public comment notices that proposed an interim PHAS scoring methodology that would be applicable to PHAs with fiscal years ending September 30, 2001, and continuing for up to one year to include PHAs with fiscal years ending September 30, 2002. For this interim assessment period, the Department advised that it proposed to make scoring changes to two of the four PHAS assessment indicators: the Financial Condition Indicator and the Physical Condition Indicator. Detailed information about these scoring changes was provided in the notices published on November 26, 2001. Essentially, the Department proposed that for physical condition scoring purposes during the interim assessment period, the inspectable areas will be reduced from five or two. The weights assigned to the three unscored inspectable areas will be redistributed over the two remaining inspectable areas. For financial condition scoring purposes, the Departmental proposed to remove the use of peer groupings from two of the financial components. The Physical Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59084, and the Financial Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59126.

The Department solicited public comment on the interim scoring procedures. Eight comments were received in response to the public comment solicitation. The Department carefully considered all comments and has decided to make no changes to the scoring methodologies as a result of the comments.

Accordingly, with the publication of this notice, the Department advises that the PHAS is effective beginning with PHAs having a fiscal year end of September 30, 2001, and PHAs will receive an overall PHAS score based on the four PHAS indicator scores. PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be scored for the Physical Condition Indicator and the Financial Condition Indicator in accordance with the scoring procedures described in the notices published on November 26, 2001. If the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in the **Federal Register**.

II. Discussion of the Public Comments

Of the eight commenters on the November 26, 2001, notices, five of the commenters were PHAs and the three other commenters were representatives of PHAs. One PHA commenter supported the interim scoring methodologies and the changes to the Physical Condition and Financial Condition Indicators. The other commenters had comments that are discussed below.

Comment. PHAS should not be implemented at this time, except on an advisory basis.

One commenter stated that it is not understandable or acceptable to subject PHAs to scores and potential penalties using an assessment tool that is still under development. For the system to be credible, the system must not continuously redefine itself as public resources are being expended in PHAs' efforts to comply. HUD should continue to implement the PHAS on an advisory basis while HUD continues to work with PHAs, resident organizations and other interested parties to refine the system or find another one that will work. The commenter stated that even in advisory form, the PHAS is a valuable tool for identifying areas that may need improvement. This commenter also stated that the system was overly dependent on the subjectivity of the inspectors.

Another commenter stated that the notices do not improve the PHAS enough to warrant issuance of official scores to PHAs, and there should have been an additional year of advisory scores, under which inspections would have continued and, more importantly, exigent health and safety violations would have been identified and remediated.

Response. While HUD acknowledges that the assessment system can be enhanced, HUD believes that PHAS, as currently amended, is useable for an interim period. The Office of Inspector General (OIG) and the General Accounting Office (GAO) have both indicated that the Public Housing Management Assessment Program (PHMAP), on which the PHAS Management Operations Indicator is substantially based, is not a reliable means of assessing PHA performance. Further, both the OIG and GAO indicated that HUD, as required by statute, must determine the condition of public housing to ensure that funds provided by Congress are being used to provide decent, safe, and sanitary housing that is in good repair. This interim scoring methodology provides for technical reviews, database

adjustments, and appeals of overall scores and designation.

Comment. In the Physical Condition Indicator, the reduction of the number of inspectable areas and redistribution of the weights results in unfairness.

Two commenters stated that the notice shifts an inordinate amount of weight to Dwelling Units. One commenter stated that under the interim physical condition scoring procedure, all five areas will be inspected, scored and the inspection data captured in the system, but for assessment purposes, a property's score, and the PHA's overall Physical Condition Indicator score, will be derived only from the deficiencies observed in Building Systems and Dwelling Units. The redistribution of the area weights from Site, Building Exterior, and Common Areas to Building Systems and Dwelling Units and the continued use of a 100 point scale for property scores means heavier weights will be applied to Dwelling Unit items such as a missing sink stopper and PHA's will be ''further penalized.''

Another commenter stated because the interim scoring process will base the score of the physical assessment on Dwelling Units (64%) and Building Systems (36%), ignoring the scores received for Site, Building Exterior and Common Areas, the ''adjusted'' normalized weight will shift most of the weight to Dwelling Units for properties that have limited Building Systems components. This PHA estimated that under the interim scoring assessment, the ''adjusted'' normalized weight for its family developments will shift to 73% for Dwelling Units and 27% for Building Systems.

The commenter further stated that to inspect an entire property and have the ''official scores'' be uniformly based on only two components, then regardless of the physical and structural considerations of each property, the official score will not provide an accurate reflection of each property's true condition. Under the new formula, this PHA commenter stated that its 2001 Physical Condition Indicator score could be reduced by 10 points—enough so that the exact physical considerations currently rated ''standard'' may become ''at risk.''

The commenter also stated that there appears to be a bias toward properties with building systems indicative of East Coast and Midwest housing. However, on the West Coast, the townhouse style properties are spread across acres of land and lack the expected level of building system components as other public housing properties. As a result, shifting the scoring to only Dwelling Units and Building Systems does a disservice to public housing in Southern California.

One commenter stated that PHAs should have the option of being scored on all five physical condition criteria. By only scoring two areas, the notice sends the disturbing message to managers that only those two areas are of importance and the other areas need not be accorded the same level of maintenance. By not according the agency the option to be scored on all five areas, human nature dictates that non-scored areas will experience a decline in attention.

Response. Both HUD and the public housing stakeholders realized that compromises would be necessary in order to proceed with the assessment of PHAs during the interim period. Most PHAs will fare better with the proposed scoring changes, although some will not fare as well.

During the effective period of the interim scoring process, inspectors will inspect all five inspectable areas and record all deficiencies observed. While PHAs will be provided with a complete inspection report reflecting all observed deficiencies, they will be scored only on Dwelling Units and Building Systems. This will enable PHAs to effectively plan short-term maintenance and long-term modernization needs. Accordingly, the inspection does not ignore or diminish the importance of any inspectable area or any deficiency. Both HUD and significant stakeholders believe that this compromise will best serve the interest of the PHAs, the residents, and HUD.

HUD appreciates the suggestion that PHAs be given the option of being scored on all five areas. However, the time, effort and cost to the government of providing this option would not be warranted given the interim nature of these scoring changes.

Comment. Certain health and safety violations should not be scored.

Two commenters asked that the notice specifically state that health and safety violations found in the three areas not scored (Site, Building Exterior, and Common Areas) will not be part of the physical score under the interim assessment process.

Response. In the November 26, 2001, Physical Condition Scoring Process notice (66 FR 59084), the Department stated, ''[t]he inspector also will record and report all health and safety deficiencies in each of the five inspectable areas. However, the inspection score for each property will be based only on the information reported by the inspector for the two inspectable areas, Building Systems and Dwelling Units, after the redistribution of the areas' weights for the three non-included areas.'' Consequently, HUD believes that this issue was addressed in the November 26, 2001, Physical Condition Scoring Process notice.

Comment. Revisions should be made to the overall physical inspection process through confirmatory reviews of inspections, more use of proportionality, and rights to appeal.

Three commenters asked for revisions in the physical inspection process. One commenter argued that, aside from the requirement that PHAs inspect their units annually, there should be a confirmatory inspection by an outside agency chosen by the PHA from a list of firms ''recognized'' by HUD. Physical inspections should be limited to a set percentage of PHA units to validate the sample, and, when more than one unit is involved, should consider ''proportionality with regard to issues such as fencing'' (i.e., measuring the overall impact of a deficiency as a percentage, such as percentage of total surface area affected by a deficiency).

The commenters stated that scoring systems must be flexible so they meet the needs of large and small PHAs. Physical inspections should result in numeric scores with a right of appeal, and not a pass-fail grade. Two other commenters agreed with the idea of a confirmatory inspection, stating, ''there is a definite need for a third party confirmation audit.'' These two commenters also stated that the frequency of inspections is not addressed and also not addressed are possible solutions for PHAs that fail inspections.

Response. HUD declines to accept the suggestion that there should be an outside agency to conduct a confirmatory inspection. The Department has several processes in place for inspection review. HUD has its own Quality Assurance inspectors that review the performance of contract inspectors. HUD also has engineers who review the inspection information when it is uploaded to HUD. The PHAS regulation provides for technical reviews, database adjustments and appeals of the overall PHAS scores and designation. As a result, HUD believes that there are adequate procedures available to PHAs to ensure the accuracy of their scores. Further, due to financial constraints, confirmatory reviews are not feasible.

At this time, HUD also declines to adopt the suggestion that units sampled should be limited to a set percentage of PHA units, and, when more than one unit is involved, should consider

proportionality with regard to issues such as fencing.

HUD chose instead to use a statistically valid random sample method rather than such set percentages at the inception of the PHAS. Educational, scientific and private communities use this methodology when attempting to draw conclusions about a given subject matter. However, in future consultations with public housing stakeholders, HUD intends to consider alternative inspection methodology, which may include the further use of proportionality. With regard to the frequency of the inspections, the PHAS regulation provides for an annual assessment of a PHA, including the physical condition of the PHA's housing stock. The November 26, 2001, physical condition scoring notice provides that where a PHA's score is equal to or greater than 24 points out of the total of 30 points for the Physical Condition Indicator, the PHA will be inspected every other year. If the PHA's Physical Condition Indicator score is less than 24 points, the inspection frequency will be annually. The PHAS regulation does not provide for a failing score for individual inspections. Instead, the regulation assesses the overall condition of all of a PHA's properties. The regulation establishes a threshold of less than 18 points out of a total of 30 points before a PHA is designated as being in substandard physical condition.

It is not the intent of the Department either through its scoring notices or the PHAS regulation to offer possible solutions for PHAs that are designated to be in ''substandard physical condition.'' Rather, it is the purpose of PHAS to provide a measuring tool so that HUD and PHAs can monitor the condition of housing stock and take appropriate action where necessary to ensure that residents are living in housing that is decent, safe, sanitary, and in good repair. The reasons for a PHA to receive a substandard designation vary from PHA to PHA. Once designated to be in ''substandard physical condition,'' the PHA and HUD analyze the root causes for the designation and determine what corrective actions need to be taken which will then be embodied in a Memorandum of Agreement in accordance with the PHAS regulation.

Comment. Clarify the applicable physical inspection standard.

Three commenters stated that the notice does not adequately address physical inspection standards. One commenter stated that Housing Quality Standards (HQS) should be the minimum standard, unless there is a local code that has higher standards, in which case the local code should prevail. Two commenters stated ''[i]n spite of the proposed rule change, we are still in a quandary on the inspection standards—HQS, UPCS, local codes, the ''higher'' of HQS than local codes.''

Response. The scoring notice change does not alter the required inspections standard for PHAs. The UPCS regulation (codified at 24 CFR part 5), and the PHAS regulation (codified at 24 CFR part 902) clearly establish the UPCS as the HUD physical condition standard for public housing. HUD has long required PHAs to comply with federal standards as well as applicable local code in the development and modernization of public housing. The standard in the industry, when there are two codes at variance, is to use the more stringent standard. This was the case under the annual unit and system inspection component of PHMAP (24 CFR 901.30(d)), the predecessor to PHAS. HUD expects PHAs during this interim period to continue with this practice.

Comment. Allow PHAs time to remediate problems.

Two commenters ''strongly recommended'' that there should be a period of time for low scoring PHAs to remediate problems before HUD imposes consequences.

Response. The PHAS regulation requires that overall troubled PHAs (and troubled-substandard in a single indicator) be referred to the Troubled Agency Recovery Center (TARC). The TARC will enter into a Memorandum of Agreement with the troubled agencies outlining corrective actions to be taken within specified time frames. Further, the PHAS regulation permits the PHA to petition for removal of the troubled designation. A petition for removal can occur if the conditions that gave rise to the troubled designation have been cured. While HUD believes that these procedures provide adequate opportunities for remediation, this issue may be further considered as HUD continues to work with stakeholders in determining what long-term evaluation methodology will be adopted.

Comment. In the Physical Condition Indicator, certain items should not be scored.

A commenter stated that only significant items that rise to the level of code violations should be scored. This commenter also stated that there should be no deductions for missing tub stoppers or non-functional defects. Tenant-caused defects should not result in point loss, but should be noted for correction or treated like smoke detectors when the batteries have been removed.

Three commenters stated that there should be no deductions for units undergoing modernization. Along similar lines, two other commenters stated that ''mitigating circumstances (e.g., tenant damages) should be taken into account.'' Yet another commenter found the number of deficiencies, the severity of them and the weights and criticalities in the units and building systems to be problematic. This commenter stated, ''[t]here are still too many tenant-caused damages and too many minor ''problems'' in units that are scored.'' As a result, the commenter questions whether the score is a fair and accurate representation of the housing stock.

Response. The U.S. Housing Act of 1937 requires that public housing be decent, safe and sanitary. The Act further requires that HUD determine the extent to which the PHA is providing basic acceptable housing conditions. HUD does not believe that the Act intended for HUD's determination to be limited to local housing code or functionality. Local codes vary throughout the nation. In some cases, local code is nonexistent or at an extremely low level. Functionality is a question of whether a particular inspectable item works or not. HUD does not believe that functionality alone is sufficient to meet either the statutory requirement or to assist PHAs and HUD in managing the inventory of approximately 14,000 public housing developments around the country. Accordingly, HUD established the federal standard, the UPCS, to determine compliance with this statutory requirement. HUD acknowledges that improvements can be made and will seek to make them in a permanent methodology. HUD appreciates the concern regarding resident-caused damage. However, the statutory requirements obligate HUD to determine the condition of the properties and do not exempt various causes of the deficiencies from decent, safe and sanitary housing that is in good repair. Reasons for the condition of a property and the attendant remedial actions should be the subject of further review and analysis by the PHA and HUD Field Offices. The PHAS regulation already exempts vacant units undergoing modernization from the inspection. However, where units are occupied, HUD has the obligation to determine if the resident is living in decent, safe and sanitary housing that is in good repair. The PHAS regulation does provide for a database adjustment

for those elements when modernization is in progress.

Comment. The Notices fail to address problems with the PHAS appeals process.

Two commenters asked that HUD ''codify * * * in writing'' that, since HUD can no longer commit to confirmatory reviews as had been ''agreed'' because of lack of manpower, instead appeals would be reviewed broadly and a PHA can make its case to the Assistant Secretary for Public and Indian Housing. One commenter stated that it was ''disappointed'' that there would be no ''common-sense'' review, and suggested that was another reason the PHAS scores should remain advisory.

Response. Although confirmatory reviews and ''common sense'' appeals were discussed during the recent meetings with stakeholders, HUD subsequently found it to be impractical to implement these items during the interim assessment period. As a result, the Department will continue to accept and review requests for technical reviews, database adjustments and score and designation appeals per the PHAS regulation. Prior to responding to the PHA, the Assistant Secretary for the Office of Public and Indian Housing will ensure that all appeals will continue to be given due consideration. While the interim scoring procedures are in effect, the Department is willing to consider improvements to the evaluation methodology, including the appeal process.

Comment. Incentives for PHAs designated as high performers should be provided.

Four commenters stated that there should be some form of reward for high performers. One commenter stated that the scores must be tied to a system of rewards and there should be regulatory waivers granted to high performers in addition to capital assistance under section 9(j)(3)(C) of the U.S. Housing Act of 1937 (which provides for the reallocation of certain Capital Funds to high performing PHAs). Two commenters stated generally that the notice fails to address the concept of rewards for high performers, which they state was at the heart of changing the old assessment system. One commenter stated that the notice was silent as to whether high performer status would entitle PHAs to all the privileges defined by the Department, including additional Capital Funds, and that this entitlement should be stated in writing. This commenter urged that Capital Funds be distributed based on high performer status as soon as technically possible.

Response. The current PHAS regulation provides incentives for high performers and PHAs will be afforded those incentives. Further, the Capital Fund Program rule provides incentives for high performers. The interim scoring notice does not modify or change the implementation of incentives to high performers. Accordingly, PHAs that are designated as high performers during the period when the interim scoring notices are in effect will receive additional capital funds as a result of their performance, as provided by the Capital Fund Program rule. HUD will notify PHAs of the schedule upon which these funds will be provided, which depends in part on administrative considerations. The Department is willing to consider the issue of additional regulatory waivers during the long-term review of changes to the evaluation methodology.

Comment. The changes to the Financial Condition Indicator may change a PHA's designation.

One commenter stated that the constant change to the financial components, specifically Current Ratio (CR) and number of Months Expendable Fund Balance (MEFB), ''may establish a perception that HUD is setting up housing authorities to fail.'' The commenter also stated that the changes to CR and MEFB under the interim scoring process may cause a PHA that was a ''high performer'' in 2001 to be designated as a ''standard performer'' or ''troubled performer'' in 2002, regardless of a change in actual performance.

Response. The Department disagrees that there have been substantial changes to the Financial Condition Indicator. The changes that have been made were either to improve the method of scoring based on industry discussions or update the thresholds based on current data.

Under the interim financial scoring process, the thresholds for the components are lowered so that a PHA with a CR or MEFB value equal to or greater than 1.0 will receive the full 9.0 points available for each component. As a result of this change, a PHA's performance designation improved in most cases, and in the remaining cases, the PHA's performance designation stayed the same.

Comment. Financial peer groupings should be eliminated.

Four commenters stated that peer groupings should be eliminated from the financial indicators and that HUD should use a more constructive measure to assess financial condition. One commenter further stated that all groupings should be abandoned and the focus should be on each PHA's individual performance given the measures by which the management assessment is based.

Response. HUD has conducted extensive research based on the total number of entity-wide units operated to validate the use of peer groups in assessing a PHA's financial condition. The research shows that PHAs of different sizes have statistically different values under the financial indicator components. In addition, financial rating services consider size and market-share as a measure of diversification, i.e., risk management. Based upon this information, HUD believes that it is appropriate to measure certain financial indicator components based on peer groups because it provides for a more accurate overall financial assessment of PHAs. However, this issue will be reconsidered as HUD works with stakeholders in determining what the long-term evaluation methodology will be.

Comment. Financial assessments should not be ''entity-wide.''

Three commenters stated that HUD should not assess a PHA's financial condition on an entity-wide basis. Two commenters stated ''entity-wide'' assessments for some PHAs with sizeable Section 8 programs result in a lower Occupancy Loss component score. The commenters went on to say ''[t]he emphasis should be on a PHA's ability to manage its public housing dwelling units that it has control over, not the housing market in its jurisdiction.'' One commenter also noted that, ''for these sub-indicators, there are (sic) no statutory authority for HUD to impose these conditions.''

Response. HUD has considered whether a PHA should be financially evaluated on an entity-wide basis and has determined that the overall financial condition of a PHA provides a valid basis to assess its long-term viability and financial performance. The Department is concerned about a PHA's ability to manage non-public housing grant and subsidy programs, as well as other federal and non-federal sources of funding. However, other options may be explored as HUD considers permanent changes to the assessment system.

With reference to the statutory requirements, HUD has the authority to assess any factors it determines appropriate in accordance with section 6(j)(1)(K) of the U.S. Housing Act of 1937, as amended. The Single Audit Act and OMB Circular A–133 require entity-wide audits of the financial statements of PHAs receiving federal funds.

Comment. The financial review should be limited to the independent audit.

One commenter stated that the financial review should be ''limited to the independent audit and the data that HUD draws from the Financial Data Schedule.'' There should be no other requirements included in the financial review.

Response. HUD understands this comment to mean that PHAs should only be required to submit an audited financial statement and not submit both an unaudited and an audited financial statement.

As required by the Single Audit Act and OMB Circular A–133, HUD requires PHAs to submit audited financial statements nine months following the close of the PHA's fiscal year-end. However, there may be information in the unaudited financial statement that would assist HUD in monitoring a PHA's financial health. Therefore, HUD will continue to require both submissions.

Comment. Business practice dictates that scores of less than one for CR and MEFB are unacceptable.

One commenter stated that ''good business practice dictates that an authority has sufficient current assets to cover current liabilities and adequate reserves to operate independently of HUD, if circumstances should warrant.'' In addition, the commenter stated that ''it might be considered harsh to penalize a housing authority zero points for scoring less than one on either current ratio or number of months expendable fund balance; however, sound business principles indicate a score of less than one is unacceptable.''

Response. HUD agrees that sound business principles indicate a value of less than one on the CR or MEFB is unacceptable. As a result, under the interim scoring process, a value of less than one on the CR component would result in a CR score of zero. The CR component measures the cash liquidity of a PHA by dividing current assets by current liabilities. This component predicts whether or not the PHA can meet its current obligations, therefore a PHA with a CR value of less than one (i.e., when current liabilities are greater than current assets) would pose a financial risk because it may be unable to cover its current obligations and thus should merit a score of zero for the CR component.

Similarly, the MEFB is a viability measure of a PHA's ability to operate using primarily its net available, unrestricted resources without reliance on additional funding. This component compares the net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses and the repayment of operating debt principal can be covered with currently available, unrestricted resources. Therefore, a PHA with a MEFB value of less than one would pose a financial risk because it may be unable to cover its operating expenses using its reserves and thus should merit a score of zero for the MEFB component.

Comment. Concur with changes to interim scoring for the Financial Condition Indicator.

Four commenters concurred with the interim scoring changes for the Financial Indicator. In particular, they concurred with HUD's decision to use pass/fail when scoring the components CR and MEFB, rather than scoring these two components based on percentiles and peer grouping.

Response. The Department appreciates the commenters' agreement with these changes.

Comment. Indicate essential elements in the PHA evaluation system.

One commenter stated that the interim assessment processes should indicate which elements are essential in the public housing evaluation system.

Response. The Department believes that the four indicators that comprise the PHAS are the essential elements in an overall assessment of public housing. As stated in the November 26, 2001, Introduction Notice (66 FR 59080), these four essential elements are the: (1) Physical condition of properties; (2) financial condition; (3) management operations; and (4) resident's assessment through a survey. Since this information is in the current PHAS regulation, no change to these notices is required.

Comment. Reduce the management reporting requirements, in particular the drug elimination program information.

One commenter stated that the management assessment indicator should be retained but the reporting requirements lessened, and in particular, the information on the drug elimination program that Congress no longer funds.

Response. The Department is not considering changes to the Management Operations Indicator for the period when the interim scoring notices are in effect, but has committed to continue to meet with public housing stakeholders during this time to further discuss evaluation methodologies and the scoring processes. In these meetings, the Department is willing to consider the drug elimination reporting requirements under the Management Operations Indicator.

Comment. Modify the resident survey questions and include the property address with the responses.

One commenter suggested that the Department retain the current questions in the Customer Service and Satisfaction Survey and allow PHAs to insert five to ten additional questions about local issues. The commenter also stated that the resident responses should indicate the resident's address in order for the PHA to deal with the responses.

Response. While the Department is not making changes to the Resident Service and Satisfaction Indicator during the period when the interim scoring notices are in effect, the Department has committed to continue to meet with public housing stakeholders to further discuss the evaluation methodologies. In these meetings, changes to the resident survey will be discussed. In November 2001, the Department began reporting resident survey results to PHAs on the property level. This provides the PHA with the ability to more specifically respond to resident concerns while at the same time maintaining the residents' anonymity, which is important because of privacy concerns.

III. Adoption of Interim Physical Condition and Financial Condition Scoring Procedures Without Change

The Department appreciates the public comments submitted on the November 26, 2001, notices. For the reasons discussed above in Section II of this notice, the Department adopts the interim physical condition and financial condition scoring procedures without change.

Dated: March 8, 2002.

Michael Liu,

Assistant Secretary, Public and Indian Housing.

[FR Doc. 02–6196 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Friday,
March 15, 2002

Part IV

Department of Housing and Urban Development

Public Housing Assessment System (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4710–N–05]

Public Housing Assessment Systems (PHAS); Notice Adopting Interim Scoring Methodologies for PHAS Physical Condition and Financial Condition Indicators

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces to Public Housing Agencies (PHAs) and the public that PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be assessed under the PHAS in accordance with interim scoring procedures described in notices published in the **Federal Register** on November 26, 2001. This notice also addresses public comments received in response to a request for comments in the November 26, 2001, notices. The Department considered all comments but has decided to make no changes to the interim scoring procedures in response to the public comments. This notice also advises that if the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in **Federal Register**.

DATES: *Effective Date:* March 15, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center of the Office of Public and Indian Housing, Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, Telephone Technical Assistance Center as (888) 245–4860 (this is a toll free number) or Judy Wojciechowski, Director of PHAS Operations, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024, telephone (202) 708–4932 extension 3464. Persons with hearing or speech impairments may access these telephone numbers via TTY by calling the Federal Information Relay Service at (800) 887–8339. Additional information is available from the Real Estate Assessment Center Office of Public and Indian Housing Web site at *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2001, HUD published for public comment notices that proposed an interim PHAS scoring methodology that would be applicable to PHAs with fiscal years ending September 30, 2001, and continuing for up to one year to include PHAs with fiscal years ending September 30, 2002. For this interim assessment period, the Department advised that it proposed to make scoring changes to two of the four PHAS assessment indicators: the Financial Condition Indicator and the Physical Condition Indicator. Detailed information about these scoring changes was provided in the notices published on November 26, 2001. Essentially, the Department proposed that for physical condition scoring purposes during the interim assessment period, the inspectable areas will be reduced from five or two. The weights assigned to the three unscored inspectable areas will be redistributed over the two remaining inspectable areas. For financial condition scoring purposes, the Departmental proposed to remove the use of peer groupings from two of the financial components. The Physical Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59084, and the Financial Condition Indicator Scoring Process notice was published in the **Federal Register** at 66 FR 59126.

The Department solicited public comment on the interim scoring procedures. Eight comments were received in response to the public comment solicitation. The Department carefully considered all comments and has decided to make no changes to the scoring methodologies as a result of the comments.

Accordingly, with the publication of this notice, the Department advises that the PHAS is effective beginning with PHAs having a fiscal year end of September 30, 2001, and PHAs will receive an overall PHAS score based on the four PHAS indicator scores. PHAs with fiscal years ending September 30, 2001, through and including September 30, 2002, will be scored for the Physical Condition Indicator and the Financial Condition Indicator in accordance with the scoring procedures described in the notices published on November 26, 2001. If the Department determines that the effective period of the interim scoring processes should be extended beyond September 30, 2002, the Department will notify PHAs and the public by notice published in the **Federal Register**.

II. Discussion of the Public Comments

Of the eight commenters on the November 26, 2001, notices, five of the commenters were PHAs and the three other commenters were representatives of PHAs. One PHA commenter supported the interim scoring methodologies and the changes to the Physical Condition and Financial Condition Indicators. The other commenters had comments that are discussed below.

Comment. PHAS should not be implemented at this time, except on an advisory basis.

One commenter stated that it is not understandable or acceptable to subject PHAs to scores and potential penalties using an assessment tool that is still under development. For the system to be credible, the system must not continuously redefine itself as public resources are being expended in PHAs' efforts to comply. HUD should continue to implement the PHAS on an advisory basis while HUD continues to work with PHAs, resident organizations and other interested parties to refine the system or find another one that will work. The commenter stated that even in advisory form, the PHAS is a valuable tool for identifying areas that may need improvement. This commenter also stated that the system was overly dependent on the subjectivity of the inspectors.

Another commenter stated that the notices do not improve the PHAS enough to warrant issuance of official scores to PHAs, and there should have been an additional year of advisory scores, under which inspections would have continued and, more importantly, exigent health and safety violations would have been identified and remediated.

Response. While HUD acknowledges that the assessment system can be enhanced, HUD believes that PHAS, as currently amended, is useable for an interim period. The Office of Inspector General (OIG) and the General Accounting Office (GAO) have both indicated that the Public Housing Management Assessment Program (PHMAP), on which the PHAS Management Operations Indicator is substantially based, is not a reliable means of assessing PHA performance. Further, both the OIG and GAO indicated that HUD, as required by statute, must determine the condition of public housing to ensure that funds provided by Congress are being used to provide decent, safe, and sanitary housing that is in good repair. This interim scoring methodology provides for technical reviews, database

adjustments, and appeals of overall scores and designation.

Comment. In the Physical Condition Indicator, the reduction of the number of inspectable areas and redistribution of the weights results in unfairness.

Two commenters stated that the notice shifts an inordinate amount of weight to Dwelling Units. One commenter stated that under the interim physical condition scoring procedure, all five areas will be inspected, scored and the inspection data captured in the system, but for assessment purposes, a property's score, and the PHA's overall Physical Condition Indicator score, will be derived only from the deficiencies observed in Building Systems and Dwelling Units. The redistribution of the area weights from Site, Building Exterior, and Common Areas to Building Systems and Dwelling Units and the continued use of a 100 point scale for property scores means heavier weights will be applied to Dwelling Unit items such as a missing sink stopper and PHA's will be ''further penalized.''

Another commenter stated because the interim scoring process will base the score of the physical assessment on Dwelling Units (64%) and Building Systems (36%), ignoring the scores received for Site, Building Exterior and Common Areas, the ''adjusted'' normalized weight will shift most of the weight to Dwelling Units for properties that have limited Building Systems components. This PHA estimated that under the interim scoring assessment, the ''adjusted'' normalized weight for its family developments will shift to 73% for Dwelling Units and 27% for Building Systems.

The commenter further stated that to inspect an entire property and have the ''official scores'' be uniformly based on only two components, then regardless of the physical and structural considerations of each property, the official score will not provide an accurate reflection of each property's true condition. Under the new formula, this PHA commenter stated that its 2001 Physical Condition Indicator score could be reduced by 10 points—enough so that the exact physical considerations currently rated ''standard'' may become ''at risk.''

The commenter also stated that there appears to be a bias toward properties with building systems indicative of East Coast and Midwest housing. However, on the West Coast, the townhouse style properties are spread across acres of land and lack the expected level of building system components as other public housing properties. As a result, shifting the scoring to only Dwelling Units and Building Systems does a disservice to public housing in Southern California.

One commenter stated that PHAs should have the option of being scored on all five physical condition criteria. By only scoring two areas, the notice sends the disturbing message to managers that only those two areas are of importance and the other areas need not be accorded the same level of maintenance. By not according the agency the option to be scored on all five areas, human nature dictates that non-scored areas will experience a decline in attention.

Response. Both HUD and the public housing stakeholders realized that compromises would be necessary in order to proceed with the assessment of PHAs during the interim period. Most PHAs will fare better with the proposed scoring changes, although some will not fare as well.

During the effective period of the interim scoring process, inspectors will inspect all five inspectable areas and record all deficiencies observed. While PHAs will be provided with a complete inspection report reflecting all observed deficiencies, they will be scored only on Dwelling Units and Building Systems. This will enable PHAs to effectively plan short-term maintenance and long-term modernization needs. Accordingly, the inspection does not ignore or diminish the importance of any inspectable area or any deficiency. Both HUD and significant stakeholders believe that this compromise will best serve the interest of the PHAs, the residents, and HUD.

HUD appreciates the suggestion that PHAs be given the option of being scored on all five areas. However, the time, effort and cost to the government of providing this option would not be warranted given the interim nature of these scoring changes.

Comment. Certain health and safety violations should not be scored.

Two commenters asked that the notice specifically state that health and safety violations found in the three areas not scored (Site, Building Exterior, and Common Areas) will not be part of the physical score under the interim assessment process.

Response. In the November 26, 2001, Physical Condition Scoring Process notice (66 FR 59084), the Department stated, ''[t]he inspector also will record and report all health and safety deficiencies in each of the five inspectable areas. However, the inspection score for each property will be based only on the information reported by the inspector for the two inspectable areas, Building Systems and Dwelling Units, after the redistribution of the areas' weights for the three non-included areas.'' Consequently, HUD believes that this issue was addressed in the November 26, 2001, Physical Condition Scoring Process notice.

Comment. Revisions should be made to the overall physical inspection process through confirmatory reviews of inspections, more use of proportionality, and rights to appeal.

Three commenters asked for revisions in the physical inspection process. One commenter argued that, aside from the requirement that PHAs inspect their units annually, there should be a confirmatory inspection by an outside agency chosen by the PHA from a list of firms ''recognized'' by HUD. Physical inspections should be limited to a set percentage of PHA units to validate the sample, and, when more than one unit is involved, should consider ''proportionality with regard to issues such as fencing'' (i.e., measuring the overall impact of a deficiency as a percentage, such as percentage of total surface area affected by a deficiency).

The commenters stated that scoring systems must be flexible so they meet the needs of large and small PHAs. Physical inspections should result in numeric scores with a right of appeal, and not a pass-fail grade. Two other commenters agreed with the idea of a confirmatory inspection, stating, ''there is a definite need for a third party confirmation audit.'' These two commenters also stated that the frequency of inspections is not addressed and also not addressed are possible solutions for PHAs that fail inspections.

Response. HUD declines to accept the suggestion that there should be an outside agency to conduct a confirmatory inspection. The Department has several processes in place for inspection review. HUD has its own Quality Assurance inspectors that review the performance of contract inspectors. HUD also has engineers who review the inspection information when it is uploaded to HUD. The PHAS regulation provides for technical reviews, database adjustments and appeals of the overall PHAS scores and designation. As a result, HUD believes that there are adequate procedures available to PHAs to ensure the accuracy of their scores. Further, due to financial constraints, confirmatory reviews are not feasible.

At this time, HUD also declines to adopt the suggestion that units sampled should be limited to a set percentage of PHA units, and, when more than one unit is involved, should consider

proportionality with regard to issues such as fencing.

HUD chose instead to use a statistically valid random sample method rather than such set percentages at the inception of the PHAS. Educational, scientific and private communities use this methodology when attempting to draw conclusions about a given subject matter. However, in future consultations with public housing stakeholders, HUD intends to consider alternative inspection methodology, which may include the further use of proportionality. With regard to the frequency of the inspections, the PHAS regulation provides for an annual assessment of a PHA, including the physical condition of the PHA's housing stock. The November 26, 2001, physical condition scoring notice provides that where a PHA's score is equal to or greater than 24 points out of the total of 30 points for the Physical Condition Indicator, the PHA will be inspected every other year. If the PHA's Physical Condition Indicator score is less than 24 points, the inspection frequency will be annually. The PHAS regulation does not provide for a failing score for individual inspections. Instead, the regulation assesses the overall condition of all of a PHA's properties. The regulation establishes a threshold of less than 18 points out of a total of 30 points before a PHA is designated as being in substandard physical condition.

It is not the intent of the Department either through its scoring notices or the PHAS regulation to offer possible solutions for PHAs that are designated to be in ''substandard physical condition.'' Rather, it is the purpose of PHAS to provide a measuring tool so that HUD and PHAs can monitor the condition of housing stock and take appropriate action where necessary to ensure that residents are living in housing that is decent, safe, sanitary, and in good repair. The reasons for a PHA to receive a substandard designation vary from PHA to PHA. Once designated to be in ''substandard physical condition,'' the PHA and HUD analyze the root causes for the designation and determine what corrective actions need to be taken which will then be embodied in a Memorandum of Agreement in accordance with the PHAS regulation.

Comment. Clarify the applicable physical inspection standard.

Three commenters stated that the notice does not adequately address physical inspection standards. One commenter stated that Housing Quality Standards (HQS) should be the minimum standard, unless there is a local code that has higher standards, in which case the local code should prevail. Two commenters stated ''[i]n spite of the proposed rule change, we are still in a quandary on the inspection standards—HQS, UPCS, local codes, the ''higher'' of HQS than local codes.''

Response. The scoring notice change does not alter the required inspections standard for PHAs. The UPCS regulation (codified at 24 CFR part 5), and the PHAS regulation (codified at 24 CFR part 902) clearly establish the UPCS as the HUD physical condition standard for public housing. HUD has long required PHAs to comply with federal standards as well as applicable local code in the development and modernization of public housing. The standard in the industry, when there are two codes at variance, is to use the more stringent standard. This was the case under the annual unit and system inspection component of PHMAP (24 CFR 901.30(d)), the predecessor to PHAS. HUD expects PHAs during this interim period to continue with this practice.

Comment. Allow PHAs time to remediate problems.

Two commenters ''strongly recommended'' that there should be a period of time for low scoring PHAs to remediate problems before HUD imposes consequences.

Response. The PHAS regulation requires that overall troubled PHAs (and troubled-substandard in a single indicator) be referred to the Troubled Agency Recovery Center (TARC). The TARC will enter into a Memorandum of Agreement with the troubled agencies outlining corrective actions to be taken within specified time frames. Further, the PHAS regulation permits the PHA to petition for removal of the troubled designation. A petition for removal can occur if the conditions that gave rise to the troubled designation have been cured. While HUD believes that these procedures provide adequate opportunities for remediation, this issue may be further considered as HUD continues to work with stakeholders in determining what long-term evaluation methodology will be adopted.

Comment. In the Physical Condition Indicator, certain items should not be scored.

A commenter stated that only significant items that rise to the level of code violations should be scored. This commenter also stated that there should be no deductions for missing tub stoppers or non-functional defects. Tenant-caused defects should not result in point loss, but should be noted for correction or treated like smoke detectors when the batteries have been removed.

Three commenters stated that there should be no deductions for units undergoing modernization. Along similar lines, two other commenters stated that ''mitigating circumstances (e.g., tenant damages) should be taken into account.'' Yet another commenter found the number of deficiencies, the severity of them and the weights and criticalities in the units and building systems to be problematic. This commenter stated, ''[t]here are still too many tenant-caused damages and too many minor ''problems'' in units that are scored.'' As a result, the commenter questions whether the score is a fair and accurate representation of the housing stock.

Response. The U.S. Housing Act of 1937 requires that public housing be decent, safe and sanitary. The Act further requires that HUD determine the extent to which the PHA is providing basic acceptable housing conditions. HUD does not believe that the Act intended for HUD's determination to be limited to local housing code or functionality. Local codes vary throughout the nation. In some cases, local code is nonexistent or at an extremely low level. Functionality is a question of whether a particular inspectable item works or not. HUD does not believe that functionality alone is sufficient to meet either the statutory requirement or to assist PHAs and HUD in managing the inventory of approximately 14,000 public housing developments around the country. Accordingly, HUD established the federal standard, the UPCS, to determine compliance with this statutory requirement. HUD acknowledges that improvements can be made and will seek to make them in a permanent methodology. HUD appreciates the concern regarding resident-caused damage. However, the statutory requirements obligate HUD to determine the condition of the properties and do not exempt various causes of the deficiencies from decent, safe and sanitary housing that is in good repair. Reasons for the condition of a property and the attendant remedial actions should be the subject of further review and analysis by the PHA and HUD Field Offices. The PHAS regulation already exempts vacant units undergoing modernization from the inspection. However, where units are occupied, HUD has the obligation to determine if the resident is living in decent, safe and sanitary housing that is in good repair. The PHAS regulation does provide for a database adjustment

for those elements when modernization is in progress.

Comment. The Notices fail to address problems with the PHAS appeals process.

Two commenters asked that HUD ''codify * * * in writing'' that, since HUD can no longer commit to confirmatory reviews as had been ''agreed'' because of lack of manpower, instead appeals would be reviewed broadly and a PHA can make its case to the Assistant Secretary for Public and Indian Housing. One commenter stated that it was ''disappointed'' that there would be no ''common-sense'' review, and suggested that was another reason the PHAS scores should remain advisory.

Response. Although confirmatory reviews and ''common sense'' appeals were discussed during the recent meetings with stakeholders, HUD subsequently found it to be impractical to implement these items during the interim assessment period. As a result, the Department will continue to accept and review requests for technical reviews, database adjustments and score and designation appeals per the PHAS regulation. Prior to responding to the PHA, the Assistant Secretary for the Office of Public and Indian Housing will ensure that all appeals will continue to be given due consideration. While the interim scoring procedures are in effect, the Department is willing to consider improvements to the evaluation methodology, including the appeal process.

Comment. Incentives for PHAs designated as high performers should be provided.

Four commenters stated that there should be some form of reward for high performers. One commenter stated that the scores must be tied to a system of rewards and there should be regulatory waivers granted to high performers in addition to capital assistance under section 9(j)(3)(C) of the U.S. Housing Act of 1937 (which provides for the reallocation of certain Capital Funds to high performing PHAs). Two commenters stated generally that the notice fails to address the concept of rewards for high performers, which they state was at the heart of changing the old assessment system. One commenter stated that the notice was silent as to whether high performer status would entitle PHAs to all the privileges defined by the Department, including additional Capital Funds, and that this entitlement should be stated in writing. This commenter urged that Capital Funds be distributed based on high performer status as soon as technically possible.

Response. The current PHAS regulation provides incentives for high performers and PHAs will be afforded those incentives. Further, the Capital Fund Program rule provides incentives for high performers. The interim scoring notice does not modify or change the implementation of incentives to high performers. Accordingly, PHAs that are designated as high performers during the period when the interim scoring notices are in effect will receive additional capital funds as a result of their performance, as provided by the Capital Fund Program rule. HUD will notify PHAs of the schedule upon which these funds will be provided, which depends in part on administrative considerations. The Department is willing to consider the issue of additional regulatory waivers during the long-term review of changes to the evaluation methodology.

Comment. The changes to the Financial Condition Indicator may change a PHA's designation.

One commenter stated that the constant change to the financial components, specifically Current Ratio (CR) and number of Months Expendable Fund Balance (MEFB), ''may establish a perception that HUD is setting up housing authorities to fail.'' The commenter also stated that the changes to CR and MEFB under the interim scoring process may cause a PHA that was a ''high performer'' in 2001 to be designated as a ''standard performer'' or ''troubled performer'' in 2002, regardless of a change in actual performance.

Response. The Department disagrees that there have been substantial changes to the Financial Condition Indicator. The changes that have been made were either to improve the method of scoring based on industry discussions or update the thresholds based on current data.

Under the interim financial scoring process, the thresholds for the components are lowered so that a PHA with a CR or MEFB value equal to or greater than 1.0 will receive the full 9.0 points available for each component. As a result of this change, a PHA's performance designation improved in most cases, and in the remaining cases, the PHA's performance designation stayed the same.

Comment. Financial peer groupings should be eliminated.

Four commenters stated that peer groupings should be eliminated from the financial indicators and that HUD should use a more constructive measure to assess financial condition. One commenter further stated that all groupings should be abandoned and the focus should be on each PHA's individual performance given the measures by which the management assessment is based.

Response. HUD has conducted extensive research based on the total number of entity-wide units operated to validate the use of peer groups in assessing a PHA's financial condition. The research shows that PHAs of different sizes have statistically different values under the financial indicator components. In addition, financial rating services consider size and market-share as a measure of diversification, i.e., risk management. Based upon this information, HUD believes that it is appropriate to measure certain financial indicator components based on peer groups because it provides for a more accurate overall financial assessment of PHAs. However, this issue will be reconsidered as HUD works with stakeholders in determining what the long-term evaluation methodology will be.

Comment. Financial assessments should not be ''entity-wide.''

Three commenters stated that HUD should not assess a PHA's financial condition on an entity-wide basis. Two commenters stated ''entity-wide'' assessments for some PHAs with sizeable Section 8 programs result in a lower Occupancy Loss component score. The commenters went on to say ''[t]he emphasis should be on a PHA's ability to manage its public housing dwelling units that it has control over, not the housing market in its jurisdiction.'' One commenter also noted that, ''for these sub-indicators, there are (sic) no statutory authority for HUD to impose these conditions.''

Response. HUD has considered whether a PHA should be financially evaluated on an entity-wide basis and has determined that the overall financial condition of a PHA provides a valid basis to assess its long-term viability and financial performance. The Department is concerned about a PHA's ability to manage non-public housing grant and subsidy programs, as well as other federal and non-federal sources of funding. However, other options may be explored as HUD considers permanent changes to the assessment system.

With reference to the statutory requirements, HUD has the authority to assess any factors it determines appropriate in accordance with section 6(j)(1)(K) of the U.S. Housing Act of 1937, as amended. The Single Audit Act and OMB Circular A–133 require entity-wide audits of the financial statements of PHAs receiving federal funds.

Comment. The financial review should be limited to the independent audit.

One commenter stated that the financial review should be ''limited to the independent audit and the data that HUD draws from the Financial Data Schedule.'' There should be no other requirements included in the financial review.

Response. HUD understands this comment to mean that PHAs should only be required to submit an audited financial statement and not submit both an unaudited and an audited financial statement.

As required by the Single Audit Act and OMB Circular A–133, HUD requires PHAs to submit audited financial statements nine months following the close of the PHA's fiscal year-end. However, there may be information in the unaudited financial statement that would assist HUD in monitoring a PHA's financial health. Therefore, HUD will continue to require both submissions.

Comment. Business practice dictates that scores of less than one for CR and MEFB are unacceptable.

One commenter stated that ''good business practice dictates that an authority has sufficient current assets to cover current liabilities and adequate reserves to operate independently of HUD, if circumstances should warrant.'' In addition, the commenter stated that ''it might be considered harsh to penalize a housing authority zero points for scoring less than one on either current ratio or number of months expendable fund balance; however, sound business principles indicate a score of less than one is unacceptable.''

Response. HUD agrees that sound business principles indicate a value of less than one on the CR or MEFB is unacceptable. As a result, under the interim scoring process, a value of less than one on the CR component would result in a CR score of zero. The CR component measures the cash liquidity of a PHA by dividing current assets by current liabilities. This component predicts whether or not the PHA can meet its current obligations, therefore a PHA with a CR value of less than one (i.e., when current liabilities are greater than current assets) would pose a financial risk because it may be unable to cover its current obligations and thus should merit a score of zero for the CR component.

Similarly, the MEFB is a viability measure of a PHA's ability to operate using primarily its net available, unrestricted resources without reliance on additional funding. This component compares the net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses and the repayment of operating debt principal can be covered with currently available, unrestricted resources. Therefore, a PHA with a MEFB value of less than one would pose a financial risk because it may be unable to cover its operating expenses using its reserves and thus should merit a score of zero for the MEFB component.

Comment. Concur with changes to interim scoring for the Financial Condition Indicator.

Four commenters concurred with the interim scoring changes for the Financial Indicator. In particular, they concurred with HUD's decision to use pass/fail when scoring the components CR and MEFB, rather than scoring these two components based on percentiles and peer grouping.

Response. The Department appreciates the commenters' agreement with these changes.

Comment. Indicate essential elements in the PHA evaluation system.

One commenter stated that the interim assessment processes should indicate which elements are essential in the public housing evaluation system.

Response. The Department believes that the four indicators that comprise the PHAS are the essential elements in an overall assessment of public housing. As stated in the November 26, 2001, Introduction Notice (66 FR 59080), these four essential elements are the: (1) Physical condition of properties; (2) financial condition; (3) management operations; and (4) resident's assessment through a survey. Since this information is in the current PHAS regulation, no change to these notices is required.

Comment. Reduce the management reporting requirements, in particular the drug elimination program information.

One commenter stated that the management assessment indicator should be retained but the reporting requirements lessened, and in particular, the information on the drug elimination program that Congress no longer funds.

Response. The Department is not considering changes to the Management Operations Indicator for the period when the interim scoring notices are in effect, but has committed to continue to meet with public housing stakeholders during this time to further discuss evaluation methodologies and the scoring processes. In these meetings, the Department is willing to consider the drug elimination reporting requirements under the Management Operations Indicator.

Comment. Modify the resident survey questions and include the property address with the responses.

One commenter suggested that the Department retain the current questions in the Customer Service and Satisfaction Survey and allow PHAs to insert five to ten additional questions about local issues. The commenter also stated that the resident responses should indicate the resident's address in order for the PHA to deal with the responses.

Response. While the Department is not making changes to the Resident Service and Satisfaction Indicator during the period when the interim scoring notices are in effect, the Department has committed to continue to meet with public housing stakeholders to further discuss the evaluation methodologies. In these meetings, changes to the resident survey will be discussed. In November 2001, the Department began reporting resident survey results to PHAs on the property level. This provides the PHA with the ability to more specifically respond to resident concerns while at the same time maintaining the residents' anonymity, which is important because of privacy concerns.

III. Adoption of Interim Physical Condition and Financial Condition Scoring Procedures Without Change

The Department appreciates the public comments submitted on the November 26, 2001, notices. For the reasons discussed above in Section II of this notice, the Department adopts the interim physical condition and financial condition scoring procedures without change.

Dated: March 8, 2002.

Michael Liu,

Assistant Secretary, Public and Indian Housing.

[FR Doc. 02–6196 Filed 3–14–02; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Friday,
March 15, 2002

Part V

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750
Risk-Based Capital; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA23

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is amending appendix A to subpart B of 12 CFR part 1750 Risk-Based Capital. These amendments modify provisions relating to counterparty haircuts, multifamily loans, and refunding and make several technical adjustments and corrections. These amendments are intended to refine the stress test model to tie capital more closely to risk.

DATES: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard Reid, Associate Director, Office of Risk Analysis and Model Development, telephone (202) 414–3754 (not a toll-free number), or David Felt, Deputy General Counsel, telephone (202) 414–3750 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test (Rule) on September 13, 2001, which formed the basis for determining the risk-based capital requirement for the Federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1] The risk-based capital stress test set forth in the Rule simulates the performance of each Enterprise's assets, liabilities, and off-balance-sheet obligations under severe credit and interest rate stress for a period of ten years (stress period). The stress test projects rates of default and prepayment for the mortgages guaranteed by the Enterprises, as well as cash flows from these and other assets, liabilities, and off-balance-sheet obligations. Using these cash flows, the stress test produces monthly balance sheets for the 120 months of the stress period in order to determine the amount of starting capital that would be necessary to maintain positive capital during the stress period. Thirty percent of the amount of capital so determined is then added to that amount to protect against management and operations risk. By statute, the Rule becomes fully enforceable on September 13, 2002, one year after it was issued.[2]

On December 18, 2001, OFHEO published a notice proposing to amend certain provisions in the risk-based capital stress test (AmendNPR).[3] The proposed amendments related to counterparty haircuts, multifamily loans, and refunding and included several technical adjustments and corrections. The purpose of the proposed changes was to improve the Rule's measurements and formulas to tie capital more closely to risk and to ensure that the Rule supports the safety and soundness regime created by the 1992 Act. OFHEO stated that such a proposal is consistent with OFHEO's intention to review, on an ongoing basis, the operation of the stress test and its various components and to evaluate the need for revisions and improvements. Also, OFHEO committed to act expeditiously to remedy any technical and operational issues that arise during the one-year implementation period during which time the capital requirement under the Rule is not being enforced.

OFHEO received 48 comments on the AmendNPR. Commenters included Freddie Mac; Fannie Mae; housing and financial trade associations; financial services companies, including mortgage insurance companies; housing advocacy groups; State housing authorities; academics; consultants; and other interested parties. Many of the comments discussed aspects of the Rule that were not addressed specifically in the AmendNPR. In other instances, commenters approved of certain changes proposed, but suggested that OFHEO go farther or make additional changes in the same area. Numerous commenters, for instance, applauded OFHEO's changes to the multifamily model, which had the effect of lowering adjustable rate mortgage (ARM) defaults in the stress test, but urged OFHEO to take additional steps to lower ARM loss rates. The amended Rule reflects OFHEO's consideration of all of these comments. However, the need for OFHEO to establish a firm baseline for the stress test and apply it to the Enterprises prior to the end of the implementation period does not allow OFHEO to consider further changes or enhancements at this time. A description of the comments along with OFHEO's responses to them is set forth below.

A. Changes to Counterparty Haircuts

The Rule gives the Enterprises credit for cash payments that would be received during the stress period from securities and various counterparties, such as mortgage insurance companies and derivative counterparties. However, because Enterprise counterparties are themselves likely to be adversely affected by the economic conditions of the stress period and to default on some or all of their obligations, the stress test discounts the value of cash payments received during the stress period by a specified percentage, based on the public credit rating of the security or counterparty. The amount by which cash payments from a counterparty or security are discounted in each month of the stress period is the haircut. The specified haircut percentages increase as the credit rating declines—the lower that rating, the more severe the haircut. In the previous Rule, the haircuts were phased in over the first five years of the stress period, except for haircuts for below-investment-grade providers and instruments, which are applied fully in the first month of the stress period.

The Rule applies one set of haircuts for non-derivative counterparties and securities, based on analysis of historical bond default rates, and a different set of haircuts for derivative counterparties, reflecting lower expected loss severities associated with the use of strong collateral agreements.[4] To further refine the previous Rule's treatment of haircuts, OFHEO has improved the consistency between haircuts for derivative counterparties and securities and non-derivative counterparties and securities by specifying default and severity rates separately; extending the phase-in period for the haircuts from five to ten years; providing for netting of exposures to the same derivative counterparty;

[1] Risk-based Capital, 66 FR 47730 (September 13, 2001).

[2] Section 1364 of Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), (12 U.S.C. 4614(d)).

[3] Risk-based Capital, Notice of proposed rulemaking 66 FR 65146 (December 18, 2001).

[4] The term ''derivative'' is used to refer to over-the-counter interest rate and foreign currency derivatives that are used by the Enterprises to hedge interest rate risk and foreign exchange risk. The term should not be read to encompass credit derivatives, which are currently not in use by the Enterprises and would be considered a ''new activity'' and dealt with under section 3.11 of the Rule, if the Enterprises began to use them.

providing for certain technical amendments described herein; and providing for an exception to the BBB haircut for certain unrated multifamily seller/servicers, as described in the AmendNPR.

OFHEO proposed lowering the maximum haircuts for both non-derivative and derivative counterparties and securities. The specified default and severity rates were calculated separately. Their products are the maximum haircuts. Previously, no explicit allowance was made for recoveries after default (severities of less than 100 percent) for non-derivative losses.

Default Rates

The amended Rule adopts the former Rule's non-derivative maximum haircut levels as maximum default rates, except that the percentage for AA-rated firms and securities was lowered from 15 to 12.5. Many commenters argued that using data from the Great Depression as a basis for default rates was inappropriate because of the broad changes in the economy since then and because default rates should be consistent with mortgage losses applied elsewhere in the stress test. Others focused on the relationship between defaults in the AA and AAA categories. Most argued that the ratio embodied in the proposal (2.5:1), which is lower than in the former Rule, was still too high or that there should be no differential between the categories at all. Many suggested that the proposed difference would drive all or most mortgage insurance business to the two AAA-rated firms, lessening competition and creating concentration risk for the Enterprises.

One commenter, however, opposed the change in the ratio, arguing that the average ratio (3:1) over the longest period available, 1920–1999, should be the basis for the Rule. A few commenters argued that maintaining a substantial differential between AAA and AA categories was important in either the maximum default rates used or the phase-in of those rates. In their view, a large differential would promote capital accumulation by mortgage insurers, decreasing the risk of losses to the Enterprises, and reversing the trend toward smaller market shares of mortgage insurance at AAA-rated firms. These commenters also noted that defaults of AAA-rated firms generally have occurred later for any given cohort of mortgage loans than defaults of AA-rated firms. One commenter further pointed out that OFHEO's haircuts differ far less across rating categories than rating agency haircuts on reinsurance that is provided by lesser-rated insurance providers.

After reviewing the comments, OFHEO has decided to adopt the proposed default rates. No single set of data provides a clear guide to the determination of default rates for the stress test. OFHEO agrees that many changes have occurred since the Great Depression and, therefore, does not view it as the sole relevant period for determining appropriate haircuts during the stress period. Data from the past three decades, however, do not contain any periods of interest rate stress or credit stress on a national basis comparable to that during the stress period.[5] Furthermore, the implication of data raised by some commenters that AAA-rated firms are as risky or riskier than AA-rated firms is based on a very small number of actual defaults. The characteristics of AAA-rated and AA-rated firms, as described in rating agency analyses, suggest significantly better relative credit performance should be expected for AAA-rated firms in a future stressful environment.

OFHEO has examined the available data from a variety of sources with varying perspectives as described in the preambles to NPR2,[6] the September 13, 2001 Rule, and the AmendNPR. OFHEO has based its choices on the totality of the data, but also has taken into account treatment of credit supports by rating agencies, although OFHEO recognizes that the agencies' purposes and perspectives differ somewhat from OFHEO's. The Depression-era data are of particular interest because, unlike other data, they reflect a very stressful period. OFHEO notes, however, that cumulative defaults in Moody's data for 1929–31, as discussed in the proposal, are very close to those obtained by using Moody's 1920–1999 data and adding 2½ standard deviations to the average 10-year default rates. Data from Hickman's 1928 cohort and more recent time periods could suggest higher default rates for the AAA category relative to the other categories, but the relatively later timing of AAA defaults in much of the data is also relevant given that OFHEO has not imposed different phase-in patterns for different rating categories. OFHEO has similarly considered the earlier timing of historical defaults in the A category and especially in the BBB category. OFHEO also considered the fact that the stress test interest rate shocks and mortgage losses as specified in the 1992 Act are heavily front-loaded in comparison to historical periods.

OFHEO recognizes that relative haircut levels for the different rating categories can have competitive implications and, therefore, has focused great attention on differences in haircuts across rating categories, so that they reflect differences in risk to the Enterprises well, without adding undue complexity to the Rule.

Severity Rates

The amended Rule adopts the severity rates from the proposal, a 70 percent severity rate for all non-derivative defaults and a 10 percent rate for derivative defaults. Much of the comment with respect to non-derivative severity rates was positive, but some commenters suggested higher or lower rates. Those favoring lower rates objected to the use of Great Depression data and suggested focusing on severity rates for senior obligations. One commenter also suggested reflecting ultimate recovery rates (1 minus severity rates) in historical data rather than security prices at the time of default. Those favoring higher severity rates stressed the variability of recovery rates, not only across users and industries, but also over time. One of the commenters also recommended using data for recovery rates on financial issues, which tend to be lower. This commenter also noted that Moody's average recovery rate for even senior secured debt was only 31 percent (69 percent severity) during the 1970s. Finally, some commenters suggested special treatment for particular types of counterparties, such as mortgage insurers, or obligations, such as mortgage revenue bonds or other mortgage related securities.

OFHEO decided to adopt the proposed non-derivative severity rates. Severity data from the Great Depression, which show higher severities during stressful periods, are relevant for the same reasons as default data from the same period. As two commenters pointed out, more recent data also show higher severity during recessions. At the same time, however, OFHEO found the average experience of 10-year periods, such as the 1930s or the 1970s more

[5] Some commenters argued that OFHEO should use the years, 1983–1984, of the benchmark loss experience. The benchmark loss experience, which is specified by the 1992 Act, includes only loans from a small area of the country and is intended only as a benchmark for credit losses on mortgage loans. It was never intended to be and would be entirely inappropriate as a benchmark for counterparty defaults for many reasons. Even more inappropriate would be use of the national data from those years without applying the requirement that they represent the highest default rates from an area of the country containing at least five percent of the population.

[6] The second notice of proposed rulemaking issued prior to the initial issuance of a final Rule on September 13, 2001. 64 FR 18084 (April 13, 1999).

relevant than subtracting standard deviations of annual data from long-term averages as one commenter suggested. Year-to-year variability does not imply that a string of ten consecutive poor results is a reasonable projection. Also, OFHEO has found data on security prices at default to be more relevant than ultimate recoveries, because prices at default take account the time value of money and uncertainties about actual future payments, which payments may even be lower during a continuing period of stress than otherwise expected.

OFHEO recognizes that the characteristics of specific exposures, such as collateral or line of business, may affect severity rates. However, taking account of such characteristics could add undue complexity to the Rule. At this time, OFHEO does not consider such additional complexity to be warranted, but may reevaluate that conclusion in the future, if appropriate.

Comments on the proposed severity of 10 percent for derivative defaults were mostly favorable. Some commenters recommended consideration of even lower severities, in the range of 1 percent to 2½ percent. They view the proposed severity rate as consistent only with a combination of very unlikely events; sudden failures and large, simultaneous, adverse changes in interest rates. A few commenters, however, voiced disapproval of OFHEO's reasoning, which relies heavily on the existence and implementation of collateral agreements. They argued that haircuts on derivative receipts should be unchanged or raised to the level of non-derivative receipts. They suggested that only actual collateral held by an Enterprise at the start of the stress period should be considered, not promises to provide collateral under certain circumstances. They questioned whether it would be feasible to unwind and replace the very large positions the Enterprises have with individual counterparties in a market that may have experienced a shock of some type.

OFHEO has decided to adopt the proposed severity rate for derivative defaults. OFHEO continues to have a high level of confidence in the successful operation of the Enterprises' collateral agreements, even in difficult times. The majority of the Enterprises' over-the-counter derivatives are simple interest rate swaps, which have been consistently very liquid, even in weak markets. Nonetheless, some caution is appropriate, given the high levels of stress contemplated in the stress test and potentially significant levels of correlation between the unlikely events considered in the proposal. While some derivatives are less liquid and could merit more cautious treatment, OFHEO judges that the added complexity is unwarranted at this time.

Haircuts

Under the amendment, haircuts will be determined by multiplying the default rate for each rating category by the severity rate. The resulting haircuts are set forth in Table 1 below.

TABLE 1—STRESS TEST HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties [1]	Non-Derivative Contract Counterparties or Instruments
Cash	0%	0%
AAA	0.5%	3.5%
AA	1.25%	8.75%
A	2%	14%
BBB	4%	28%
Below BBB and Unrated	100%	100%

[1] Does not include interim rates prior to implementation of netting. *See* Table 2.

Phase-In

Under the former Rule, haircuts were phased in linearly over a 5-year period. OFHEO proposed lengthening the phase-in to the full 10 years of the stress period. Most of the comments supported the change. A few commenters suggested changing the pattern of the phase-in to reflect actual default timing during the 10-year period for the cohort for a specific year or the average of cohorts from a specific time period. This approach would have different phase-in patterns for different rating categories. A few other commenters urged OFHEO not to change the existing 5-year phase-in. They argued that it is particularly appropriate for AA-rated mortgage insurers, which could expect to experience their greatest losses during the middle years of the stress period.

OFHEO decided to adopt the proposed 10-year linear phase-in. Historical data indicate that defaults have not been concentrated in the first 5 years of the 10-year periods. OFHEO recognizes that defaults generally occur increasingly later within 10-year experiences as ratings increase. That is, not only have higher-rated firms (AAA versus AA, for example) shown lower default rates during periods of economic stress, those that have not survived tended to have sufficient capital to withstand the stress longer and, therefore, defaulted later than lower-rated firms. OFHEO considered timing differences across different rating categories in determining maximum default rates for those categories, as discussed above. Determining a special timing pattern of defaults for any specific type of counterparty, such as mortgage insurers, would be difficult and speculative. Even the timing of claims is uncertain during the stress period because, while the stress test does not incorporate new business of the Enterprises, no similar provision applies to mortgage insurers. In any event, OFHEO can not add the complexity involved with explicit consideration of specific types of counterparties in the time frame required for implementation of the Rule.

Netting of Derivative Counterparty Exposures

OFHEO adopts as proposed the treatment for netting of derivative counterparty exposures. Due to technical limitations, the previous Rule did not model the master netting

agreements associated with derivative counterparty exposures. OFHEO will now recognize the risk mitigation effects of master netting agreements by reducing the haircuts for derivative contract counterparties as set forth in Table 2, under heading of Haircuts for Derivative Contract Counterparties prior to Implementation of Netting. Upon implementation of modeling of master netting agreements, maximum haircuts for derivative contract counterparties will be readjusted. (*See* Table 2, under heading of Haircuts for Derivative Contract Counterparties upon Implementation of Netting). The interim treatment will remain effective only for the period required to complete the technical software modifications necessary to model master netting agreements.

TABLE 2—STRESS TEST HAIRCUTS FOR DERIVATIVE CONTRACT COUNTERPARTIES

Ratings Classification	Haircuts for Derivative Counterparties Prior to Implementation of Netting	Haircuts for Derivative Counterparties Upon Implementation of Netting	Number of Phase-in Months
AAA	0.3%	0.5%	120
AA	0.75%	1.25%	120
A	1.2%	2.0%	120
BBB	2.4%	4.0%	120
Below BBB and Unrated	100%	100%	1

Commenters generally supported OFHEO's proposal to recognize the impact of derivative counterparty netting agreements and urged OFHEO to implement counterparty netting as soon as possible.

OFHEO has adopted the proposed treatments and will continue to work toward implementation of the technical changes required to model netting agreements.

Unrated Seller/Servicers

OFHEO adopted the change to the treatment of unrated seller-servicers as proposed in the AmendNPR, with the addition of language to clarify that the change applies only to unrated multifamily seller-servicers. The previous Rule provided that unrated seller-servicers will be treated as if they are BBB-rated counterparties, unlike other unrated counterparties, which are treated as below BBB. Consistent with OFHEO's commitment in the Rule to evaluate alternative approaches to determine risk distinctions among unrated seller-servicers, OFHEO is amending the Rule to permit a higher rating than BBB (but not to exceed AA) for certain unrated multifamily seller-servicers. These unrated multifamily seller-servicers must participate in a delegated underwriting and servicing program that requires a loss-sharing agreement collateralized by a fully funded reserve account pledged to the Enterprise and the reserve account must be in an amount that is equal or greater than an amount determined by OFHEO to be adequate to support the seller-servicer's loss-sharing obligation under the program. Each program will be evaluated on a case-by-case basis by the Director to determine whether the program qualifies the seller-servicer for the refined ratings treatment. The amendment only applies to multifamily seller-servicers and does not incorporate a similar treatment for single-family seller-servicers.

For example, if the loss-sharing obligation of a seller-servicer participating in Fannie Mae's Delegated Underwriting and Servicing (DUS) Program (which is a multifamily mortgage program) is collateralized by a fully funded reserve account that is equal to or greater than one percent of the seller-servicer's aggregate unpaid principal balance covered by the loss-sharing agreement at the start of the stress test, the rating of the issuer of the instrument backing the reserve account may be used, in lieu of BBB, as the rating of the unrated seller-servicer, not to exceed AA. Determinations of the required reserve amount and the rating equivalent permitted will be made on a program-by-program and Enterprise-by-Enterprise basis.

With a few exceptions, commenters generally viewed the proposed amendment to the Rule regarding unrated seller-servicers as a positive contribution that would tie capital more closely to risk. Indeed, commenters who supported the amendment largely suggested that OFHEO also consider other factors, such as the value of the servicing stream and the level of capital of unrated seller-servicers as support for an improved rating for these seller-servicers. Commenters who disagreed with the proposed amendment included some who objected to the use of a BBB rating for any unrated counterparty, and objected further to allowing a rating higher than BBB for unrated counterparties under any circumstances. One commenter indicated that OFHEO should have empirical data supporting the BBB rating for unrated seller-servicers. Others who objected cited the example given of the DUS program, questioning whether a one percent fully funded reserve account would be adequate to support the loss-sharing obligation under the DUS program, and objecting to the competitive advantage that a higher than BBB rating for unrated seller-servicers would impart to the Automated Underwriting (AU) systems of the Enterprises, thereby placing other AU systems at a disadvantage. Finally, one commenter recommended that OFHEO clarify its intent to limit this approach to unrated multifamily seller-servicers.

OFHEO believes that the amendment ties capital more closely to risk by allowing for an improved rating for specified unrated multifamily seller-servicers. OFHEO has relied upon its own specialized expertise in the mortgage business and its detailed understanding of the Enterprises' seller-servicer agreements in making its decision to treat unrated seller-servicers more favorably than other unrated counterparties of whom OFHEO may lack such specialized understanding. Beyond the BBB rating to which all unrated seller-servicers are elevated, the amendment allows a higher rating than BBB to be used for certain multifamily seller-servicers. The increased rating is available if OFHEO determines that their ongoing relationships with the

Enterprises and the contractual leverage available to the Enterprises in managing their exposure to counterparty risk from these seller-servicers is further enhanced by a fully funded reserve account—pledged to the Enterprise—of sufficient size to support the loss-sharing obligation adequately. With regard to the consideration of other factors as the basis for ratings above BBB, OFHEO will continue to evaluate alternative approaches for assessing the risk of unrated seller-servicers.

Finally, OFHEO notes that there appeared to be some confusion among commenters who objected to the amendment regarding the extent of the obligations of DUS lenders to share in multifamily credit losses. The one percent fully funded reserve account is not intended to be adequate to support all losses incurred on the covered loans. Rather it is determined to be adequate to support the much smaller loss-sharing obligations of the seller-servicer under the DUS program. In addition, there also appeared to be some confusion among commenters regarding the distinction between the multifamily DUS program and the single-family Automated Underwriting (AU) systems of the Enterprises. There is no connection between the two. The amendment does not apply to single-family programs.

B. Changes to Multifamily Model

OFHEO is adopting as proposed a number of changes to the multifamily default model, multifamily loss severity parameters, and multifamily prepayment speeds specified in the Rule. These changes and the comments regarding them are summarized below:

Underwater Debt Coverage Ratio Flag (UWDCRF)

As amended, the multifamily default model includes an Underwater Debt Coverage Ratio Flag (UWDCRF), which accounts for the additional default risk posed when the projected debt service coverage ratio (DCR)—net operating income (NOI) divided by mortgage payment—falls below 0.98 during the stress test. The stress test projects the DCR in each month of the stress period from the prior month's value by updating NOI, using rent growth rates and rental vacancy rates that reflect the economic conditions of the benchmark region and time period,[7] and adjusting mortgage payments over time according to the note terms and the stress test interest rate scenario. The UWDCRF adds value to the multifamily default model by capturing the additional risk of default when NOI is insufficient to cover mortgage payments.

OFHEO has re-specified the UWDCRF to turn the flag on when the projected DCR is less than 0.98 (that is, when net operating income (NOI) on the collateral property is more than two percentage points below the mortgage payment), altering the previous Rule, which turned the flag on when the projected DCR fell below one. The re-specified multifamily default model results in a slightly lower coefficient on UWDCRF, and the coefficients for the other explanatory variables do not change materially. Simulations using the revised UWDCRF definition result in lower predicted default rates for ARMs in the up-rate scenario and for FRMs with low initial DCR in both interest-rate scenarios, making the revised model less sensitive to the UWDCRF than the prior version. The revised model does not substantially affect the predicted default rates for most FRMs or for ARMs in the down-rate scenario.

All commenters that addressed this change recommended its adoption. These commenters included a number of seller-servicers of the Enterprises, State housing authorities, and both Enterprises. In view of these comments, together with OFHEO's concern, discussed in detail in the AmendNPR, that borrowers often have reasons to carry properties with slightly negative cash flows for a period of time, OFHEO decided to adopt the change as proposed.

ARM Flags

The amended Rule retains the same explanatory variables as the model in the earlier Rule, except that three dummy variables or flags, the New ARM flag (NAF), the New Balloon Loan Flag (NBLF), and the Ratio-Updated Flag (RUF) are removed, and a re-specified flag is introduced that captures both the distinction between ARMs and FRMs and the distinction between ratio-updated and not-ratio-updated loans. Specifically, the new variable OFHEO has adopted in its re-specified default model is a Not-Ratio-updated ARM Flag (NRAF) that is turned on if a loan is both an ARM and not-ratio-updated and is turned off otherwise. However, there were insufficient data on FRMs that were not-ratio-updated to include a flag similar to the NRAF for FRMs.[8] Instead, the revised Rule calculates the monthly conditional default rates for not-ratio-updated FRMs by applying a factor of 1.2 to the conditional monthly default rates for otherwise comparable ratio-updated FRMs.

The NRAF variable was introduced because OFHEO observed higher ARM default rates compared with FRM default rates even during historical periods of flat-to-declining interest rates, which should, other things being equal, have favored ARM performance. Additionally, when FRM and ARM data were combined, OFHEO found substantially higher Enterprise default rates for not-ratio-updated versus ratio-updated loans. This result was not surprising given that the ratio-updating process is intended to improve underwriting and the resultant performance of all loans. The factor of 1.2 that is applied to not-ratio-updated FRMs is based upon the multiplicative difference in simulated stress test default probabilities for the typical ratio-updated versus not-ratio-updated ARM loan, holding all other factors constant at their means. Given the definition of ratio-updating, OFHEO determined that it is reasonable to expect proportionate performance differentials for ratio-updated versus not-ratio-updated ARMs and FRMs when other factors are held constant.

All commenters to address this issue favored the elimination of the NAF, NBLF, and RUF variables and the introduction of the NRAF flag. However, several comments, including those of Fannie Mae, suggested that the 1.2 factor applied to FRMs should be eliminated, because it lacked statistical or factual basis. Some of those commenters may have confused the ratio-updating process with the Enterprises' receipt or lack of receipt of annual operating statement data and rent rolls on certain loans.[9]

OFHEO disagrees with the suggestion that the 1.2 factor be dropped and notes that, although there are insufficient data

[7] The terms ''benchmark region and time period'' refer to the regional credit loss experience identified by OFHEO in compliance with the ''Credit Loss'' parameters outlined in 12 U.S.C. 4611, as described in additional detail in NPR2.

[8] OFHEO decided against using an FRM counterpart to the NRAF in the multifamily default model, despite the fact that a similar distinction between ratio-updated and not-ratio-updated FRMs was consistent with the data. The introduction of a flag to capture non-ratio-updated FRMs substantially altered the size of other variable coefficients and the significance of other model variables. Further examination of Enterprise data indicated that this result likely occurred because of insufficient data on not-ratio-updated FRMs, particularly in recent years. Therefore, OFHEO rejected the inclusion of a not-ratio-updated flag in the re-specified default model.

[9] As described in the AmendNPR, ratio-updating refers to New Book loans for which the LTV and the DCR have been calculated by the Enterprise or its delagee at loan origination or for which the LTV and DCR have been recalculated by an Enterprise or its delagee upon acquisition according to current underwriting standards. New Book loans for which origination and/or acquisition LTV and DCR are unknown cannot be considered to be ratio-updated.

to incorporate an FRM counterpart to the NRAF into the multifamily default model, the decision to include a similar and proportionate adjustment to the default rates of not-ratio-updated FRMs was predicated on statistical analysis. Statistical evidence suggests that the ratio-update process, whereby loans originated using underwriting standards that may differ from those of the Enterprises are re-underwritten using the Enterprises' standards at the time of acquisition, reduces stress test default rates for a typical ARM by about 17 percent. Furthermore, Enterprise data confirm lower historical default rates of ratio-updated versus not-ratio-updated loans without regard to product type. At this time, OFHEO has no evidence that the ratio-update process should operate in a different fashion for one product than for another. Therefore, OFHEO believes the use of a multiplicative factor of 1.2 applied to the conditional monthly default rates of not-ratio-updated FRMs is a reasonable approach reflecting sound judgment based in fact and statistical evidence. If sufficient data become available to convince OFHEO that the use of the multiplicative factor of 1.2 is no longer appropriate, OFHEO will consider a change to the Rule.

One commenter questioned how the definition of the NRAF would be affected by any future changes in the underwriting standards of the Enterprises. For example, if as a result of ongoing experience, the standards of an Enterprise were to become tighter or looser, or simply emphasize different financial ratios, the commenter asked whether the entire current ARM portfolios of the two companies would be subject to this variable. In response to this comment, OFHEO notes that if an Enterprise were to stop updating the ratios of loans at acquisition, for example, the entire Enterprise multifamily portfolio would eventually be subject to the NRAF variable (or its FRM counterpart) as older ratio-updated loans terminated. As to the other part of the commenter's question, OFHEO continually examines the Enterprises' underwriting standards and processes and may modify variables or introduce new ones where the data indicates it is appropriate to do so.

Initial Vacancy Rate

OFHEO modified the Rule so that the change in vacancy rates between the period immediately prior to the stress test and month one of the stress test is based on the change in the benchmark region vacancy rate from the month prior to the benchmark period to the first month of the benchmark period. OFHEO views this change as a technical correction. The change sets the initial vacancy rate at ten percent, which is the estimated West South Central (WSC) Census division vacancy rate in 1983. Thus, the vacancy rate change in the initial month of the stress test will be increased from ten percent to 13.6 percent. All comments to discuss this change were favorable, although some suggested that OFHEO's technical correction should have reflected a higher initial vacancy rate. OFHEO did not find any convincing arguments from those who suggested the initial rate should have been higher and, therefore, OFHEO will adopt the rate as proposed.

Loss Severity

OFHEO has modified the multifamily severity parameters to take into consideration the performance of Fannie Mae multifamily REO [10] in the 1980s and both Enterprises' more recent multifamily REO. Loss severity parameters in the previous Rule were based upon the experience of 705 Freddie Mac multifamily REO properties from the 1980s. The multifamily loss severity calculations that use the severity parameters in the Rule have not changed. Specifically, OFHEO has decided to reduce net REO holding costs to seven percent from 13.33 percent and to increase REO sales proceeds from 58.88 percent to 63 percent of the unpaid principal balance as of the default date. Additionally, OFHEO is reducing the time from default to foreclosure completion from 18 to 9 months, while increasing the time from REO acquisition to REO disposition from 13 to 15 months. Changing these severity parameters yields a 44 percent ''baseline'' severity rate, as compared to the 55 percent ''baseline'' produced by the model in the Rule. ''Baseline'' severity is a simple way to compare one set of severity parameters with another.[11]

All comments received regarding this change were favorable.

Prepayment Penalties

OFHEO has modified the Rule to provide for no prepayments in the down-rate scenario inside prepayment penalty or yield maintenance periods. This approach is more consistent with OFHEO's preference to model contractual instruments according to their terms, but recognizes that modeling these penalties according to their terms would be immensely complicated, because those terms vary greatly from loan to loan. The change implicitly assumes that the prepayment penalty provisions either prevent prepayments or provide compensating economic benefit to the Enterprises.

All comments regarding this change were supportive.

Other Comments

Numerous comments were received suggesting that OFHEO should make further refinements to the multifamily model in the stress test. Many commenters stated that although the proposed changes had gone a long way to address what they viewed as inappropriately high loss rates associated with ARMs, the changes had not gone far enough and that the Rule might cause such loans to be disfavored by the Enterprises. OFHEO will consider these comments as it studies the impact of the current modifications to the Rule and will propose additional changes to the Rule when sufficient data indicates a need for them.

Among the refinements suggested by commenters was that OFHEO take into consideration the effects that low-income-housing tax credits (LIHTCs) have in reducing the likelihood of default on loans collateralized by properties with these credits. OFHEO agrees with experts in the housing finance industry that such loans are less likely to default than otherwise identical non-LIHTC loans. OFHEO has responded to this comment by clarifying the Risk-Based-Capital Report Instructions to provide that potential income from the holders of the tax credits is included in the calculation of current debt-service-coverage ratios on these loans. A rule change was unnecessary, because the existing Rule is sufficient to provide for consideration of the tax benefits to the equity investor from the tax credit.

Both Enterprises argued that the multifamily model should consider seasoning of loans that lack annual operating statements by accounting for the likely improvement in NOI and DCR prior to the stress period. OFHEO agreed. However, this comment also did not require a change to the Rule, which does not prohibit consideration of such improvements. To provide clarity to the Enterprises about how to report current NOI and DCR, OFHEO has added language to the Risk-Based Capital Report Instructions.

One Enterprise's comments suggest that the multifamily model does not account for rate caps and payment caps. In fact, the model does account explicitly for these features. However,

[10] REO is real estate owned as a result of loan default.

[11] The ''baseline'' consists of a simple adding up of the cost components of the rate, without considering discounting, credit enhancements, or passthrough interest on sold loans.

the Risk-Based Capital Report Instructions have been clarified to include specifically third party rate caps or swaps that may be required by loan documents and used to cap a multifamily loan.

C. Changes to Yields on Enterprise Debt

This amended Rule modifies the previous Rule by adding 10 basis points to the cost of debt for an Enterprise in the stress test vis-a-vis other borrowers in the debt markets. This amendment serves to reflect the reaction of the debt markets to the financial stress imposed upon the Enterprise.

Only five commenters addressed the issue of the cost of new Enterprise debt. Those commenters voiced significant disagreement among themselves about whether OFHEO should add a debt premium to the Enterprises' cost of debt compared to other lenders. Several commenters, including FM Watch, the Consumer Mortgage Coalition (CMC), and an individual investment advisor, stated that not only was a debt premium appropriate but that the debt premium should be significantly larger than proposed. They argued that 10 basis points might not realistically reflect changes in the Enterprises' debt financing costs. CMC stated that, in times of stress, GSE debt spreads could increase significantly and that a 50 basis point or greater spread increase is not unlikely. CMC continued that Agency spreads to Treasuries have varied by about 70 basis points since 1998 and that a small spread adjustment in effect allows the GSEs to assume that they have essentially unlimited access to capital markets at preferred rates even in periods of distress. They cited the experience of the Farm Credit System in the 1980s as historical evidence of the need for a debt premium when a government sponsored enterprise faces adverse credit and interest rate stress.

Another commenter noted that if the capital markets perceived the Enterprises to be in trouble, liquidity premiums and default premiums would both increase. That commenter noted that after both the Asian currency devaluations of 1997 and the Long Term Capital Management/Russian debt crisis of 1998, spreads between LIBOR and AA rated instruments increased five to 10 basis points. He concluded that an economic event that directly impacted the GSEs would likely cause the spread between their debt and LIBOR/COFI to increase by more than 10 basis points, especially as their perceived special status might be brought into question by poor performance.

Only Freddie Mac [12] and Fannie Mae opposed including a debt premium. The Enterprises claimed that there was no factual basis for the agency's decision and that it fails to tie capital to risk. Freddie Mac's consultants opined that historical evidence might instead support reducing Enterprise spreads relative to other issuers. Freddie Mac concluded that OFHEO added what it termed a costly premium on Enterprise debt yields based on a mere possibility, unsupported by evidence. Accordingly, the Enterprises recommended that OFHEO retain the methodology under the previous Rule, which projects yields on Enterprise debt based on historical spreads to Treasury, without a debt premium.

OFHEO has decided to adopt the proposed debt premium in which 10 basis points is added after the first year of the stress period. After one year of stress conditions, the Enterprises might appear strong based on accounting measures of earnings and net worth. However, market values of the Enterprises' assets, liabilities, and derivatives contracts would fully reflect the effects of the interest rate shock and some credit quality deterioration of the stress test. Investors would be aware of these changes in market value and adjust their evaluations of the Enterprises' financial health accordingly.

Notwithstanding the Enterprises' critique, historical evidence does exist to support OFHEO's decision to include a debt premium. The historical experiences of Fannie Mae in the early 1980s and the Farm Credit System in the mid-1980s were periods during which government sponsored enterprises faced financial stress, which indicated that borrowing costs would include some risk premium during economic conditions such as those in the stress test. In fact, in drafting the 1992 Act, legislators referenced the Farm Credit System bailout to support having the Enterprises subject to a rigorous risk-based capital test.[13] This historical experience is further illustrated by data reported in the General Accounting Office's 1990 report on government sponsored enterprises in which Fannie Mae's short-term borrowing costs during 1980 through 1982 were generally about 80 basis points in excess of yields of comparable maturity Treasury debt, and rising at one point to 200 basis points above Treasury yields. Spreads receded after sharp declines in interest rates greatly improved Fannie Mae's condition to a more normal range centered roughly at 20 basis points. Spreads were high again in the late 1980s for both Fannie Mae and the Farm Credit System, ranging from 40 to 100 basis points over a two-year period during the Farm Credit System's time of greatest difficulty.[14]

These episodes could support a stress test projection that spreads of Enterprise debt yields to Treasury yields widen by 50 to 60 basis points. However, the stressful circumstances likely would also cause yield spreads of other debt to widen. OFHEO has chosen not to project how each yield series in the stress period might be affected by the stresses incorporated in the test, but wider spreads for some indexes generally would benefit an Enterprise with more fixed-pay than floating-pay swaps or swaptions. Because, in recent years, both Enterprises generally have relied much more heavily on fixed-pay instruments, that benefit could easily offset more than half of the cost of wider spreads on the Enterprises' own debt issues. However, based on recent Enterprise asset-liability structures, a substantial portion of new debt that would be issued by each Enterprise in stress tests would not be matched by fixed-pay swaps. Also, the nature of the stresses (sharp changes in long-term yields and high mortgage credit losses) is designed to affect the Enterprises specifically, and short-term yield indexes typically used in swap contracts might be affected less than Enterprise yields. In view of these considerations, OFHEO has decided that an appropriate adjustment to Enterprise yields (in the absence of any adjustment to other yield indexes) should be significantly less than the sustained 50 to 60 basis point spread widenings of the 1980s, low enough to avoid potentially inappropriate adverse affects on the Enterprises, but high enough to be meaningful, pending further consideration.

The Enterprises suggest that the only rational stress test is one that presumes that spreads of Enterprise debt to

[12] Freddie Mac commissioned two consultants to file comments in support of its arguments.

[13] ''Because of their Federal ties, GSEs emerged as a major public policy issue in the wake of the $4 billion Federal bailout of the Farm Credit System in 1987 * * *'' H.R. Rep. No. 102–282 (1991) at 109; *see also* S. Rep. No. 102–282 (1992)0 at 10 (''While both GSEs are currently very prosperous, HUD estimated in a 1986 report to Congress, that Fannie Mae was insolvent on a marked-to-market basis at year-end 1978 and did not return to solvency until 1985. Its negative net worth reached a peak of more that (sic) $20 billion in 1981, which was roughly 20 percent of its outstanding liabilities.'')

[14] U.S. General Accounting Office (1990), Government Sponsored Enterprises: The Government's Exposure to Risk. Washington, DC: U.S. General Accounting Office. (GAO/GGD–90–97) 87–88.

Treasuries widen no more than spreads on any other non-Treasury rate. Far from being irrational to presume a wider yield spread on the debt of a stressed Enterprise, OFHEO determined that it was the most prudent and responsible course from a regulatory perspective. To assume, as the failed risk-management strategies at Long Term Capital Management did, that yield spreads would never fall far outside recent experience, is to ignore the reasonable implications of out-of-sample events such as the interest rate and credit stresses that are imposed during the stress period.

D. Changes to New Debt Mix

The previous Rule provided for the funding of all cash deficits by the issuance of new long-or short-term debt, whichever was in shorter supply, until a 50/50 balance of short-to-long-term debt was reached in each Enterprise's portfolio. Thereafter, long- and short-term debt were to be issued in whatever ratio would best contribute to maintaining that balance. OFHEO chose this approach because it did not want to include an assumption about any particular behavioral preference by the Enterprises during the stress test. The previous Rule specified that the new short-term debt being issued as six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds, and the new-long term debt being issued as callable five-year bonds not callable for the first year. The previous Rule also provided a 50 basis point call premium, which required that callable debt would be called when it was 50 basis points out-of-the-money. The Rule further specified an issuance cost of 2.5 basis points on new short-term debt and an issuance cost of 20 basis points on new long-term debt.

OFHEO has decided to adopt its proposal to change the target balance embodied in the previous Rule's approach. Specifically, the 50/50 debt mix has been replaced with the actual ratio of an Enterprise's debt obligations (as adjusted by interest rate swaps) at the start of the stress period. In addition, OFHEO has decided to modify the call rule for long-term debt so that no calls will be executed on new long-term debt in the up-rate scenario.

Fannie Mae, Freddie Mac, the Mortgage Bankers Association (MBA) and JP Morgan each commented on the new debt mix. All these comments favored the proposed approach over the 50/50 mix adopted in the Rule.

These commenters provided additional recommendations for OFHEO to further refine the new debt mix in the stress test. MBA suggested that OFHEO meet with professional portfolio risk management experts to devise additional funding rules for each interest rate scenario. MBA also stated, without elaboration, that the capital requirements resulting from this funding rule would cause the agencies to curtail their activities in the housing market at unpredictable times.

The Enterprises provided detailed comments on this issue. Freddie Mac expressed concern that, under the Rule, callable debt issued in the up-rate stress test after month 12 would always be called at the first opportunity, even though interest rates remain constant during the last nine years of the stress period and the Enterprises would incur issuance fees as a result of calling the debt. Freddie Mac requested that the cost of callable debt reflect the degree of prepayment risk in the mortgages being funded. Freddie Mac argued that the issuance fees were inappropriate because there would be no reason for the Enterprise, without more, to call the debt. Freddie Mac requested that the Rule include detailed refunding provisions, including that callable debt match the callability of the mortgages being funded and that the 50 basis point call premium for long term debt be reduced significantly. Specifically, Freddie Mac believed the call premium for 5-year callable debt should be reduced from an initial cost of 50 basis points to 5 basis points over the first 12 months of the up-rate scenario and from an initial cost of 50 basis points to minus 45 basis points over the first 12 months of the down-rate scenario.

Like Freddie Mac, Fannie Mae was particularly concerned about repeatedly calling new long-term debt at the end of one year and incurring the 20 basis point issuance fee for an identically yielding long-term debt instrument. Fannie Mae also supported Freddie Mac's recommendation for lower call premiums on new callable debt. In addition, Fannie Mae suggested that new long-term debt should be a mix of 5-year callable debt and seven year noncallable debt and that calls on newly issued callable debt should reflect the month-end cash position.

As noted above, OFHEO has decided to adopt the proposed change to the new debt mix to reflect an Enterprise's actual short-term/long-term proportions of corporate debt outstanding at the start of the stress test. As the commenters stated, this new approach provides a more typical debt structure than the 50/50 mix set forth in the Rule. In addition, OFHEO has decided to modify the specification for calling long-term debt so that the call option for new long-term debt will never be executed in the up-rate scenario. OFHEO determined that this modification is appropriate because the earlier requirement would have resulted in new long-term debt being called even though there would be cost but little benefit to an Enterprise in calling it.

OFHEO read with interest the more detailed alternative debt funding strategies suggested by the commenters. However, OFHEO has decided not to adopt any of the more detailed alternative recommendations, but will continue to analyze the issue. In addition, OFHEO is aware that the proposed treatment may place excessive significance on the quantity of an Enterprise's debt maturing early in the second year of the stress test. Such debt will contribute to the long-term (greater than one year) portion of its initial debt ratios, but will count as short-term debt in early months of the stress test when calculating whether new debt is issued as short-term or long-term debt. OFHEO will monitor the amounts of debt with these maturities closely and could decide to reclassify some debt if the amounts do not appear consistent with normal business practice.

E. Miscellaneous Technical Changes

Operating Expenses

OFHEO has decided to modify the stress test treatment of operating expenses by converting 75 percent of starting-position fixed-asset balances to cash over the ten-year stress period. The amended Rule retains 25 percent of the fixed assets on an Enterprise's books throughout the stress period to reflect the acquisition of some new fixed assets, such as computer equipment, which is likely even in a ''wind-down'' scenario. The effect of this change is to reduce the Enterprises' need for debt to carry nonearning fixed assets.

Only Fannie Mae and Freddie Mac commented on this aspect of the proposal. Each Enterprise stated that the proposal was superior to the treatment of operating expenses in the Rule, because the proposal provides a ''more realistic'' treatment of fixed assets. Nevertheless, each Enterprise stated that the stress test should use an accelerated rate of amortization of fixed assets, which they believed would be more economically realistic.

This amendment to the treatment of operating expenses adopts the approach proposed in the AmendNPR, without modification. OFHEO believes that the adopted change provides a straightforward and reasonable approach to the treatment of fixed assets.

Float Income

The Rule provides for the modeling of float income associated with passthrough payments on securities issued by the Enterprises. Float income can be positive or negative depending upon whether the Enterprise holds the funds for a period of time before remitting them to security holders or remits funds to security holders before they are actually received. When an Enterprise owns its own passthrough securities, the timing of payment to itself is not relevant. However, the previous Rule included these securities in the calculation of float income, resulting in an overstatement of float income. OFHEO corrected this overstatement by reducing the float income on passthrough securities issued by the reporting Enterprise by the percentage of the Enterprise's ownership interest.

Fannie Mae and Freddie Mac commented favorably about the proposed treatment of float income, provided that the stress test accurately accounts for such income. Freddie Mac provided an alternative equation which it believed more completely implements the proposal.

After reviewing this suggested alternative, OFHEO determined that the alternative, with slight further modification, is correct. Accordingly, OFHEO has adopted its proposal with the appropriate adjustment.

Currency Swaps

Regarding the treatment of Foreign Exchange Risk specified in the previous Rule, OFHEO stated that it would not apply haircuts to foreign currency swaps. However, in furtherance of its commitment to continue to refine the ability of the stress test to tie capital to risk more accurately, OFHEO indicated that it would continue to seek a suitable methodology for applying an appropriate haircut to foreign currency swaps. After additional analysis, including evaluation of the technical enhancements required for implementation, OFHEO has eliminated the simplifying assumption applied in the previous Rule and applied a haircut to foreign currency swap counterparties. Because the stress test does not project foreign currency values, the haircut is applied by adjusting the pay (dollar-denominated) side of the swap upward by the amount of the haircut percentage rather than haircutting the foreign-currency receive side of the swap.

Commenters agreed with OFHEO that the stress test should recognize the capital impact of foreign currency swaps, however, they criticized OFHEO's methodology. One commenter characterized OFHEO's approach as imprecise and conservative, suggesting that the amendment would result in the imposition of an excessive capital charge for foreign currency swaps. Another commenter opined that OFHEO's treatment would result in excessive capital charges for currency swaps and suggested establishing haircuts based on the net amount owed on the swap. Both Enterprises recommended that OFHEO reduce the haircuts applied to foreign currency swaps by 50 percent. They argued that the proposed approach, which bases the haircut on the amount paid by an Enterprise, rather than the net amount received, implicitly assumes that the U.S. dollar would depreciate by 100 percent. Historical data on dollar exchange rates with major currencies over the past three decades show that the largest sustained decline (average decline over a 10-year period, relative to the start of the 10-year period) in the dollar was slightly less than 50 percent—half the decline implicitly assumed in the proposed approach.

Although OFHEO has declined to project currency exchange rates during the stress period, the amended Rule produces the same result as an assumption that during the stress period the dollar will have depreciated 50 percent relative to the forward exchange values of all foreign currencies embodied in the currency swaps. (A 100 percent dollar depreciation would imply that the dollar value of net swap receipts would be infinite, as would any percentage haircut.) OFHEO agrees that the worst sustained dollar depreciation against a major currency in recent times was nearly 50 percent, which is consistent with the implied assumption about currency rates during the stress period. Accordingly, OFHEO has decided to adopt the proposed change to the Rule.

American Call Options

With respect to the modeling of nonmortgage instrument cash flows, the previous Rule did not attempt to provide a comprehensive explanation of the cash flows of all nonmortgage instruments utilized by the Enterprises. Consistent with this approach, OFHEO used a simplifying assumption in the previous Rule to model American call options. In the previous Rule, an American call option, which allows an issuer to exercise the call option at any time after a lockout period, was treated as a Bermudan call option. Bermudan options allow the owner to exercise the option only on certain specified dates before maturity, usually on coupon payment days. However, in the preamble to the previous Rule, OFHEO stated that it would be preferable to consider how options might be modeled more precisely.

Upon further evaluation, OFHEO has modified the stress test to evaluate American calls on the first option date in the exercise schedule and on subsequent monthly anniversaries of an instrument's first coupon date. This methodology will allow the stress test to model American call options according to their terms, resulting in a refinement that more closely ties capital to risk.

The comments supported OFHEO's proposed modifications to address American call options. Both Enterprises suggested additional improvements to the stress test could be achieved by incorporating changes designed specifically to model European call options.

Changes to the stress test treatment of European options may be appropriate. OFHEO will consider the desirability of implementing European call related recommendations in the future.

House Price Growth Factor Clarification

The Rule requires the use of OFHEO's most recent House Price Index as of the reporting date to determine the house price growth factor used to calculate current loan-to-value ratios. OFHEO has decided to expand the instructions in Section 3.6 to clarify, consistent with Section 3.7, that when a loan was originated since the publication of that report, a cumulative house price growth factor of one is used. No comments critical of this clarification were received.

Preferred Stock

In the Final Rule, OFHEO decided to include rules in the stress test to address share repurchases during the stress period. Although the Rule's effect was to treat the calling of preferred stock as a share repurchase, this result would not be clear to some readers. Accordingly, OFHEO is making a technical amendment to state in section 3.8.1[a]3 that ''no preferred stock issued by the Enterprise will be called.''

Technical Correction

OFHEO added a Prepayment Penalty Flag as an additional classification variable for multifamily loan groups. The Flag distinguishes loans with active prepayment penalties or yield maintenance provisions from those without in the calculation of prepayment penalty duration for loan groups.

F. Process Issues

Publication of Capital Numbers

Several commenters opined that OFHEO should have published results of model runs to demonstrate the impact of the proposed change on the Enterprises' capital requirements. One commenter stated that OFHEO should publish the capital requirements for the Enterprises under the previous version of the Rule and the modified Rule, so that the public can understand the impact of the changes.

In OFHEO's view, the comments received in response to the proposed changes demonstrate that the AmendNPR provided sufficient information for a full and informed discussion of the relevant issues. OFHEO considered each of the proposed changes on its own merits and those that were adopted were approved on the basis of sound theory, research and, where appropriate, statistical estimation, rather than simply the impact they might have on the capital of an Enterprise in a particular historical quarter. To the extent that OFHEO did runs to test the developmental computer code it had created for these changes, OFHEO did not rely upon those results as the rationale for its choices. Those runs were designed primarily to check for errors in the code or the algorithms on which the code was based. For these reasons, OFHEO has found the argument that results of runs are necessary to understand or evaluate the impact of the proposed changes to be unfounded.

OFHEO published a final Rule on September 13, 2001, which provided detailed specifications and working copies of the code to the Enterprises and other members of the public. As expected, when outside parties were able to examine the specifications in detail and begin to run portions of the code, OFHEO received numerous comments and requests for changes. Some of these changes OFHEO considered to be sufficiently significant that it was desirable to publish them for comment quickly in order to allow any of them found to be necessary to be finalized without delaying the implementation of the Rule and the September 2002 date when the Rule becomes enforceable. OFHEO expects that with the changes approved in this document, the Rule will better tie capital to risk. Accordingly, the risk-based capital numbers for the first quarter of 2002 will accurately portray the adequacy of the Enterprises' capital under the Rule that will be enforced. Earlier results would be based upon data that are now too old to indicate any useful information about the Enterprises' current condition.

Another important reason why OFHEO has delayed publishing risk-based capital numbers is that, in OFHEO's view, the 1992 Act intends that the Enterprises have a year to adjust their operations to the requirements of the Rule. These adjustments take a number of forms. First, the Enterprises have needed time to adjust their computer systems and data production systems to support the stress test. This has been a time-consuming and expensive process for them and for OFHEO, but is an essential part of making the entire capital scheme in the 1992 Act operational. Second, the one-year implementation period in the 1992 Act allows the Enterprises to adjust their businesses, including their lending and hedging strategies, to the stress test. Third, the implementation period allows the Enterprises to raise any additional capital that might be required by the Rule. Given the fact that the Enterprises are publicly traded companies, the economic condition of which could be affected greatly by premature disclosure of capital requirements, OFHEO will not disclose capital numbers until the Enterprises have had a reasonable opportunity to make at least a large portion of these adjustments and present to the public their plans to maintain capital compliance.

Use of Code by Parties Other Than OFHEO

Two commenters discussed the difficulties they have encountered in running the computer code released by OFHEO. They both expressed the view that OFHEO should not amend the Rule until they have had time to run the code and analyze the results or until OFHEO has published data regarding the capital impact of any proposed amendments. Instead they would have OFHEO enforce the previous Rule and continue to allow commenters to study the proposed changes. OFHEO disagrees with this approach. The changes that OFHEO adopted are each supportable on its own merits. OFHEO's goal is to have the best rule possible when the Rule becomes enforceable in September 2002. That goal would not be achieved if the changes were delayed until after that date. As a general matter, if OFHEO were to hold up any changes to the Rule until any parties who wished to run the model and test the impact of the changes were able to do so, the Rule would lose the flexibility it must have in order to be dynamic and meaningful. Although the good faith of these commenters in attempting to run the code is not questioned, their ability to do so, or the ability of any other interested party to do so, will not determine whether OFHEO proceeds with needed changes to the Rule.

Notwithstanding that OFHEO will not delay changes to the Rule to allow other parties (including the Enterprises) to be able to run the underlying computer code, OFHEO appreciates the extensive time and resources certain commenters have put into studying the code and attempting to run it. It is beneficial to OFHEO and to the regulatory process to obtain the well-informed and differing views that have resulted. OFHEO also appreciates the importance of the capital rules to parties other than the Enterprises and takes their views and the factual information they supply into consideration in determining the specifications for the stress test. As time and resources allow, OFHEO will continue to work with these parties to help them understand and run the models that underlie the stress test.

In order to assist interested parties with their continued efforts to replicate the model, and to maintain appropriate regulatory transparency, OFHEO intends to make the computer code associated with the Rule available to the public. The code will be available upon request after the Rule is published. OFHEO anticipates that the code will continue to evolve over time as additional efficiencies and technical adjustments are incorporated to enhance the functionality of the code. Consistent with OFHEO's need to address technical requirements or other contingencies that arise out of the operation of the code, the agency will continue to make code changes, without opportunity for public comment, as long as such changes are not inconsistent with the Rule. Any such changes to the code will be made available to the public.

Determination That the Amendments to the Rule Are Not ''Economically Significant''

One commenter took issue with the determination by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) that the amendments to the Rule were not ''economically significant'' within the meaning of Executive Order 12866. OFHEO notes that this determination is entirely consistent with similar determinations made with regard to the capital rules of other federal financial regulatory agencies. As a practical matter, it is impossible to prove what economic impact a change in the Rule will have on the economy. However, OFHEO anticipates the effects on the Enterprises

and the economy as a whole will be small.

Cost/Benefit Analysis

The same commenter suggested that OFHEO should have undertaken a more extensive cost/benefit analysis than was included in the AmendNPR. OFHEO disagrees for much the same reasons that it disagreed that these amendments should be considered an economically significant rule in the previous paragraph.

A detailed cost/benefit analysis such as that suggested by the commenter would begin with an analysis of the marginal capital impact of each change on each of the Enterprises. It would then require judgments to be made about whether and to what extent these marginal impacts would alter the behavior of the Enterprises in the marketplace and the financial impact of those changes on other market participants. With risk-based capital rules, these types of predictions of future behavior are speculative, at best, and analysis is most useful after the change is implemented and its actual impact can be studied. That is why risk-based capital rules tend to be changed relatively frequently and incrementally, as additional information comes to light and the behavior of the regulated entities and the markets in which they operate can be studied.

Comment Period Extension

In the AmendNPR, OFHEO proposed a comment period of thirty days. Two commenters each requested that the comment period be extended to give the public more time to analyze and provide meaningful comment about the proposal.

OFHEO contacted the commenters before the close of the comment period and explained that it decided to deny any request to extend the comment period because, as discussed above, OFHEO has determined that the comment period provided sufficient time for a full and informed discussion of relevant issues. Another reason that the extension was denied is the tight statutory timeframe within which Congress intended that the Rule should become fully enforceable. Specifically, the 1992 Act provides that the Rule becomes fully enforceable one year after the Rule is initially issued. It would be impracticable for OFHEO to meet this statutory timeframe if it were to extend the comment period any further.

To meet the one-year timetable, OFHEO needs to establish a firm baseline set of specifications for the Rule, which can be applied to first quarter, 2002, data from the Enterprises. Any delay in the effective date of these amendments could have caused a one quarter delay in applying that set of specifications. Applying the new specifications to new data from the Enterprises before the risk-based capital rule becomes fully enforceable in September 2002 will allow the Enterprises to adjust to the revised Rule and for OFHEO to study its effects.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

Today's final Rule amends OFHEO's risk-based capital rule, which was designated as a major rule by OMB. The amendment refines various aspects of that Rule to tie the capital more closely to risk. Although the impact of these refinements is not economically significant, OMB has reviewed the amendment to determine whether the changes may raise novel policy issues. OFHEO is not required to provide the type of regulatory impact analysis that is required for an economically significant rule. Nevertheless, in accordance with OMB's guidance that all regulatory actions should be consistent with the principles of E.O. 12866, OFHEO has determined, after review by agency economists, financial analysts, and attorneys, that the benefits of the changes to the Rule substantially outweigh any economic costs.

It is impossible to estimate precisely the particular benefits and costs associated with the risk-based capital requirement. Although OFHEO believes this group of enhancements and refinements to the stress test will not generally increase or decrease the amount of required capital for an Enterprise to any substantial degree, the effect in any particular quarter depends upon how well that Enterprise is hedged against the risks and conditions specified in the stress test. OFHEO cannot know whether or not hedges in place at an Enterprise at the beginning of any quarter would have been in place in the absence of specific provisions of the risk-based capital rule or were put in place because of the test. Speculating as to what the Enterprises would do in the absence of specific provisions in future quarters is even more difficult. Therefore, a detailed economic cost/benefit analysis is not practical.

Rather than trying to assess the costs and benefits of every change to the stress test, OFHEO looks to whether or not the changes make the Rule better reflect the risks faced by the Enterprises. Improving the Rule in this manner should reduce the potential for Enterprise insolvency by protecting better against interest rate, credit, and management and operations risk. By helping to ensure the safety and soundness of the Enterprises, the regulation allows them to continue to carry out their public purposes, which include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.[15] In addition, the regulation helps ensure that the Enterprises will continue to provide benefits to the primary mortgage market, such as standardizing business practices.[16]

The amended Rule results in a capital requirement that corresponds more closely to capital levels that the marketplace would demand in the absence of the benefits afforded by the Government sponsorship of the Enterprises, leading to gains in overall economic efficiency. By improving the Rule's ability to reflect actual risks at the Enterprises, the amendment also may enhance investor confidence in the ability of the stress test to forewarn investors and regulators of financial weaknesses. This result would be consistent with a study by Standard & Poor's (S&P) that provided risk-to-the-government credit ratings for the Enterprises.[17] Although S&P had rated Fannie Mae A− and Freddie Mac A+ in 1991, the 1997 report upgraded the ratings of both Enterprises to AA−. S&P cited increased governmental oversight by OFHEO as an important factor in these higher ratings. It further noted that ''OFHEO's regulatory oversight [of Freddie Mac] also gives comfort that appropriate interest rate risk mitigation steps would be taken as needed.''[18]

OFHEO can identify no significant additional costs associated with implementing the amendments. No new reports are required, and net effects on required future capital likely will be very small. As explained above in response to comments, it is not practical to measure all the indirect impacts that each of these amendments might have on various sectors of the economy. OFHEO is convinced, however, that the amendments do improve, incrementally, the capital requirements applied to the Enterprises, as described in detail above and in the AmendNPR. In sum, the benefits to the public, including the Enterprises and other private-sector

[15] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

[16] ''Managing Risk in Housing Finance Markets: Perspectives from the Experiences of the United States of America and Mexico,'' *Mortgage Bankers Association of America* (June 11, 1998).

[17] *Report to OFHEO*, Standard & Poor's, Contract No. HE09602C (February 3, 1997).

[18] Report to OFHEO, at 10.

concerns, of improving the sensitivity of the stress test to risk far outweigh the already expended costs of implementing these improvements.

Paperwork Reduction Act

This regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR part 1750 as follows:

PART 1750—RISK-BASED CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–1 in paragraph 3.1.1;

b. Revise Tables 3–2 through 3–4 in paragraph 3.1.2.1;

c. Revise Table 3–18 in paragraph 3.1.3.1 [c];

d. Revise paragraph 3.3.1 [b];

e. Revise paragraph 3.3.3 [a] 3.c.;

f. Revise Table 3–28 in paragraph 3.4.2;

g. Add new paragraph 3.5.3 [a] 2.d.;

h. Revise paragraph 3.5.3 [a] 3. and Table 3–31;

i. In sentence six of paragraph 3.6.1 [e], remove the comma after the words ''Credit Losses'', add the word ''and'' in its place; and remove the words ''and the Float Income'' after the words ''Guarantee Fee'';

j. Revise paragraph 3.6.3.4.3.1 [a] 2.a.;

k. Revise paragraph 3.6.3.4.3.1 [a] 3.a.;

l. Revise paragraph 3.6.3.5.1 [b];

m. Revise Table 3–38 in paragraph 3.6.3.5.2.;

n. Revise paragraph 3.6.3.5.3.1 [a] 2.;

o. In paragraph 3.6.3.5.3.1 [a] 4, remove the first equation: ''$UWDCRF_m = 1$ if $DCR_m < 1$ in month m'' and add the equation ''$UWDCRF_m = 1$ if $DCR_m < 0.98$ in month m'' in its place;

p. Revise paragraph 3.6.3.5.3.2 [a] 1. and Table 3–39;

q. Revise paragraph 3.6.3.5.3.2 [a] 2.b.;

r. Revise paragraph 3.6.3.5.3.2 [a] 3.;

s. Revise Table 3–44 in paragraph 3.6.3.6.3.2;

t. In section 3.6.3.6.4.3, revise the four paragraphs: [a] 1., [a] 3.b., [a] 4.b. and [a] 5.;

u. Revise paragraph 3.6.3.7.3 [a] 9.b.;

v. Revise paragraph 3.7.3.1 [g] 1.;

w. In paragraphs 3.7.3.2 [a] 5. and 3.7.3.3 [a] 3., add the words '', as appropriate'' at the end of the sentence in each paragraph;

x. In paragraph 3.7.4 [a] remove reference to ''Table 3–55'' and add ''Table 3–61'' in its place;

y. Redesignate Tables 3–65 through 3–70 as Tables 3–66 through 3–71;

z. After Table 3–64, add new paragraph 3.8.1 [f], new footnote 5, and new Table 3–65;

aa. In paragraphs 3.8.2 [a] and [b] remove references to ''Table 3–65'' and add ''Table 3–66'' in their place;

bb. Revise paragraphs 3.8.3.1 [a] 3.a. and 3.8.3.1 [a] 3.d.;

cc. Add new paragraph 3.8.3.1 [a] 3.e.;

dd. In paragraph 3.8.3.4 remove reference to ''Table 3–66'' and add ''Table 3–67'' in its place;

ee. In paragraphs 3.8.3.6.1 [e] 1. and [e] 2. remove both references to ''Table 3–67'' and add ''Table 3–68'' in their place;

ff. In paragraph 3.8.3.9, in redesignated Table 3–69 remove both references to ''Table 3–65'' and add ''Table 3–66'' in their place;

gg. Revise paragraphs 3.8.3.10 [a], [b] and [c];

hh. In paragraph 3.9.2 remove reference to ''Table 3–69'' and add ''Table 3–70'' in its place;

ii. In paragraph 3.10.2 [a] remove reference to ''Table 3–70'' and add ''Table 3–71'' in its place;

jj. Revise paragraphs 3.10.3.1 [b] 2. and [b] 3.;

kk. Revise paragraph 3.10.3.6.2 [a] 5.; and

ll. Revise the definition of *Enterprise Cost of Funds* in paragraph 4.0 Glossary.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Text Methodology and Specifications

* * * * *

3.1.1 * * *

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.1.3, Public Data	3–19, Stress Test Single Family Quarterly House Price Growth Rates			F	
	3–20, Multifamily Monthly Rent Growth and Vacancy Rates			F	
3.2.2, Commitments Inputs	Characteristics of securitized single family loans originated and delivered within 6 months prior to the Start of the Stress Test	R			3.3.4, Interest Rates Outputs
3.2.3, Commitments Procedures	3–25, Monthly Deliveries as a Percentage of Commitments Outstanding (MDP)			F	

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.3.2, Interest Rates Inputs	3–18, Interest Rate and Index Inputs		P		
3.3.3, Interest Rates Procedures	3–26, CMT Ratios to the Ten-Year CMT			F	
3.4.2, Property Valuation Inputs	3–28, Property Valuation Inputs				3.1.3, Public Data 3.3.4, Interest Rates Outputs
3.5.3, Counterparty Defaults Procedures	3–30, Rating Agencies Mappings to OFHEO Ratings Categories		P		
	3–31, Stress Test Maximum Haircut by Ratings Classification			F	
3.6.3.3.2, Mortgage Amortization Schedule Inputs	3–32, Loan Group Inputs for Mortgage Amortization Calculation				3.3.4, Interest Rates Outputs
3.6.3.4.2, Single Family Default and Prepayment Inputs	3–34, Single Family Default and Prepayment Inputs	R		F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.4.3.3, Prepayment and Default Rates and Performance Fractions	3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables			F	
3.6.3.5.2, Multifamily Default and Prepayment Inputs	3–38, Loan Group Inputs for Multifamily Default and Prepayment Calculations	R		F	
3.6.3.5.3.3, Default and Prepayment Rates and Performance Fractions	3–39, Explanatory Variable Coefficients for Multifamily Default			F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.2.6, Single Family Gross Loss Severity Inputs	3–42, Loan Group inputs for Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs
3.6.3.6.3.6, Multifamily Gross Loss Severity Inputs	3–44, Loan Group Inputs for Multifamily Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.4.8, Mortgage Credit Enhancement Inputs	3–46, CE Inputs for each Loan Group	R			3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.2.3, Single Family Gross Loss Severity Outputs 3.6.3.6.3.3, Multifamily Gross Loss Severity Outputs
	3–47, Inputs for each Distinct CE Combination (DCC)	R			
3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs	3–51, Inputs for Final Calculation of Stress Test Whole Loan Cash Flows	R			3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.5.6, Single Family and Multifamily Net Loss Severity Outputs
3.6.3.8.2, Whole Loan Accounting Flows Inputs	3–54, Inputs for Whole Loan Accounting Flows	R			3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
3.7.2, Mortgage-Related Securities Inputs	3–56, RBC Report Inputs for Single Class MBS Cash Flows	R			
	3–57, RBC Report Inputs for Multi-Class and Derivative MBS Cash Flows	R			
	3–58, RBC Report Inputs for MRBs and Derivative MBS Cash Flows	R			
3.8.2, Nonmortgage Instrument Inputs	3–66, Input Variables for Nonmortgage Instrument Cash flows	R			
3.9.2, Alternative Modeling Treatments Inputs	3–70, Alternative Modeling Treatment Inputs	R			

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.10.2, Operations, Taxes, and Accounting Inputs	3–71, Operations, Taxes, and Accounting Inputs	R			3.3.4, Interest Rates Outputs 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs 3.7.4, Mortgage-Related Securities Outputs 3.8.4, Nonmortgage Instrument Outputs
3.12.2, Risk-Based Capital Requirement Inputs		R			3.3.4, Interest Rates Outputs 3.9.4, Alternative Modeling Treatments Outputs 3.10.4, Operations, Taxes, and Accounting Outputs

* * * * * * *

3.1.2.1 * * *

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Reporting Date	The last day of the quarter for the loan group activity that is being reported to OFHEO	YYYY0331 YYYY0630 YYYY0930 YYYY1231
Enterprise	Enterprise submitting the loan group data	Fannie Mae Freddie Mac
Business Type	Single family or multifamily	Single family Multifamily
Portfolio Type	Retained portfolio or Sold portfolio	Retained Portfolio Sold Portfolio
Government Flag	Conventional or Government insured loan	Conventional Government
Original LTV	Assigned LTV classes based on the ratio, in percent, between the original loan amount and the lesser of the purchase price or appraised value	LTV<=60 60 <LTV<=70 70 <LTV<=75 75 <LTV<=80 80 <LTV<=90 90 <LTV<=95 95 <LTV<=100 100 <LTV
Current Mortgage Interest Rate	Assigned classes for the current mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Original Mortgage Interest Rate	Assigned classes for the original mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
Mortgage Age	Assigned classes for the age of the loan	0<=Age<=12 12<Age<=24 24<Age<=36 36<Age<=48 48<Age<=60 60<Age<=72 72<Age<=84 84<Age<=96 96<Age<=108 108<Age<=120 120<Age<=132 132<Age<=144 144<Age<=156 156<Age<=168 168<Age<=180 Age>180
Rate Reset Period	Assigned classes for the number of months between rate adjustments	Period =1 1< Period <=4 4< Period <=9 9< Period <=15 15< Period <=60 60< Period <999 Period = 999 (not applicable)
Payment Reset Period	Assigned classes for the number of months between payment adjustments after the duration of the teaser rate	Period <=9 9< Period <=15 15< Period <999 Period = 999 (not applicable)
ARM Index	Specifies the type of index used to determine the interest rate at each adjustment	FHLB 11th District Cost of Funds. 1 Month Federal Agency Cost of Funds. 3 Month Federal Agency Cost of Funds. 6 Month Federal Agency Cost of Funds. 12 Month Federal Agency Cost of Funds. 24 Month Federal Agency Cost of Funds. 36 Month Federal Agency Cost of Funds. 60 Month Federal Agency Cost of Funds. 120 Month Federal Agency Cost of Funds. 360 Month Federal Agency Cost of Funds. Overnight Federal Funds (Effective). 1 Week Federal Funds 6 Month Federal Funds 1 Month LIBOR 3 Month LIBOR 6 Month LIBOR 12 Month LIBOR Conventional Mortgage Rate. 15 Year Fixed Mortgage Rate. 7 Year Balloon Mortgage Rate. Prime Rate 1 Month Treasury Bill 3 Month CMT 6 Month CMT 12 Month CMT 24 Month CMT 36 Month CMT 60 Month CMT 120 Month CMT 240 Month CMT 360 Month CMT
Cap Type Flag	Indicates if a loan group is rate-capped, payment-capped or uncapped	Payment Capped Rate Capped No periodic rate cap
OFHEO Ledger Code	OFHEO-specific General Ledger account number used in the Stress Test	Appropriate OFHEO Ledger Code based on the chart of accounts.

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Single Family Product Code	Identifies the mortgage product types for single family loans	Fixed Rate 30YR Fixed Rate 20YR Fixed Rate 15YR 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		Adjustable Rate Step Rate ARMs Second Lien Other
Census Division	The Census Division in which the property resides. This variable is populated based on the property's state code	East North Central East South Central Middle Atlantic Mountain New England Pacific South Atlantic West North Central West South Central
Relative Loan Size	Assigned classes for the loan amount at origination divided by the simple average of the loan amount for the origination year and for the State in which the property is located. Average loan size for the appropriate quarter is provided by OFHEO based upon data from both Enterprises. It is expressed as a decimal	0<=Size<=.4 .4<Size<=.6 .6<Size<=.75 .75<Size<=1.0 1.0<Size<=1.25 1.25<Size<=1.5 Size>1.5

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	''New Book'' is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Interest Only Flag	Indicates if the loan is currently paying interest only. Loans that started as I/Os and are currently amortizing should be flagged as ''N''	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR < 1.00 1.00 <=DCR<1.10 1.10 <=DCR<1.20 1.20 <=DCR<1.30 1.30 <=DCR<1.40 1.40 <=DCR<1.50 1.50 <=DCR<1.60 1.60 <=DCR<1.70 1.70 <=DCR<1.80 1.80 <=DCR<1.90 1.90 <=DCR<2.00 2.00 <=DCR<2.50 2.50 <=DCR<4.00 DCR >= 4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

* * * * * * *

3.1.3.1 * * *

[c] * * *

TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W (index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M (index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield, Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield, Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield, Ticker: AGDN180Y (index)
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield, Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield, Ticker: AGAC02 (index)
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield, Ticker: AGAC03 (index)
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield, Ticker: AGAC05 (index)
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield, Ticker: AGAC10 (index)
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield, Ticker: AGAC30 (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed

* * * * *

3.3.1 * * *

[b] The process for determining interest rates is as follows: first, identify values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20- and 30-year CMTs; fourth, project non-Treasury Interest Rates, including the Federal Agency Cost of Funds Index; and fifth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test.

* * * * *

3.3.3 * * *

[a] * * *

3. * * *

c. *Enterprise Borrowing Rates.* In the Stress Test, the Federal Agency Cost of Funds Index is the same as the Enterprise Cost of Funds Index during the Stress Period, except that the Stress Test adds a 10 basis-point credit spread to the Federal Agency Cost of Funds rates to project Enterprise Cost of Funds rates for the last 108 months of the Stress Period.

* * * * *

3.4.2 * * *

TABLE 3–28—PROPERTY VALUATION INPUTS

Variable	Description	Source
$CMT10_m$	10-year CMT yield for months m = 1...120 of the Stress Test	section 3.3, Interest Rates
$ACMT_o$	Unweighted nine-month average of the ten-year CMT yield for the nine months immediately preceding the Stress Test. (Monthly rates are unweighted monthly averages of daily rates, bond equivalent yield)	section 3.3, Interest Rates
$HHPGR_q^{HSP}$	Quarterly single family historical house price growth rates computed from the HPI series for the Benchmark region and time period, unadjusted for inflation. The specific series is the West South Central Census Division for the years l984–1993, as reported in OFHEO's Third Quarter, 1996 HPI Report	Table 3–19 of section 3.1.3, Public Data
RG_m^{HSP}	Multifamily Rent Growth Rates for months m = 1...120 of the Benchmark region and time period, unadjusted for inflation	Table 3–20 of section 3.1.3, Public Data
RVR_m^{HSP}	Multifamily Rental Vacancy Rates for months m = 1...120 of the Benchmark region and time period	Table 3–20 of section 3.1.3, Public Data

* * * * *

3.5.3 * * *

[a] * * *

2. * * *

d. The Stress Test will permit a higher rating to be used for an unrated seller-servicer who participates in a multifamily delegated underwriting and servicing program that requires a loss-sharing agreement when: (1) The loss sharing agreement is collateralized by a fully funded reserve account pledged to the Enterprise; and (2) the reserve account is in an amount that is equal to or exceeds the amount that OFHEO has determined to be adequate to support the seller-servicer's loss-sharing obligation under the program. Determinations of the reserve requirement and of the rating that will be permitted will be made on a program-by-program and Enterprise-by-Enterprise basis by the Director.

3. *Determine Maximum Haircuts.* The Stress Test specifies the Maximum Haircut (i.e., the maximum reduction applied to cash flows during the Stress Test to reflect the risk of loss due to counterparty (including security) default) by rating category and counterparty type as shown in Table 3–31.

a. The Maximum Haircut for a rating category is the product of its default rate and its loss severity rate. For all counterparties, the default rates are 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for Below BBB and Unrated. For non-derivative counterparties, the loss severity rate is 70 percent; for derivative counterparties, it is 10 percent. For all Below BBB and Unrated counterparties, the loss severity rate is 100 percent.

b. For periods prior to the implementation of netting, a separate set of Maximum Haircuts (set forth in Table 3–31) will be applied to derivative contract cash flows to approximate the impact of the net exposures to derivative contract counterparties (see section 3.8.3, Nonmortgage Instrument Procedures). After the implementation of netting, exposures will be netted as described in section 3.8.3 before the haircut is applied.

c. With the exception of haircuts for the Below BBB and Unrated category, haircuts for all counterparty categories are phased-in linearly over the 120 months of the Stress Period. The Maximum Haircut is applied in month 120 of the Stress Period. Haircuts for the Below BBB and Unrated category are applied fully starting in the first month of the Stress Test.

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
Cash	0%	0%	0%	N/A
AAA	0.3%	0.5%	3.5%	120
AA	0.75%	1.25%	8.75%	120

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION—Continued

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
A	1.2%	2%	14%	120
BBB	2.4%	4%	28%	120
Below BBB and Unrated	100%	100%	100%	1

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

2. Calculate $PNEQ_q$, the Probability of Negative Equity in quarter q:

$$PNEQ_q = N\left(\frac{ln LTV_q}{\sigma_q}\right),$$

where:

N designates the cumulative normal distribution function.

a. LTV_q is evaluated for a quarter q as:

$$LTV_{ORIG} \times \frac{\begin{pmatrix}\text{Ratio of current}\\ \text{Loan Group UPB}\\ \text{to Original UPB}\end{pmatrix}}{\begin{pmatrix}\text{Ratio of current property}\\ \text{value (based on HPI in}\\ \text{quarter q) to original}\\ \text{property value (based on}\\ \text{HPI at Origination)}\end{pmatrix}}$$

The HPI at Origination is updated to the beginning of the Stress Test using actual historical experience as measured by the OFHEO HPI; and then updated within the Stress Test using House Price Growth Factors from the Benchmark region and time period:

$$LTV_q = LTV_{ORIG} \times \frac{\left(\frac{UPB_{m=3_q-3}}{UPB_{ORIG}}\right)}{\left[CHPGF_0^{LG} \times exp\left(\sum_{k=1}^{q} HPGR_k\right)\right]}$$

Where:

$UPB_{m=3q-3}$ = UPB for the month at the end of the quarter prior to quarter q

$CHPGF_o^{LG}$ = 1.0 if the loan was originated in the same quarter as or after the most recently available HPI as of the reporting date

* * * * *

3. * * *

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6, ... 0, 1, ... 40):

* * * * *

3.6.3.5.1 * * *

[b] *Explanatory Variables for Default Rates.* Eight explanatory variables are used as specified in the equations in section 3.6.3.5.3.1, of this Appendix, to determine Default rates for multifamily loans: Mortgage Age, Mortgage Age Squared, New Book indicator, Not Ratio-updated ARM indicator, current Debt-Service Coverage Ratio, Underwater Current Debt-Service Coverage indicator, Loan-To-Value Ratio at origination/acquisition, and a Balloon Maturity indicator. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional annual Default rates throughout the Stress Test. The annualized Default rates are converted to monthly conditional Default rates and are used together with monthly conditional Prepayment rates to calculate Stress Test Whole Loan Cash Flows. (*See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this appendix).

* * * * *

3.6.3.5.2 * * *

TABLE 3–38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS

Variable	Description	Source
	Mortgage Product Type	RBC Report
A_o	Age immediately prior to start of Stress Test, in months (weighted average for Loan Group)	RBC Report
NBF	New Book Flag	RBC Report
RUF	Ratio Update Flag	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at loan Origination	RBC Report
DCR_o	Debt Service Coverage Ratio at the start of the Stress Test	RBC Report
PMT_o	Amount of the mortgage Payment (principal and interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group)	RBC Report
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
RGR_m	Benchmark Rent Growth for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
RVR_m	Benchmark Vacancy Rates for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
PMT_m	Scheduled Payment for months m = 1... RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
OE	Operating expenses as a share of gross potential rents (0.472)	fixed decimal from Benchmark region and time period
RVR_o	Initial rental vacancy rate	0.10

* * * * *

3.6.3.5.3.1 * * *

[a] * * *

2. Assign product and ratio update flags (NBF, NRAF). *Note:* these values do not change over time for a given Loan Group.

a. New Book Flag (NBF):

NBF = 1 for Fannie Mae loans acquired after 1987 and Freddie Mac loans acquired after 1992, *except* for loans that were refinanced to avoid a Default on a loan originated or acquired earlier.

NBF = 0 otherwise.

b. Not Ratio-updated Arm Flag (NRAF):

NRAF = 1 if both ARMF = 1 and RUF = 0,

NRAF = 0 otherwise.

Where:

ARMF = 1 for ARMs (including Balloon ARMs)

ARMF = 0 otherwise, and

RUF = 1 if the LTV and DCR were calculated or delegated to have been calculated at origination or recalculated or delegated to have been recalculated at Enterprise acquisition according to current Enterprise standards.

RUF = 0 otherwise

* * * * *

3.6.3.5.3.2 * * *

[a] * * *

1. Compute the logits for multifamily Default using inputs from Table 3–38 and coefficients from Table 3–39. For indexing purposes, the Default rate for a period m is the likelihood of missing the m_{th} payment; calculate its corresponding logit ($X\delta_m$) based on Loan Group characteristics as of the period *prior* to m, i.e. *prior* to making the mth payment.

$$\begin{aligned} X\delta_m = {} & \delta_{AY}AY_{m-1} + \delta_{AY^2}AY_{m-1}^2 \\ & + \delta_{NBF}NBF + \delta_{NRAF}NRAF \\ & + \delta_{DCR}ln\left(DCR_{m-1}\right) \\ & + \delta_{UWDCRF}UWDCRF_{m-1} \\ & + \delta_{LTV}ln\left(LTV_{ORIG}\right) \\ & + \delta_{BMF}BMF_{m-1} + \delta_0 \end{aligned}$$

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT

Explanatory Variable (V)	Default Weight (δ_v)
AY	0.5256
AY^2	0.0284
NBF	−1.219
NRAF	0.4193
DCR	−2.368
UWDCRF	1.220
LTV	0.8165
BMF	1.518
Intercept (δ_0)	−4.553

* * * * *

2. * * *

b. For the down-rate scenario,

APR_m = 0 percent during the Prepayment penalty period (i.e., when m ≤ PPEM)

APR_m = 25 percent after the Prepayment penalty period (i.e., when m > PPEM)

* * * * *

3. Convert annual Prepayment and Default rates to monthly rates (MPR and MDR) using the following formulas for simultaneous processes:

$$MPR_m = \frac{APR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]$$

If both ARMF = 0 and RUF = 0, then

$$MDR_m = \left[\frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]\right] \times 1.2$$

otherwise,

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]$$

* * * * *

3.6.3.6.3.2 * * *

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value or Source
	Government Flag	RBC Report
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from Section 3.3, Interest Rates
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise
PTR_m	Pass Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.07
MF	Time from Default to completion of foreclosure (REO acquisition)	9 months
MR	Months from REO acquisition to REO disposition	15 months
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.63

* * * * * * *

3.6.3.6.4.3 * * *

[a] * * *

1. Determine Mortgage Insurance Payment (MI_m) for single family loans in the DCC, or Loss Sharing Payment (LSA_m) for multifamily loans in the DCC, as a percentage of Defaulted UPB, applying appropriate counterparty Haircuts from section 3.5., of this Appendix:

$$MI_m^{DCC} = \left(1 - MIExp_m^{LG}\right) \times C^{MI,DCC} \times CLM_m^{MI,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{MI,DCC}\right)\right]$$

$$LSA_m^{DCC} = C^{LSA,DCC} \times CLM_m^{LSA,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{LSA,DCC}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

$$MIExp_m^{LG} = 1 \text{ if } \left(LTV_{ORIG} \times \frac{UPB_m^{LG}}{UPB_{ORIG}^{LG}} \right) < 0.78$$

$$MIExp_m^{LG} = 0 \text{ otherwise}$$

0.78 (78%) = the LTV at which MI is cancelled if payments are current

* * * * * * *

3. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C1,H} = PD_m^{DCC,C1} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C1}\right) \right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * * * *

4. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C2,H} = PD_m^{DCC,C2} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C2}\right) \right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * * * *

5. Convert Aggregate Limit First and Second Priority Contract receipts in Dollars for each DCC in month m to a percentage of DCC Defaulted UPB:

$$ALPD_m^{DCC} = \frac{\left(PD_m^{DCC,C1,H} \times ELPI^{DCC,C1}\right) + \left(PD_m^{DCC,C2,H} \times ELPI^{DCC,C2}\right)}{DEF_m \times UPB_{m-1}^{LG} \times P^{DCC}}$$

Where:

$ELPI^{DCC,C}$ = 0 if $ELPF^{DCC,C}$ = Y (Yes, indicating that Contract C is an Enterprise Loss Position)

$ELPI^{DCC,C}$ = 1 otherwise

* * * * * * *

3.6.3.7.3. * * *

[a] * * *

9. * * *

b. Float Income (FI) received in month m

$$FI_m = \left(\left[\left(\left[\left(SPR_m + NIR_m - GF_m \right) \times \frac{FDS}{365} \right] + \left[PPR_m \times \frac{FDP}{365} \right] \right) \times FER_m \right] - PIS_m \right) \times (1 - FREP)$$

where: Prepayment Interest Shortfall (PIS) in month m is:

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{12}$$

$$\text{if } FDP \geq 30$$

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{24}$$

$$\text{if } 15 \leq FDP < 30$$

* * * * *

3.7.3.1 * * *

[g] * * *

1. Compute:

$$HctFac_m = \frac{m'}{120} \times MaxHct\,(R)$$

Where:

m' = m, except for MBS credit rating below BBB where m'=120

R = MBS credit rating

* * * * *

3.8.1 * * *

[f] In a currency swap, the Enterprise receives payments that are denominated in a foreign currency and it makes payments in U.S. dollars. The main difference between currency swaps and the type of swaps discussed above is that in a currency swap principal amounts are actually exchanged between the two counterparties. Currency swaps are divided into two classes, as shown in Table 3–65.[5]

[5] *Ibid.*

TABLE 3–65—CURRENCY SWAP CONTRACT CLASSIFICATION

Classification	Description of Contract
Fixed-for-Fixed Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes fixed, US dollar-denominated payments
Fixed-for Floating Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes payments in US dollar based on a floating interest rate

* * * * *

3.8.3.1 * * *

[a] * * *

3. When applying the option exercise rule:

a. For zero coupon and discount securities, instruments with European options, and zero coupon swaps, evaluate option exercise only on dates listed in the instrument's option exercise schedule. For Bermudan options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent coupon dates (coupon dates on the fixed-rate leg for swaps). For American options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent monthly anniversaries of the instrument's first coupon date.

* * * * *

d. If the remaining maturity is greater than 360 months, use the equivalent-maturity Enterprise Cost of Funds as if the remaining maturity is 360 months.

e. In the Stress Test, no preferred stock issued by the Enterprise will be called.

* * * * *

3.8.3.10 * * *

[a] Finally, the interest and principal cash flows received by the Enterprises for non-mortgage instruments other than swaps and foreign currency-related instruments are Haircut (i.e., reduced) by a percentage to account for the risk of counterparty insolvency, if a counterparty obligation exists. The amount of the Haircut is calculated based on the public rating of the counterparty and time during the stress period in which the cash flow occurs, as specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] An Enterprise may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. The combination of the debt and the swap creates synthetic debt with principal and interest payments denominated in U.S. dollars. The Haircuts for currency swaps are applied to the pay (dollar-denominated) side of the currency swaps, or to the cash outflows of the synthetic debt instrument. Therefore, the payments made by the Enterprise on a foreign currency contract are increased by the haircut amount. The Haircuts and the Phase-in periods for currency swaps are detailed in Table 3–31, under Derivative Contracts.

[c] Haircuts for swaps that are not foreign currency related are applied to the Monthly Interest Accruals (as calculated in section 3.8.3.8, of this Appendix) on the receive leg minus the Monthly Interest Accruals on the pay leg when this difference is positive. Use the maximum haircut from Table 3–31 for periods before and after the implementation of netting, as appropriate. After the implementation of netting, net the swap proceeds for each counterparty before applying the haircuts. The following example applies to an Enterprise having two swaps with the same counterparty. On the first swap, the Enterprise pays fixed and receives floating and on the second swap it pays floating and receives fixed. If the counterparty is a net payer to the Enterprise, the haircuts will be applied to the sum of the two receive legs net of the sum of the two pay legs.

* * * * *

3.10.3.1 * * *

[b] * * *

2. In any month in which the cash position is negative at the end of the month, the Stress Test issues a mix of new short-term and long-term debt on the 15th day of that month. New short-term debt issued is six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, with interest accruing on a 30/360 basis. New long-term debt issued is five-year bonds not callable for the first year (''five-year-no call-one'') with an American call at par after the end of the first year, semiannual coupons on a 30/360 basis with principal paid at maturity or call, and a coupon rate set at the five year Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, plus a 50 basis point premium for the call option. During the Stress Test, the call option for new long-term debt issued is not executed in the up-rate scenario and in the down-rate scenario follows the same call exercise rule as other debt. An issuance cost of 2.5 basis points is assessed on new short-term debt at issue and an issuance cost of 20 basis points is assessed on new long-term debt at issue. New long-term debt is issued to target a total debt mix of short- to long-term debt that is the same as the short- to long-term debt mix at the beginning of the Stress Test. Issuance fees for new debt are amortized on a straight line basis to the maturity of the appropriate instrument.

3. Given the Net Cash Deficit (NCD_m) in month m, use the following constants and method to calculate the amount of short-term and long-term debt to issue in month m:

a. Set the Issuance Cost on new short-term debt at issue (ISCOST):
ISCOST = 0.00025

b. Set the Issuance Cost on new long-term debt at issue (ILCOST):
ILCOST = 0.002

c. Calculate Net Short-term Debt Outstanding ($NSDO_0$) and Total Debt Outstanding (TDO_0) at the start of the Stress Test (m = 0) using the following methodology:

1) For each month m and each debt and swap instrument i (each swap leg is considered a separate instrument), determine the Month of Next Repricing (MNR_m) defined as the first month greater than m in which the instrument matures or repricing can occur whether or not the coupon rate actually changes. Set the Principal Balance (PB_m) to be:

a) The principal (or notional principal) outstanding if the instrument cash flows are paid by the Enterprise,

b) Minus the principal (or notional principal) outstanding if the instrument cash flows are received by the Enterprise.

c) Zero if m is less than or equal to the issue month or the month in which an option exercised during the stress test would begin accruing cash flows to or from the Enterprise.

d) Zero if m is greater than or equal to the maturity month or the month in which an option exercised during the stress test would cease further cash flows to or from the Enterprise.

2) Calculate $NSDO_m$ by summing $PB_{m,i}$ for all instruments where $MNR_{m,i}$ is less than or equal to m plus 12.

3) Calculate TDO_m by summing $PB_{m,i}$ for instruments where $MNR_{m,i}$, is greater than m.

d. Set the Maximum Proportion of Total Debt (MPD):

$$MPD = \frac{TDO_0 - NSDO_0}{TDO_0}$$

e. Calculate Discount Rate Factor (DRF_m):

$$DRF_m = \left(1 + \frac{CF_m}{12}\right)^6$$

Where: CF_m = six month Enterprise Cost of Funds for month m

f. Calculate the Adjustment Factor for Short-Term Debt Issuance Fees ($AFSIF_m$):

$$AFSIF_m = \frac{DRF_m}{1 - ISCOST \times DRF_m}$$

g. Calculate the Adjustment Factor for Long-Term Debt Issuance Fees ($AFLIF_m$):

$$AFLIF_m = \frac{1}{1 - ILCOST}$$

h. Calculate the Maximum Long-Term Issuance ($MLTI_m$):

$$MLTI_m = NCD_m \times AFLIF_m$$

i. Calculate Net Short-Term Debt Outstanding ($NSDO_m$) and Total Debt Outstanding (TDO_m) for month m using the methodology described in paragraph 3.10.3.1.[b]3.c. of this appendix. *Note:* This calculation must reflect all new issuances, option exercises, and maturities between the beginning of the Stress Test and month m.

j. Calculate Interim Face Amount of Long-Term Debt to be issued this month ($IFALD_m$):

$$IFALD_m = \frac{\left((MPD-1)\times TDO_m\right) + NSDO_m + \left(MPD \times AFSIF_m \times NCD_m\right)}{1 - MPD + \left(AFSIF_m \times \frac{MPD}{AFLIF_m}\right)}$$

k. Calculate Face Amount of Long-Term Debt to be issued ($FALD_m$):

$$FALD_m = min\left(MLTI_m, max\left(0, IFALD_m\right)\right)$$

l. Calculate Face Amount of Short-Term Debt to be issued ($FASD_m$):

$$FASD_m = AFSIF_m \times max\left(0, NCD_m - \frac{FALD_m}{AFLIF_m}\right)$$

* * * * *

3.10.3.6.2 * * *

[a] * * *

5. *Fixed Assets*. 25 percent of fixed assets (net of accumulated depreciation) as of the beginning of the Stress Test remain constant over the Stress Test. The remaining 75 percent is converted to cash on a straight line basis over the ten-year Stress Period. Depreciation is included in the base on which operating expenses are calculated for each month during the Stress Period.

* * * * *

4.0 * * *

Enterprise Cost of Funds: Cost of funds used in computing the cost of new debt for the Enterprises during the Stress Test, as specified in section 3.3.3.[a]3.c., of this Appendix.

* * * * *

Dated: February 20, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

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Friday,
March 15, 2002

Part V

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750
Risk-Based Capital; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA23

Risk-Based Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is amending appendix A to subpart B of 12 CFR part 1750 Risk-Based Capital. These amendments modify provisions relating to counterparty haircuts, multifamily loans, and refunding and make several technical adjustments and corrections. These amendments are intended to refine the stress test model to tie capital more closely to risk.

DATES: April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard Reid, Associate Director, Office of Risk Analysis and Model Development, telephone (202) 414–3754 (not a toll-free number), or David Felt, Deputy General Counsel, telephone (202) 414–3750 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test (Rule) on September 13, 2001, which formed the basis for determining the risk-based capital requirement for the Federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1] The risk-based capital stress test set forth in the Rule simulates the performance of each Enterprise's assets, liabilities, and off-balance-sheet obligations under severe credit and interest rate stress for a period of ten years (stress period). The stress test projects rates of default and prepayment for the mortgages guaranteed by the Enterprises, as well as cash flows from these and other assets, liabilities, and off-balance-sheet obligations. Using these cash flows, the stress test produces monthly balance sheets for the 120 months of the stress period in order to determine the amount of starting capital that would be necessary to maintain positive capital during the stress period. Thirty percent of the amount of capital so determined is then added to that amount to protect against management and operations risk. By statute, the Rule becomes fully enforceable on September 13, 2002, one year after it was issued.[2]

On December 18, 2001, OFHEO published a notice proposing to amend certain provisions in the risk-based capital stress test (AmendNPR).[3] The proposed amendments related to counterparty haircuts, multifamily loans, and refunding and included several technical adjustments and corrections. The purpose of the proposed changes was to improve the Rule's measurements and formulas to tie capital more closely to risk and to ensure that the Rule supports the safety and soundness regime created by the 1992 Act. OFHEO stated that such a proposal is consistent with OFHEO's intention to review, on an ongoing basis, the operation of the stress test and its various components and to evaluate the need for revisions and improvements. Also, OFHEO committed to act expeditiously to remedy any technical and operational issues that arise during the one-year implementation period during which time the capital requirement under the Rule is not being enforced.

OFHEO received 48 comments on the AmendNPR. Commenters included Freddie Mac; Fannie Mae; housing and financial trade associations; financial services companies, including mortgage insurance companies; housing advocacy groups; State housing authorities; academics; consultants; and other interested parties. Many of the comments discussed aspects of the Rule that were not addressed specifically in the AmendNPR. In other instances, commenters approved of certain changes proposed, but suggested that OFHEO go farther or make additional changes in the same area. Numerous commenters, for instance, applauded OFHEO's changes to the multifamily model, which had the effect of lowering adjustable rate mortgage (ARM) defaults in the stress test, but urged OFHEO to take additional steps to lower ARM loss rates. The amended Rule reflects OFHEO's consideration of all of these comments. However, the need for OFHEO to establish a firm baseline for the stress test and apply it to the Enterprises prior to the end of the implementation period does not allow OFHEO to consider further changes or enhancements at this time. A description of the comments along with OFHEO's responses to them is set forth below.

A. Changes to Counterparty Haircuts

The Rule gives the Enterprises credit for cash payments that would be received during the stress period from securities and various counterparties, such as mortgage insurance companies and derivative counterparties. However, because Enterprise counterparties are themselves likely to be adversely affected by the economic conditions of the stress period and to default on some or all of their obligations, the stress test discounts the value of cash payments received during the stress period by a specified percentage, based on the public credit rating of the security or counterparty. The amount by which cash payments from a counterparty or security are discounted in each month of the stress period is the haircut. The specified haircut percentages increase as the credit rating declines—the lower that rating, the more severe the haircut. In the previous Rule, the haircuts were phased in over the first five years of the stress period, except for haircuts for below-investment-grade providers and instruments, which are applied fully in the first month of the stress period.

The Rule applies one set of haircuts for non-derivative counterparties and securities, based on analysis of historical bond default rates, and a different set of haircuts for derivative counterparties, reflecting lower expected loss severities associated with the use of strong collateral agreements.[4] To further refine the previous Rule's treatment of haircuts, OFHEO has improved the consistency between haircuts for derivative counterparties and securities and non-derivative counterparties and securities by specifying default and severity rates separately; extending the phase-in period for the haircuts from five to ten years; providing for netting of exposures to the same derivative counterparty;

[1] Risk-based Capital, 66 FR 47730 (September 13, 2001).

[2] Section 1364 of Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), (12 U.S.C. 4614(d)).

[3] Risk-based Capital, Notice of proposed rulemaking 66 FR 65146 (December 18, 2001).

[4] The term ''derivative'' is used to refer to over-the-counter interest rate and foreign currency derivatives that are used by the Enterprises to hedge interest rate risk and foreign exchange risk. The term should not be read to encompass credit derivatives, which are currently not in use by the Enterprises and would be considered a ''new activity'' and dealt with under section 3.11 of the Rule, if the Enterprises began to use them.

providing for certain technical amendments described herein; and providing for an exception to the BBB haircut for certain unrated multifamily seller/servicers, as described in the AmendNPR.

OFHEO proposed lowering the maximum haircuts for both non-derivative and derivative counterparties and securities. The specified default and severity rates were calculated separately. Their products are the maximum haircuts. Previously, no explicit allowance was made for recoveries after default (severities of less than 100 percent) for non-derivative losses.

Default Rates

The amended Rule adopts the former Rule's non-derivative maximum haircut levels as maximum default rates, except that the percentage for AA-rated firms and securities was lowered from 15 to 12.5. Many commenters argued that using data from the Great Depression as a basis for default rates was inappropriate because of the broad changes in the economy since then and because default rates should be consistent with mortgage losses applied elsewhere in the stress test. Others focused on the relationship between defaults in the AA and AAA categories. Most argued that the ratio embodied in the proposal (2.5:1), which is lower than in the former Rule, was still too high or that there should be no differential between the categories at all. Many suggested that the proposed difference would drive all or most mortgage insurance business to the two AAA-rated firms, lessening competition and creating concentration risk for the Enterprises.

One commenter, however, opposed the change in the ratio, arguing that the average ratio (3:1) over the longest period available, 1920–1999, should be the basis for the Rule. A few commenters argued that maintaining a substantial differential between AAA and AA categories was important in either the maximum default rates used or the phase-in of those rates. In their view, a large differential would promote capital accumulation by mortgage insurers, decreasing the risk of losses to the Enterprises, and reversing the trend toward smaller market shares of mortgage insurance at AAA-rated firms. These commenters also noted that defaults of AAA-rated firms generally have occurred later for any given cohort of mortgage loans than defaults of AA-rated firms. One commenter further pointed out that OFHEO's haircuts differ far less across rating categories than rating agency haircuts on reinsurance that is provided by lesser-rated insurance providers.

After reviewing the comments, OFHEO has decided to adopt the proposed default rates. No single set of data provides a clear guide to the determination of default rates for the stress test. OFHEO agrees that many changes have occurred since the Great Depression and, therefore, does not view it as the sole relevant period for determining appropriate haircuts during the stress period. Data from the past three decades, however, do not contain any periods of interest rate stress or credit stress on a national basis comparable to that during the stress period.[5] Furthermore, the implication of data raised by some commenters that AAA-rated firms are as risky or riskier than AA-rated firms is based on a very small number of actual defaults. The characteristics of AAA-rated and AA-rated firms, as described in rating agency analyses, suggest significantly better relative credit performance should be expected for AAA-rated firms in a future stressful environment.

OFHEO has examined the available data from a variety of sources with varying perspectives as described in the preambles to NPR2,[6] the September 13, 2001 Rule, and the AmendNPR. OFHEO has based its choices on the totality of the data, but also has taken into account treatment of credit supports by rating agencies, although OFHEO recognizes that the agencies' purposes and perspectives differ somewhat from OFHEO's. The Depression-era data are of particular interest because, unlike other data, they reflect a very stressful period. OFHEO notes, however, that cumulative defaults in Moody's data for 1929–31, as discussed in the proposal, are very close to those obtained by using Moody's 1920–1999 data and adding 2½ standard deviations to the average 10-year default rates. Data from Hickman's 1928 cohort and more recent time periods could suggest higher default rates for the AAA category relative to the other categories, but the relatively later timing of AAA defaults in much of the data is also relevant given that OFHEO has not imposed different phase-in patterns for different rating categories. OFHEO has similarly considered the earlier timing of historical defaults in the A category and especially in the BBB category. OFHEO also considered the fact that the stress test interest rate shocks and mortgage losses as specified in the 1992 Act are heavily front-loaded in comparison to historical periods.

OFHEO recognizes that relative haircut levels for the different rating categories can have competitive implications and, therefore, has focused great attention on differences in haircuts across rating categories, so that they reflect differences in risk to the Enterprises well, without adding undue complexity to the Rule.

Severity Rates

The amended Rule adopts the severity rates from the proposal, a 70 percent severity rate for all non-derivative defaults and a 10 percent rate for derivative defaults. Much of the comment with respect to non-derivative severity rates was positive, but some commenters suggested higher or lower rates. Those favoring lower rates objected to the use of Great Depression data and suggested focusing on severity rates for senior obligations. One commenter also suggested reflecting ultimate recovery rates (1 minus severity rates) in historical data rather than security prices at the time of default. Those favoring higher severity rates stressed the variability of recovery rates, not only across users and industries, but also over time. One of the commenters also recommended using data for recovery rates on financial issues, which tend to be lower. This commenter also noted that Moody's average recovery rate for even senior secured debt was only 31 percent (69 percent severity) during the 1970s. Finally, some commenters suggested special treatment for particular types of counterparties, such as mortgage insurers, or obligations, such as mortgage revenue bonds or other mortgage related securities.

OFHEO decided to adopt the proposed non-derivative severity rates. Severity data from the Great Depression, which show higher severities during stressful periods, are relevant for the same reasons as default data from the same period. As two commenters pointed out, more recent data also show higher severity during recessions. At the same time, however, OFHEO found the average experience of 10-year periods, such as the 1930s or the 1970s more

[5] Some commenters argued that OFHEO should use the years, 1983–1984, of the benchmark loss experience. The benchmark loss experience, which is specified by the 1992 Act, includes only loans from a small area of the country and is intended only as a benchmark for credit losses on mortgage loans. It was never intended to be and would be entirely inappropriate as a benchmark for counterparty defaults for many reasons. Even more inappropriate would be use of the national data from those years without applying the requirement that they represent the highest default rates from an area of the country containing at least five percent of the population.

[6] The second notice of proposed rulemaking issued prior to the initial issuance of a final Rule on September 13, 2001. 64 FR 18084 (April 13, 1999).

relevant than subtracting standard deviations of annual data from long-term averages as one commenter suggested. Year-to-year variability does not imply that a string of ten consecutive poor results is a reasonable projection. Also, OFHEO has found data on security prices at default to be more relevant than ultimate recoveries, because prices at default take account the time value of money and uncertainties about actual future payments, which payments may even be lower during a continuing period of stress than otherwise expected.

OFHEO recognizes that the characteristics of specific exposures, such as collateral or line of business, may affect severity rates. However, taking account of such characteristics could add undue complexity to the Rule. At this time, OFHEO does not consider such additional complexity to be warranted, but may reevaluate that conclusion in the future, if appropriate.

Comments on the proposed severity of 10 percent for derivative defaults were mostly favorable. Some commenters recommended consideration of even lower severities, in the range of 1 percent to 2½ percent. They view the proposed severity rate as consistent only with a combination of very unlikely events; sudden failures and large, simultaneous, adverse changes in interest rates. A few commenters, however, voiced disapproval of OFHEO's reasoning, which relies heavily on the existence and implementation of collateral agreements. They argued that haircuts on derivative receipts should be unchanged or raised to the level of non-derivative receipts. They suggested that only actual collateral held by an Enterprise at the start of the stress period should be considered, not promises to provide collateral under certain circumstances. They questioned whether it would be feasible to unwind and replace the very large positions the Enterprises have with individual counterparties in a market that may have experienced a shock of some type.

OFHEO has decided to adopt the proposed severity rate for derivative defaults. OFHEO continues to have a high level of confidence in the successful operation of the Enterprises' collateral agreements, even in difficult times. The majority of the Enterprises' over-the-counter derivatives are simple interest rate swaps, which have been consistently very liquid, even in weak markets. Nonetheless, some caution is appropriate, given the high levels of stress contemplated in the stress test and potentially significant levels of correlation between the unlikely events considered in the proposal. While some derivatives are less liquid and could merit more cautious treatment, OFHEO judges that the added complexity is unwarranted at this time.

Haircuts

Under the amendment, haircuts will be determined by multiplying the default rate for each rating category by the severity rate. The resulting haircuts are set forth in Table 1 below.

TABLE 1—STRESS TEST HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties [1]	Non-Derivative Contract Counterparties or Instruments
Cash	0%	0%
AAA	0.5%	3.5%
AA	1.25%	8.75%
A	2%	14%
BBB	4%	28%
Below BBB and Unrated	100%	100%

[1] Does not include interim rates prior to implementation of netting. *See* Table 2.

Phase-In

Under the former Rule, haircuts were phased in linearly over a 5-year period. OFHEO proposed lengthening the phase-in to the full 10 years of the stress period. Most of the comments supported the change. A few commenters suggested changing the pattern of the phase-in to reflect actual default timing during the 10-year period for the cohort for a specific year or the average of cohorts from a specific time period. This approach would have different phase-in patterns for different rating categories. A few other commenters urged OFHEO not to change the existing 5-year phase-in. They argued that it is particularly appropriate for AA-rated mortgage insurers, which could expect to experience their greatest losses during the middle years of the stress period.

OFHEO decided to adopt the proposed 10-year linear phase-in. Historical data indicate that defaults have not been concentrated in the first 5 years of the 10-year periods. OFHEO recognizes that defaults generally occur increasingly later within 10-year experiences as ratings increase. That is, not only have higher-rated firms (AAA versus AA, for example) shown lower default rates during periods of economic stress, those that have not survived tended to have sufficient capital to withstand the stress longer and, therefore, defaulted later than lower-rated firms. OFHEO considered timing differences across different rating categories in determining maximum default rates for those categories, as discussed above. Determining a special timing pattern of defaults for any specific type of counterparty, such as mortgage insurers, would be difficult and speculative. Even the timing of claims is uncertain during the stress period because, while the stress test does not incorporate new business of the Enterprises, no similar provision applies to mortgage insurers. In any event, OFHEO can not add the complexity involved with explicit consideration of specific types of counterparties in the time frame required for implementation of the Rule.

Netting of Derivative Counterparty Exposures

OFHEO adopts as proposed the treatment for netting of derivative counterparty exposures. Due to technical limitations, the previous Rule did not model the master netting

agreements associated with derivative counterparty exposures. OFHEO will now recognize the risk mitigation effects of master netting agreements by reducing the haircuts for derivative contract counterparties as set forth in Table 2, under heading of Haircuts for Derivative Contract Counterparties prior to Implementation of Netting. Upon implementation of modeling of master netting agreements, maximum haircuts for derivative contract counterparties will be readjusted. (*See* Table 2, under heading of Haircuts for Derivative Contract Counterparties upon Implementation of Netting). The interim treatment will remain effective only for the period required to complete the technical software modifications necessary to model master netting agreements.

TABLE 2—STRESS TEST HAIRCUTS FOR DERIVATIVE CONTRACT COUNTERPARTIES

Ratings Classification	Haircuts for Derivative Counterparties Prior to Implementation of Netting	Haircuts for Derivative Counterparties Upon Implementation of Netting	Number of Phase-in Months
AAA	0.3%	0.5%	120
AA	0.75%	1.25%	120
A	1.2%	2.0%	120
BBB	2.4%	4.0%	120
Below BBB and Unrated	100%	100%	1

Commenters generally supported OFHEO's proposal to recognize the impact of derivative counterparty netting agreements and urged OFHEO to implement counterparty netting as soon as possible.

OFHEO has adopted the proposed treatments and will continue to work toward implementation of the technical changes required to model netting agreements.

Unrated Seller/Servicers

OFHEO adopted the change to the treatment of unrated seller-servicers as proposed in the AmendNPR, with the addition of language to clarify that the change applies only to unrated multifamily seller-servicers. The previous Rule provided that unrated seller-servicers will be treated as if they are BBB-rated counterparties, unlike other unrated counterparties, which are treated as below BBB. Consistent with OFHEO's commitment in the Rule to evaluate alternative approaches to determine risk distinctions among unrated seller-servicers, OFHEO is amending the Rule to permit a higher rating than BBB (but not to exceed AA) for certain unrated multifamily seller-servicers. These unrated multifamily seller-servicers must participate in a delegated underwriting and servicing program that requires a loss-sharing agreement collateralized by a fully funded reserve account pledged to the Enterprise and the reserve account must be in an amount that is equal or greater than an amount determined by OFHEO to be adequate to support the seller-servicer's loss-sharing obligation under the program. Each program will be evaluated on a case-by-case basis by the Director to determine whether the program qualifies the seller-servicer for the refined ratings treatment. The amendment only applies to multifamily seller-servicers and does not incorporate a similar treatment for single-family seller-servicers.

For example, if the loss-sharing obligation of a seller-servicer participating in Fannie Mae's Delegated Underwriting and Servicing (DUS) Program (which is a multifamily mortgage program) is collateralized by a fully funded reserve account that is equal to or greater than one percent of the seller-servicer's aggregate unpaid principal balance covered by the loss-sharing agreement at the start of the stress test, the rating of the issuer of the instrument backing the reserve account may be used, in lieu of BBB, as the rating of the unrated seller-servicer, not to exceed AA. Determinations of the required reserve amount and the rating equivalent permitted will be made on a program-by-program and Enterprise-by-Enterprise basis.

With a few exceptions, commenters generally viewed the proposed amendment to the Rule regarding unrated seller-servicers as a positive contribution that would tie capital more closely to risk. Indeed, commenters who supported the amendment largely suggested that OFHEO also consider other factors, such as the value of the servicing stream and the level of capital of unrated seller-servicers as support for an improved rating for these seller-servicers. Commenters who disagreed with the proposed amendment included some who objected to the use of a BBB rating for any unrated counterparty, and objected further to allowing a rating higher than BBB for unrated counterparties under any circumstances. One commenter indicated that OFHEO should have empirical data supporting the BBB rating for unrated seller-servicers. Others who objected cited the example given of the DUS program, questioning whether a one percent fully funded reserve account would be adequate to support the loss-sharing obligation under the DUS program, and objecting to the competitive advantage that a higher than BBB rating for unrated seller-servicers would impart to the Automated Underwriting (AU) systems of the Enterprises, thereby placing other AU systems at a disadvantage. Finally, one commenter recommended that OFHEO clarify its intent to limit this approach to unrated multifamily seller-servicers.

OFHEO believes that the amendment ties capital more closely to risk by allowing for an improved rating for specified unrated multifamily seller-servicers. OFHEO has relied upon its own specialized expertise in the mortgage business and its detailed understanding of the Enterprises' seller-servicer agreements in making its decision to treat unrated seller-servicers more favorably than other unrated counterparties of whom OFHEO may lack such specialized understanding. Beyond the BBB rating to which all unrated seller-servicers are elevated, the amendment allows a higher rating than BBB to be used for certain multifamily seller-servicers. The increased rating is available if OFHEO determines that their ongoing relationships with the

Enterprises and the contractual leverage available to the Enterprises in managing their exposure to counterparty risk from these seller-servicers is further enhanced by a fully funded reserve account—pledged to the Enterprise—of sufficient size to support the loss-sharing obligation adequately. With regard to the consideration of other factors as the basis for ratings above BBB, OFHEO will continue to evaluate alternative approaches for assessing the risk of unrated seller-servicers.

Finally, OFHEO notes that there appeared to be some confusion among commenters who objected to the amendment regarding the extent of the obligations of DUS lenders to share in multifamily credit losses. The one percent fully funded reserve account is not intended to be adequate to support all losses incurred on the covered loans. Rather it is determined to be adequate to support the much smaller loss-sharing obligations of the seller-servicer under the DUS program. In addition, there also appeared to be some confusion among commenters regarding the distinction between the multifamily DUS program and the single-family Automated Underwriting (AU) systems of the Enterprises. There is no connection between the two. The amendment does not apply to single-family programs.

B. Changes to Multifamily Model

OFHEO is adopting as proposed a number of changes to the multifamily default model, multifamily loss severity parameters, and multifamily prepayment speeds specified in the Rule. These changes and the comments regarding them are summarized below:

Underwater Debt Coverage Ratio Flag (UWDCRF)

As amended, the multifamily default model includes an Underwater Debt Coverage Ratio Flag (UWDCRF), which accounts for the additional default risk posed when the projected debt service coverage ratio (DCR)—net operating income (NOI) divided by mortgage payment—falls below 0.98 during the stress test. The stress test projects the DCR in each month of the stress period from the prior month's value by updating NOI, using rent growth rates and rental vacancy rates that reflect the economic conditions of the benchmark region and time period,[7] and adjusting mortgage payments over time according to the note terms and the stress test interest rate scenario. The UWDCRF adds value to the multifamily default model by capturing the additional risk of default when NOI is insufficient to cover mortgage payments.

OFHEO has re-specified the UWDCRF to turn the flag on when the projected DCR is less than 0.98 (that is, when net operating income (NOI) on the collateral property is more than two percentage points below the mortgage payment), altering the previous Rule, which turned the flag on when the projected DCR fell below one. The re-specified multifamily default model results in a slightly lower coefficient on UWDCRF, and the coefficients for the other explanatory variables do not change materially. Simulations using the revised UWDCRF definition result in lower predicted default rates for ARMs in the up-rate scenario and for FRMs with low initial DCR in both interest-rate scenarios, making the revised model less sensitive to the UWDCRF than the prior version. The revised model does not substantially affect the predicted default rates for most FRMs or for ARMs in the down-rate scenario.

All commenters that addressed this change recommended its adoption. These commenters included a number of seller-servicers of the Enterprises, State housing authorities, and both Enterprises. In view of these comments, together with OFHEO's concern, discussed in detail in the AmendNPR, that borrowers often have reasons to carry properties with slightly negative cash flows for a period of time, OFHEO decided to adopt the change as proposed.

ARM Flags

The amended Rule retains the same explanatory variables as the model in the earlier Rule, except that three dummy variables or flags, the New ARM flag (NAF), the New Balloon Loan Flag (NBLF), and the Ratio-Updated Flag (RUF) are removed, and a re-specified flag is introduced that captures both the distinction between ARMs and FRMs and the distinction between ratio-updated and not-ratio-updated loans. Specifically, the new variable OFHEO has adopted in its re-specified default model is a Not-Ratio-updated ARM Flag (NRAF) that is turned on if a loan is both an ARM and not-ratio-updated and is turned off otherwise. However, there were insufficient data on FRMs that were not-ratio-updated to include a flag similar to the NRAF for FRMs.[8] Instead, the revised Rule calculates the monthly conditional default rates for not-ratio-updated FRMs by applying a factor of 1.2 to the conditional monthly default rates for otherwise comparable ratio-updated FRMs.

The NRAF variable was introduced because OFHEO observed higher ARM default rates compared with FRM default rates even during historical periods of flat-to-declining interest rates, which should, other things being equal, have favored ARM performance. Additionally, when FRM and ARM data were combined, OFHEO found substantially higher Enterprise default rates for not-ratio-updated versus ratio-updated loans. This result was not surprising given that the ratio-updating process is intended to improve underwriting and the resultant performance of all loans. The factor of 1.2 that is applied to not-ratio-updated FRMs is based upon the multiplicative difference in simulated stress test default probabilities for the typical ratio-updated versus not-ratio-updated ARM loan, holding all other factors constant at their means. Given the definition of ratio-updating, OFHEO determined that it is reasonable to expect proportionate performance differentials for ratio-updated versus not-ratio-updated ARMs and FRMs when other factors are held constant.

All commenters to address this issue favored the elimination of the NAF, NBLF, and RUF variables and the introduction of the NRAF flag. However, several comments, including those of Fannie Mae, suggested that the 1.2 factor applied to FRMs should be eliminated, because it lacked statistical or factual basis. Some of those commenters may have confused the ratio-updating process with the Enterprises' receipt or lack of receipt of annual operating statement data and rent rolls on certain loans.[9]

OFHEO disagrees with the suggestion that the 1.2 factor be dropped and notes that, although there are insufficient data

[7] The terms ''benchmark region and time period'' refer to the regional credit loss experience identified by OFHEO in compliance with the ''Credit Loss'' parameters outlined in 12 U.S.C. 4611, as described in additional detail in NPR2.

[8] OFHEO decided against using an FRM counterpart to the NRAF in the multifamily default model, despite the fact that a similar distinction between ratio-updated and not-ratio-updated FRMs was consistent with the data. The introduction of a flag to capture non-ratio-updated FRMs substantially altered the size of other variable coefficients and the significance of other model variables. Further examination of Enterprise data indicated that this result likely occurred because of insufficient data on not-ratio-updated FRMs, particularly in recent years. Therefore, OFHEO rejected the inclusion of a not-ratio-updated flag in the re-specified default model.

[9] As described in the AmendNPR, ratio-updating refers to New Book loans for which the LTV and the DCR have been calculated by the Enterprise or its delagee at loan origination or for which the LTV and DCR have been recalculated by an Enterprise or its delagee upon acquisition according to current underwriting standards. New Book loans for which origination and/or acquisition LTV and DCR are unknown cannot be considered to be ratio-updated.

to incorporate an FRM counterpart to the NRAF into the multifamily default model, the decision to include a similar and proportionate adjustment to the default rates of not-ratio-updated FRMs was predicated on statistical analysis. Statistical evidence suggests that the ratio-update process, whereby loans originated using underwriting standards that may differ from those of the Enterprises are re-underwritten using the Enterprises' standards at the time of acquisition, reduces stress test default rates for a typical ARM by about 17 percent. Furthermore, Enterprise data confirm lower historical default rates of ratio-updated versus not-ratio-updated loans without regard to product type. At this time, OFHEO has no evidence that the ratio-update process should operate in a different fashion for one product than for another. Therefore, OFHEO believes the use of a multiplicative factor of 1.2 applied to the conditional monthly default rates of not-ratio-updated FRMs is a reasonable approach reflecting sound judgment based in fact and statistical evidence. If sufficient data become available to convince OFHEO that the use of the multiplicative factor of 1.2 is no longer appropriate, OFHEO will consider a change to the Rule.

One commenter questioned how the definition of the NRAF would be affected by any future changes in the underwriting standards of the Enterprises. For example, if as a result of ongoing experience, the standards of an Enterprise were to become tighter or looser, or simply emphasize different financial ratios, the commenter asked whether the entire current ARM portfolios of the two companies would be subject to this variable. In response to this comment, OFHEO notes that if an Enterprise were to stop updating the ratios of loans at acquisition, for example, the entire Enterprise multifamily portfolio would eventually be subject to the NRAF variable (or its FRM counterpart) as older ratio-updated loans terminated. As to the other part of the commenter's question, OFHEO continually examines the Enterprises' underwriting standards and processes and may modify variables or introduce new ones where the data indicates it is appropriate to do so.

Initial Vacancy Rate

OFHEO modified the Rule so that the change in vacancy rates between the period immediately prior to the stress test and month one of the stress test is based on the change in the benchmark region vacancy rate from the month prior to the benchmark period to the first month of the benchmark period. OFHEO views this change as a technical correction. The change sets the initial vacancy rate at ten percent, which is the estimated West South Central (WSC) Census division vacancy rate in 1983. Thus, the vacancy rate change in the initial month of the stress test will be increased from ten percent to 13.6 percent. All comments to discuss this change were favorable, although some suggested that OFHEO's technical correction should have reflected a higher initial vacancy rate. OFHEO did not find any convincing arguments from those who suggested the initial rate should have been higher and, therefore, OFHEO will adopt the rate as proposed.

Loss Severity

OFHEO has modified the multifamily severity parameters to take into consideration the performance of Fannie Mae multifamily REO [10] in the 1980s and both Enterprises' more recent multifamily REO. Loss severity parameters in the previous Rule were based upon the experience of 705 Freddie Mac multifamily REO properties from the 1980s. The multifamily loss severity calculations that use the severity parameters in the Rule have not changed. Specifically, OFHEO has decided to reduce net REO holding costs to seven percent from 13.33 percent and to increase REO sales proceeds from 58.88 percent to 63 percent of the unpaid principal balance as of the default date. Additionally, OFHEO is reducing the time from default to foreclosure completion from 18 to 9 months, while increasing the time from REO acquisition to REO disposition from 13 to 15 months. Changing these severity parameters yields a 44 percent ''baseline'' severity rate, as compared to the 55 percent ''baseline'' produced by the model in the Rule. ''Baseline'' severity is a simple way to compare one set of severity parameters with another.[11]

All comments received regarding this change were favorable.

Prepayment Penalties

OFHEO has modified the Rule to provide for no prepayments in the down-rate scenario inside prepayment penalty or yield maintenance periods. This approach is more consistent with OFHEO's preference to model contractual instruments according to their terms, but recognizes that modeling these penalties according to their terms would be immensely complicated, because those terms vary greatly from loan to loan. The change implicitly assumes that the prepayment penalty provisions either prevent prepayments or provide compensating economic benefit to the Enterprises.

All comments regarding this change were supportive.

Other Comments

Numerous comments were received suggesting that OFHEO should make further refinements to the multifamily model in the stress test. Many commenters stated that although the proposed changes had gone a long way to address what they viewed as inappropriately high loss rates associated with ARMs, the changes had not gone far enough and that the Rule might cause such loans to be disfavored by the Enterprises. OFHEO will consider these comments as it studies the impact of the current modifications to the Rule and will propose additional changes to the Rule when sufficient data indicates a need for them.

Among the refinements suggested by commenters was that OFHEO take into consideration the effects that low-income-housing tax credits (LIHTCs) have in reducing the likelihood of default on loans collateralized by properties with these credits. OFHEO agrees with experts in the housing finance industry that such loans are less likely to default than otherwise identical non-LIHTC loans. OFHEO has responded to this comment by clarifying the Risk-Based-Capital Report Instructions to provide that potential income from the holders of the tax credits is included in the calculation of current debt-service-coverage ratios on these loans. A rule change was unnecessary, because the existing Rule is sufficient to provide for consideration of the tax benefits to the equity investor from the tax credit.

Both Enterprises argued that the multifamily model should consider seasoning of loans that lack annual operating statements by accounting for the likely improvement in NOI and DCR prior to the stress period. OFHEO agreed. However, this comment also did not require a change to the Rule, which does not prohibit consideration of such improvements. To provide clarity to the Enterprises about how to report current NOI and DCR, OFHEO has added language to the Risk-Based Capital Report Instructions.

One Enterprise's comments suggest that the multifamily model does not account for rate caps and payment caps. In fact, the model does account explicitly for these features. However,

[10] REO is real estate owned as a result of loan default.

[11] The ''baseline'' consists of a simple adding up of the cost components of the rate, without considering discounting, credit enhancements, or passthrough interest on sold loans.

the Risk-Based Capital Report Instructions have been clarified to include specifically third party rate caps or swaps that may be required by loan documents and used to cap a multifamily loan.

C. Changes to Yields on Enterprise Debt

This amended Rule modifies the previous Rule by adding 10 basis points to the cost of debt for an Enterprise in the stress test vis-a-vis other borrowers in the debt markets. This amendment serves to reflect the reaction of the debt markets to the financial stress imposed upon the Enterprise.

Only five commenters addressed the issue of the cost of new Enterprise debt. Those commenters voiced significant disagreement among themselves about whether OFHEO should add a debt premium to the Enterprises' cost of debt compared to other lenders. Several commenters, including FM Watch, the Consumer Mortgage Coalition (CMC), and an individual investment advisor, stated that not only was a debt premium appropriate but that the debt premium should be significantly larger than proposed. They argued that 10 basis points might not realistically reflect changes in the Enterprises' debt financing costs. CMC stated that, in times of stress, GSE debt spreads could increase significantly and that a 50 basis point or greater spread increase is not unlikely. CMC continued that Agency spreads to Treasuries have varied by about 70 basis points since 1998 and that a small spread adjustment in effect allows the GSEs to assume that they have essentially unlimited access to capital markets at preferred rates even in periods of distress. They cited the experience of the Farm Credit System in the 1980s as historical evidence of the need for a debt premium when a government sponsored enterprise faces adverse credit and interest rate stress.

Another commenter noted that if the capital markets perceived the Enterprises to be in trouble, liquidity premiums and default premiums would both increase. That commenter noted that after both the Asian currency devaluations of 1997 and the Long Term Capital Management/Russian debt crisis of 1998, spreads between LIBOR and AA rated instruments increased five to 10 basis points. He concluded that an economic event that directly impacted the GSEs would likely cause the spread between their debt and LIBOR/COFI to increase by more than 10 basis points, especially as their perceived special status might be brought into question by poor performance.

Only Freddie Mac [12] and Fannie Mae opposed including a debt premium. The Enterprises claimed that there was no factual basis for the agency's decision and that it fails to tie capital to risk. Freddie Mac's consultants opined that historical evidence might instead support reducing Enterprise spreads relative to other issuers. Freddie Mac concluded that OFHEO added what it termed a costly premium on Enterprise debt yields based on a mere possibility, unsupported by evidence. Accordingly, the Enterprises recommended that OFHEO retain the methodology under the previous Rule, which projects yields on Enterprise debt based on historical spreads to Treasury, without a debt premium.

OFHEO has decided to adopt the proposed debt premium in which 10 basis points is added after the first year of the stress period. After one year of stress conditions, the Enterprises might appear strong based on accounting measures of earnings and net worth. However, market values of the Enterprises' assets, liabilities, and derivatives contracts would fully reflect the effects of the interest rate shock and some credit quality deterioration of the stress test. Investors would be aware of these changes in market value and adjust their evaluations of the Enterprises' financial health accordingly.

Notwithstanding the Enterprises' critique, historical evidence does exist to support OFHEO's decision to include a debt premium. The historical experiences of Fannie Mae in the early 1980s and the Farm Credit System in the mid-1980s were periods during which government sponsored enterprises faced financial stress, which indicated that borrowing costs would include some risk premium during economic conditions such as those in the stress test. In fact, in drafting the 1992 Act, legislators referenced the Farm Credit System bailout to support having the Enterprises subject to a rigorous risk-based capital test.[13] This historical experience is further illustrated by data reported in the General Accounting Office's 1990 report on government sponsored enterprises in which Fannie Mae's short-term borrowing costs during 1980 through 1982 were generally about 80 basis points in excess of yields of comparable maturity Treasury debt, and rising at one point to 200 basis points above Treasury yields. Spreads receded after sharp declines in interest rates greatly improved Fannie Mae's condition to a more normal range centered roughly at 20 basis points. Spreads were high again in the late 1980s for both Fannie Mae and the Farm Credit System, ranging from 40 to 100 basis points over a two-year period during the Farm Credit System's time of greatest difficulty.[14]

These episodes could support a stress test projection that spreads of Enterprise debt yields to Treasury yields widen by 50 to 60 basis points. However, the stressful circumstances likely would also cause yield spreads of other debt to widen. OFHEO has chosen not to project how each yield series in the stress period might be affected by the stresses incorporated in the test, but wider spreads for some indexes generally would benefit an Enterprise with more fixed-pay than floating-pay swaps or swaptions. Because, in recent years, both Enterprises generally have relied much more heavily on fixed-pay instruments, that benefit could easily offset more than half of the cost of wider spreads on the Enterprises' own debt issues. However, based on recent Enterprise asset-liability structures, a substantial portion of new debt that would be issued by each Enterprise in stress tests would not be matched by fixed-pay swaps. Also, the nature of the stresses (sharp changes in long-term yields and high mortgage credit losses) is designed to affect the Enterprises specifically, and short-term yield indexes typically used in swap contracts might be affected less than Enterprise yields. In view of these considerations, OFHEO has decided that an appropriate adjustment to Enterprise yields (in the absence of any adjustment to other yield indexes) should be significantly less than the sustained 50 to 60 basis point spread widenings of the 1980s, low enough to avoid potentially inappropriate adverse affects on the Enterprises, but high enough to be meaningful, pending further consideration.

The Enterprises suggest that the only rational stress test is one that presumes that spreads of Enterprise debt to

[12] Freddie Mac commissioned two consultants to file comments in support of its arguments.

[13] ''Because of their Federal ties, GSEs emerged as a major public policy issue in the wake of the $4 billion Federal bailout of the Farm Credit System in 1987 * * *'' H.R. Rep. No. 102–282 (1991) at 109; *see also* S. Rep. No. 102–282 (1992)0 at 10 (''While both GSEs are currently very prosperous, HUD estimated in a 1986 report to Congress, that Fannie Mae was insolvent on a marked-to-market basis at year-end 1978 and did not return to solvency until 1985. Its negative net worth reached a peak of more that (sic) $20 billion in 1981, which was roughly 20 percent of its outstanding liabilities.'')

[14] U.S. General Accounting Office (1990), Government Sponsored Enterprises: The Government's Exposure to Risk. Washington, DC: U.S. General Accounting Office. (GAO/GGD–90–97) 87–88.

Treasuries widen no more than spreads on any other non-Treasury rate. Far from being irrational to presume a wider yield spread on the debt of a stressed Enterprise, OFHEO determined that it was the most prudent and responsible course from a regulatory perspective. To assume, as the failed risk-management strategies at Long Term Capital Management did, that yield spreads would never fall far outside recent experience, is to ignore the reasonable implications of out-of-sample events such as the interest rate and credit stresses that are imposed during the stress period.

D. Changes to New Debt Mix

The previous Rule provided for the funding of all cash deficits by the issuance of new long-or short-term debt, whichever was in shorter supply, until a 50/50 balance of short-to-long-term debt was reached in each Enterprise's portfolio. Thereafter, long- and short-term debt were to be issued in whatever ratio would best contribute to maintaining that balance. OFHEO chose this approach because it did not want to include an assumption about any particular behavioral preference by the Enterprises during the stress test. The previous Rule specified that the new short-term debt being issued as six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds, and the new-long term debt being issued as callable five-year bonds not callable for the first year. The previous Rule also provided a 50 basis point call premium, which required that callable debt would be called when it was 50 basis points out-of-the-money. The Rule further specified an issuance cost of 2.5 basis points on new short-term debt and an issuance cost of 20 basis points on new long-term debt.

OFHEO has decided to adopt its proposal to change the target balance embodied in the previous Rule's approach. Specifically, the 50/50 debt mix has been replaced with the actual ratio of an Enterprise's debt obligations (as adjusted by interest rate swaps) at the start of the stress period. In addition, OFHEO has decided to modify the call rule for long-term debt so that no calls will be executed on new long-term debt in the up-rate scenario.

Fannie Mae, Freddie Mac, the Mortgage Bankers Association (MBA) and JP Morgan each commented on the new debt mix. All these comments favored the proposed approach over the 50/50 mix adopted in the Rule.

These commenters provided additional recommendations for OFHEO to further refine the new debt mix in the stress test. MBA suggested that OFHEO meet with professional portfolio risk management experts to devise additional funding rules for each interest rate scenario. MBA also stated, without elaboration, that the capital requirements resulting from this funding rule would cause the agencies to curtail their activities in the housing market at unpredictable times.

The Enterprises provided detailed comments on this issue. Freddie Mac expressed concern that, under the Rule, callable debt issued in the up-rate stress test after month 12 would always be called at the first opportunity, even though interest rates remain constant during the last nine years of the stress period and the Enterprises would incur issuance fees as a result of calling the debt. Freddie Mac requested that the cost of callable debt reflect the degree of prepayment risk in the mortgages being funded. Freddie Mac argued that the issuance fees were inappropriate because there would be no reason for the Enterprise, without more, to call the debt. Freddie Mac requested that the Rule include detailed refunding provisions, including that callable debt match the callability of the mortgages being funded and that the 50 basis point call premium for long term debt be reduced significantly. Specifically, Freddie Mac believed the call premium for 5-year callable debt should be reduced from an initial cost of 50 basis points to 5 basis points over the first 12 months of the up-rate scenario and from an initial cost of 50 basis points to minus 45 basis points over the first 12 months of the down-rate scenario.

Like Freddie Mac, Fannie Mae was particularly concerned about repeatedly calling new long-term debt at the end of one year and incurring the 20 basis point issuance fee for an identically yielding long-term debt instrument. Fannie Mae also supported Freddie Mac's recommendation for lower call premiums on new callable debt. In addition, Fannie Mae suggested that new long-term debt should be a mix of 5-year callable debt and seven year noncallable debt and that calls on newly issued callable debt should reflect the month-end cash position.

As noted above, OFHEO has decided to adopt the proposed change to the new debt mix to reflect an Enterprise's actual short-term/long-term proportions of corporate debt outstanding at the start of the stress test. As the commenters stated, this new approach provides a more typical debt structure than the 50/50 mix set forth in the Rule. In addition, OFHEO has decided to modify the specification for calling long-term debt so that the call option for new long-term debt will never be executed in the up-rate scenario. OFHEO determined that this modification is appropriate because the earlier requirement would have resulted in new long-term debt being called even though there would be cost but little benefit to an Enterprise in calling it.

OFHEO read with interest the more detailed alternative debt funding strategies suggested by the commenters. However, OFHEO has decided not to adopt any of the more detailed alternative recommendations, but will continue to analyze the issue. In addition, OFHEO is aware that the proposed treatment may place excessive significance on the quantity of an Enterprise's debt maturing early in the second year of the stress test. Such debt will contribute to the long-term (greater than one year) portion of its initial debt ratios, but will count as short-term debt in early months of the stress test when calculating whether new debt is issued as short-term or long-term debt. OFHEO will monitor the amounts of debt with these maturities closely and could decide to reclassify some debt if the amounts do not appear consistent with normal business practice.

E. Miscellaneous Technical Changes

Operating Expenses

OFHEO has decided to modify the stress test treatment of operating expenses by converting 75 percent of starting-position fixed-asset balances to cash over the ten-year stress period. The amended Rule retains 25 percent of the fixed assets on an Enterprise's books throughout the stress period to reflect the acquisition of some new fixed assets, such as computer equipment, which is likely even in a ''wind-down'' scenario. The effect of this change is to reduce the Enterprises' need for debt to carry nonearning fixed assets.

Only Fannie Mae and Freddie Mac commented on this aspect of the proposal. Each Enterprise stated that the proposal was superior to the treatment of operating expenses in the Rule, because the proposal provides a ''more realistic'' treatment of fixed assets. Nevertheless, each Enterprise stated that the stress test should use an accelerated rate of amortization of fixed assets, which they believed would be more economically realistic.

This amendment to the treatment of operating expenses adopts the approach proposed in the AmendNPR, without modification. OFHEO believes that the adopted change provides a straightforward and reasonable approach to the treatment of fixed assets.

Float Income

The Rule provides for the modeling of float income associated with passthrough payments on securities issued by the Enterprises. Float income can be positive or negative depending upon whether the Enterprise holds the funds for a period of time before remitting them to security holders or remits funds to security holders before they are actually received. When an Enterprise owns its own passthrough securities, the timing of payment to itself is not relevant. However, the previous Rule included these securities in the calculation of float income, resulting in an overstatement of float income. OFHEO corrected this overstatement by reducing the float income on passthrough securities issued by the reporting Enterprise by the percentage of the Enterprise's ownership interest.

Fannie Mae and Freddie Mac commented favorably about the proposed treatment of float income, provided that the stress test accurately accounts for such income. Freddie Mac provided an alternative equation which it believed more completely implements the proposal.

After reviewing this suggested alternative, OFHEO determined that the alternative, with slight further modification, is correct. Accordingly, OFHEO has adopted its proposal with the appropriate adjustment.

Currency Swaps

Regarding the treatment of Foreign Exchange Risk specified in the previous Rule, OFHEO stated that it would not apply haircuts to foreign currency swaps. However, in furtherance of its commitment to continue to refine the ability of the stress test to tie capital to risk more accurately, OFHEO indicated that it would continue to seek a suitable methodology for applying an appropriate haircut to foreign currency swaps. After additional analysis, including evaluation of the technical enhancements required for implementation, OFHEO has eliminated the simplifying assumption applied in the previous Rule and applied a haircut to foreign currency swap counterparties. Because the stress test does not project foreign currency values, the haircut is applied by adjusting the pay (dollar-denominated) side of the swap upward by the amount of the haircut percentage rather than haircutting the foreign-currency receive side of the swap.

Commenters agreed with OFHEO that the stress test should recognize the capital impact of foreign currency swaps, however, they criticized OFHEO's methodology. One commenter characterized OFHEO's approach as imprecise and conservative, suggesting that the amendment would result in the imposition of an excessive capital charge for foreign currency swaps. Another commenter opined that OFHEO's treatment would result in excessive capital charges for currency swaps and suggested establishing haircuts based on the net amount owed on the swap. Both Enterprises recommended that OFHEO reduce the haircuts applied to foreign currency swaps by 50 percent. They argued that the proposed approach, which bases the haircut on the amount paid by an Enterprise, rather than the net amount received, implicitly assumes that the U.S. dollar would depreciate by 100 percent. Historical data on dollar exchange rates with major currencies over the past three decades show that the largest sustained decline (average decline over a 10-year period, relative to the start of the 10-year period) in the dollar was slightly less than 50 percent—half the decline implicitly assumed in the proposed approach.

Although OFHEO has declined to project currency exchange rates during the stress period, the amended Rule produces the same result as an assumption that during the stress period the dollar will have depreciated 50 percent relative to the forward exchange values of all foreign currencies embodied in the currency swaps. (A 100 percent dollar depreciation would imply that the dollar value of net swap receipts would be infinite, as would any percentage haircut.) OFHEO agrees that the worst sustained dollar depreciation against a major currency in recent times was nearly 50 percent, which is consistent with the implied assumption about currency rates during the stress period. Accordingly, OFHEO has decided to adopt the proposed change to the Rule.

American Call Options

With respect to the modeling of nonmortgage instrument cash flows, the previous Rule did not attempt to provide a comprehensive explanation of the cash flows of all nonmortgage instruments utilized by the Enterprises. Consistent with this approach, OFHEO used a simplifying assumption in the previous Rule to model American call options. In the previous Rule, an American call option, which allows an issuer to exercise the call option at any time after a lockout period, was treated as a Bermudan call option. Bermudan options allow the owner to exercise the option only on certain specified dates before maturity, usually on coupon payment days. However, in the preamble to the previous Rule, OFHEO stated that it would be preferable to consider how options might be modeled more precisely.

Upon further evaluation, OFHEO has modified the stress test to evaluate American calls on the first option date in the exercise schedule and on subsequent monthly anniversaries of an instrument's first coupon date. This methodology will allow the stress test to model American call options according to their terms, resulting in a refinement that more closely ties capital to risk.

The comments supported OFHEO's proposed modifications to address American call options. Both Enterprises suggested additional improvements to the stress test could be achieved by incorporating changes designed specifically to model European call options.

Changes to the stress test treatment of European options may be appropriate. OFHEO will consider the desirability of implementing European call related recommendations in the future.

House Price Growth Factor Clarification

The Rule requires the use of OFHEO's most recent House Price Index as of the reporting date to determine the house price growth factor used to calculate current loan-to-value ratios. OFHEO has decided to expand the instructions in Section 3.6 to clarify, consistent with Section 3.7, that when a loan was originated since the publication of that report, a cumulative house price growth factor of one is used. No comments critical of this clarification were received.

Preferred Stock

In the Final Rule, OFHEO decided to include rules in the stress test to address share repurchases during the stress period. Although the Rule's effect was to treat the calling of preferred stock as a share repurchase, this result would not be clear to some readers. Accordingly, OFHEO is making a technical amendment to state in section 3.8.1[a]3 that ''no preferred stock issued by the Enterprise will be called.''

Technical Correction

OFHEO added a Prepayment Penalty Flag as an additional classification variable for multifamily loan groups. The Flag distinguishes loans with active prepayment penalties or yield maintenance provisions from those without in the calculation of prepayment penalty duration for loan groups.

F. Process Issues

Publication of Capital Numbers

Several commenters opined that OFHEO should have published results of model runs to demonstrate the impact of the proposed change on the Enterprises' capital requirements. One commenter stated that OFHEO should publish the capital requirements for the Enterprises under the previous version of the Rule and the modified Rule, so that the public can understand the impact of the changes.

In OFHEO's view, the comments received in response to the proposed changes demonstrate that the AmendNPR provided sufficient information for a full and informed discussion of the relevant issues. OFHEO considered each of the proposed changes on its own merits and those that were adopted were approved on the basis of sound theory, research and, where appropriate, statistical estimation, rather than simply the impact they might have on the capital of an Enterprise in a particular historical quarter. To the extent that OFHEO did runs to test the developmental computer code it had created for these changes, OFHEO did not rely upon those results as the rationale for its choices. Those runs were designed primarily to check for errors in the code or the algorithms on which the code was based. For these reasons, OFHEO has found the argument that results of runs are necessary to understand or evaluate the impact of the proposed changes to be unfounded.

OFHEO published a final Rule on September 13, 2001, which provided detailed specifications and working copies of the code to the Enterprises and other members of the public. As expected, when outside parties were able to examine the specifications in detail and begin to run portions of the code, OFHEO received numerous comments and requests for changes. Some of these changes OFHEO considered to be sufficiently significant that it was desirable to publish them for comment quickly in order to allow any of them found to be necessary to be finalized without delaying the implementation of the Rule and the September 2002 date when the Rule becomes enforceable. OFHEO expects that with the changes approved in this document, the Rule will better tie capital to risk. Accordingly, the risk-based capital numbers for the first quarter of 2002 will accurately portray the adequacy of the Enterprises' capital under the Rule that will be enforced. Earlier results would be based upon data that are now too old to indicate any useful information about the Enterprises' current condition.

Another important reason why OFHEO has delayed publishing risk-based capital numbers is that, in OFHEO's view, the 1992 Act intends that the Enterprises have a year to adjust their operations to the requirements of the Rule. These adjustments take a number of forms. First, the Enterprises have needed time to adjust their computer systems and data production systems to support the stress test. This has been a time-consuming and expensive process for them and for OFHEO, but is an essential part of making the entire capital scheme in the 1992 Act operational. Second, the one-year implementation period in the 1992 Act allows the Enterprises to adjust their businesses, including their lending and hedging strategies, to the stress test. Third, the implementation period allows the Enterprises to raise any additional capital that might be required by the Rule. Given the fact that the Enterprises are publicly traded companies, the economic condition of which could be affected greatly by premature disclosure of capital requirements, OFHEO will not disclose capital numbers until the Enterprises have had a reasonable opportunity to make at least a large portion of these adjustments and present to the public their plans to maintain capital compliance.

Use of Code by Parties Other Than OFHEO

Two commenters discussed the difficulties they have encountered in running the computer code released by OFHEO. They both expressed the view that OFHEO should not amend the Rule until they have had time to run the code and analyze the results or until OFHEO has published data regarding the capital impact of any proposed amendments. Instead they would have OFHEO enforce the previous Rule and continue to allow commenters to study the proposed changes. OFHEO disagrees with this approach. The changes that OFHEO adopted are each supportable on its own merits. OFHEO's goal is to have the best rule possible when the Rule becomes enforceable in September 2002. That goal would not be achieved if the changes were delayed until after that date. As a general matter, if OFHEO were to hold up any changes to the Rule until any parties who wished to run the model and test the impact of the changes were able to do so, the Rule would lose the flexibility it must have in order to be dynamic and meaningful. Although the good faith of these commenters in attempting to run the code is not questioned, their ability to do so, or the ability of any other interested party to do so, will not determine whether OFHEO proceeds with needed changes to the Rule.

Notwithstanding that OFHEO will not delay changes to the Rule to allow other parties (including the Enterprises) to be able to run the underlying computer code, OFHEO appreciates the extensive time and resources certain commenters have put into studying the code and attempting to run it. It is beneficial to OFHEO and to the regulatory process to obtain the well-informed and differing views that have resulted. OFHEO also appreciates the importance of the capital rules to parties other than the Enterprises and takes their views and the factual information they supply into consideration in determining the specifications for the stress test. As time and resources allow, OFHEO will continue to work with these parties to help them understand and run the models that underlie the stress test.

In order to assist interested parties with their continued efforts to replicate the model, and to maintain appropriate regulatory transparency, OFHEO intends to make the computer code associated with the Rule available to the public. The code will be available upon request after the Rule is published. OFHEO anticipates that the code will continue to evolve over time as additional efficiencies and technical adjustments are incorporated to enhance the functionality of the code. Consistent with OFHEO's need to address technical requirements or other contingencies that arise out of the operation of the code, the agency will continue to make code changes, without opportunity for public comment, as long as such changes are not inconsistent with the Rule. Any such changes to the code will be made available to the public.

Determination That the Amendments to the Rule Are Not ''Economically Significant''

One commenter took issue with the determination by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) that the amendments to the Rule were not ''economically significant'' within the meaning of Executive Order 12866. OFHEO notes that this determination is entirely consistent with similar determinations made with regard to the capital rules of other federal financial regulatory agencies. As a practical matter, it is impossible to prove what economic impact a change in the Rule will have on the economy. However, OFHEO anticipates the effects on the Enterprises

and the economy as a whole will be small.

Cost/Benefit Analysis

The same commenter suggested that OFHEO should have undertaken a more extensive cost/benefit analysis than was included in the AmendNPR. OFHEO disagrees for much the same reasons that it disagreed that these amendments should be considered an economically significant rule in the previous paragraph.

A detailed cost/benefit analysis such as that suggested by the commenter would begin with an analysis of the marginal capital impact of each change on each of the Enterprises. It would then require judgments to be made about whether and to what extent these marginal impacts would alter the behavior of the Enterprises in the marketplace and the financial impact of those changes on other market participants. With risk-based capital rules, these types of predictions of future behavior are speculative, at best, and analysis is most useful after the change is implemented and its actual impact can be studied. That is why risk-based capital rules tend to be changed relatively frequently and incrementally, as additional information comes to light and the behavior of the regulated entities and the markets in which they operate can be studied.

Comment Period Extension

In the AmendNPR, OFHEO proposed a comment period of thirty days. Two commenters each requested that the comment period be extended to give the public more time to analyze and provide meaningful comment about the proposal.

OFHEO contacted the commenters before the close of the comment period and explained that it decided to deny any request to extend the comment period because, as discussed above, OFHEO has determined that the comment period provided sufficient time for a full and informed discussion of relevant issues. Another reason that the extension was denied is the tight statutory timeframe within which Congress intended that the Rule should become fully enforceable. Specifically, the 1992 Act provides that the Rule becomes fully enforceable one year after the Rule is initially issued. It would be impracticable for OFHEO to meet this statutory timeframe if it were to extend the comment period any further.

To meet the one-year timetable, OFHEO needs to establish a firm baseline set of specifications for the Rule, which can be applied to first quarter, 2002, data from the Enterprises. Any delay in the effective date of these amendments could have caused a one quarter delay in applying that set of specifications. Applying the new specifications to new data from the Enterprises before the risk-based capital rule becomes fully enforceable in September 2002 will allow the Enterprises to adjust to the revised Rule and for OFHEO to study its effects.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

Today's final Rule amends OFHEO's risk-based capital rule, which was designated as a major rule by OMB. The amendment refines various aspects of that Rule to tie the capital more closely to risk. Although the impact of these refinements is not economically significant, OMB has reviewed the amendment to determine whether the changes may raise novel policy issues. OFHEO is not required to provide the type of regulatory impact analysis that is required for an economically significant rule. Nevertheless, in accordance with OMB's guidance that all regulatory actions should be consistent with the principles of E.O. 12866, OFHEO has determined, after review by agency economists, financial analysts, and attorneys, that the benefits of the changes to the Rule substantially outweigh any economic costs.

It is impossible to estimate precisely the particular benefits and costs associated with the risk-based capital requirement. Although OFHEO believes this group of enhancements and refinements to the stress test will not generally increase or decrease the amount of required capital for an Enterprise to any substantial degree, the effect in any particular quarter depends upon how well that Enterprise is hedged against the risks and conditions specified in the stress test. OFHEO cannot know whether or not hedges in place at an Enterprise at the beginning of any quarter would have been in place in the absence of specific provisions of the risk-based capital rule or were put in place because of the test. Speculating as to what the Enterprises would do in the absence of specific provisions in future quarters is even more difficult. Therefore, a detailed economic cost/benefit analysis is not practical.

Rather than trying to assess the costs and benefits of every change to the stress test, OFHEO looks to whether or not the changes make the Rule better reflect the risks faced by the Enterprises. Improving the Rule in this manner should reduce the potential for Enterprise insolvency by protecting better against interest rate, credit, and management and operations risk. By helping to ensure the safety and soundness of the Enterprises, the regulation allows them to continue to carry out their public purposes, which include providing stability in the secondary market for residential mortgages and providing access to mortgage credit in central cities, rural areas, and underserved areas.[15] In addition, the regulation helps ensure that the Enterprises will continue to provide benefits to the primary mortgage market, such as standardizing business practices.[16]

The amended Rule results in a capital requirement that corresponds more closely to capital levels that the marketplace would demand in the absence of the benefits afforded by the Government sponsorship of the Enterprises, leading to gains in overall economic efficiency. By improving the Rule's ability to reflect actual risks at the Enterprises, the amendment also may enhance investor confidence in the ability of the stress test to forewarn investors and regulators of financial weaknesses. This result would be consistent with a study by Standard & Poor's (S&P) that provided risk-to-the-government credit ratings for the Enterprises.[17] Although S&P had rated Fannie Mae A− and Freddie Mac A+ in 1991, the 1997 report upgraded the ratings of both Enterprises to AA−. S&P cited increased governmental oversight by OFHEO as an important factor in these higher ratings. It further noted that ''OFHEO's regulatory oversight [of Freddie Mac] also gives comfort that appropriate interest rate risk mitigation steps would be taken as needed.''[18]

OFHEO can identify no significant additional costs associated with implementing the amendments. No new reports are required, and net effects on required future capital likely will be very small. As explained above in response to comments, it is not practical to measure all the indirect impacts that each of these amendments might have on various sectors of the economy. OFHEO is convinced, however, that the amendments do improve, incrementally, the capital requirements applied to the Enterprises, as described in detail above and in the AmendNPR. In sum, the benefits to the public, including the Enterprises and other private-sector

[15] 1992 Act, section 1302(2) (12 U.S.C. 4501(2)).

[16] ''Managing Risk in Housing Finance Markets: Perspectives from the Experiences of the United States of America and Mexico,'' *Mortgage Bankers Association of America* (June 11, 1998).

[17] *Report to OFHEO*, Standard & Poor's, Contract No. HE09602C (February 3, 1997).

[18] Report to OFHEO, at 10.

concerns, of improving the sensitivity of the stress test to risk far outweigh the already expended costs of implementing these improvements.

Paperwork Reduction Act

This regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO is amending 12 CFR part 1750 as follows:

PART 1750—RISK-BASED CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–1 in paragraph 3.1.1;

b. Revise Tables 3–2 through 3–4 in paragraph 3.1.2.1;

c. Revise Table 3–18 in paragraph 3.1.3.1 [c];

d. Revise paragraph 3.3.1 [b];

e. Revise paragraph 3.3.3 [a] 3.c.;

f. Revise Table 3–28 in paragraph 3.4.2;

g. Add new paragraph 3.5.3 [a] 2.d.;

h. Revise paragraph 3.5.3 [a] 3. and Table 3–31;

i. In sentence six of paragraph 3.6.1 [e], remove the comma after the words ''Credit Losses'', add the word ''and'' in its place; and remove the words ''and the Float Income'' after the words ''Guarantee Fee'';

j. Revise paragraph 3.6.3.4.3.1 [a] 2.a.;

k. Revise paragraph 3.6.3.4.3.1 [a] 3.a.;

l. Revise paragraph 3.6.3.5.1 [b];

m. Revise Table 3–38 in paragraph 3.6.3.5.2.;

n. Revise paragraph 3.6.3.5.3.1 [a] 2.;

o. In paragraph 3.6.3.5.3.1 [a] 4, remove the first equation: ''$UWDCRF_m = 1$ if $DCR_m < 1$ in month m'' and add the equation ''$UWDCRF_m = 1$ if $DCR_m < 0.98$ in month m'' in its place;

p. Revise paragraph 3.6.3.5.3.2 [a] 1. and Table 3–39;

q. Revise paragraph 3.6.3.5.3.2 [a] 2.b.;

r. Revise paragraph 3.6.3.5.3.2 [a] 3.;

s. Revise Table 3–44 in paragraph 3.6.3.6.3.2;

t. In section 3.6.3.6.4.3, revise the four paragraphs: [a] 1., [a] 3.b., [a] 4.b. and [a] 5.;

u. Revise paragraph 3.6.3.7.3 [a] 9.b.;

v. Revise paragraph 3.7.3.1 [g] 1.;

w. In paragraphs 3.7.3.2 [a] 5. and 3.7.3.3 [a] 3., add the words '', as appropriate'' at the end of the sentence in each paragraph;

x. In paragraph 3.7.4 [a] remove reference to ''Table 3–55'' and add ''Table 3–61'' in its place;

y. Redesignate Tables 3–65 through 3–70 as Tables 3–66 through 3–71;

z. After Table 3–64, add new paragraph 3.8.1 [f], new footnote 5, and new Table 3–65;

aa. In paragraphs 3.8.2 [a] and [b] remove references to ''Table 3–65'' and add ''Table 3–66'' in their place;

bb. Revise paragraphs 3.8.3.1 [a] 3.a. and 3.8.3.1 [a] 3.d.;

cc. Add new paragraph 3.8.3.1 [a] 3.e.;

dd. In paragraph 3.8.3.4 remove reference to ''Table 3–66'' and add ''Table 3–67'' in its place;

ee. In paragraphs 3.8.3.6.1 [e] 1. and [e] 2. remove both references to ''Table 3–67'' and add ''Table 3–68'' in their place;

ff. In paragraph 3.8.3.9, in redesignated Table 3–69 remove both references to ''Table 3–65'' and add ''Table 3–66'' in their place;

gg. Revise paragraphs 3.8.3.10 [a], [b] and [c];

hh. In paragraph 3.9.2 remove reference to ''Table 3–69'' and add ''Table 3–70'' in its place;

ii. In paragraph 3.10.2 [a] remove reference to ''Table 3–70'' and add ''Table 3–71'' in its place;

jj. Revise paragraphs 3.10.3.1 [b] 2. and [b] 3.;

kk. Revise paragraph 3.10.3.6.2 [a] 5.; and

ll. Revise the definition of *Enterprise Cost of Funds* in paragraph 4.0 Glossary.

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Text Methodology and Specifications

* * * * *

3.1.1 * * *

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.1.3, Public Data	3–19, Stress Test Single Family Quarterly House Price Growth Rates			F	
	3–20, Multifamily Monthly Rent Growth and Vacancy Rates			F	
3.2.2, Commitments Inputs	Characteristics of securitized single family loans originated and delivered within 6 months prior to the Start of the Stress Test	R			3.3.4, Interest Rates Outputs
3.2.3, Commitments Procedures	3–25, Monthly Deliveries as a Percentage of Commitments Outstanding (MDP)			F	

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.3.2, Interest Rates Inputs	3–18, Interest Rate and Index Inputs		P		
3.3.3, Interest Rates Procedures	3–26, CMT Ratios to the Ten-Year CMT			F	
3.4.2, Property Valuation Inputs	3–28, Property Valuation Inputs				3.1.3, Public Data 3.3.4, Interest Rates Outputs
3.5.3, Counterparty Defaults Procedures	3–30, Rating Agencies Mappings to OFHEO Ratings Categories		P		
	3–31, Stress Test Maximum Haircut by Ratings Classification			F	
3.6.3.3.2, Mortgage Amortization Schedule Inputs	3–32, Loan Group Inputs for Mortgage Amortization Calculation				3.3.4, Interest Rates Outputs
3.6.3.4.2, Single Family Default and Prepayment Inputs	3–34, Single Family Default and Prepayment Inputs	R		F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.4.3.3, Prepayment and Default Rates and Performance Fractions	3–35, Coefficients for Single Family Default and Prepayment Explanatory Variables			F	
3.6.3.5.2, Multifamily Default and Prepayment Inputs	3–38, Loan Group Inputs for Multifamily Default and Prepayment Calculations	R		F	
3.6.3.5.3.3, Default and Prepayment Rates and Performance Fractions	3–39, Explanatory Variable Coefficients for Multifamily Default			F	3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.2.6, Single Family Gross Loss Severity Inputs	3–42, Loan Group inputs for Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs
3.6.3.6.3.6, Multifamily Gross Loss Severity Inputs	3–44, Loan Group Inputs for Multifamily Gross Loss Severity			F	3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs
3.6.3.6.4.8, Mortgage Credit Enhancement Inputs	3–46, CE Inputs for each Loan Group	R			3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.2.3, Single Family Gross Loss Severity Outputs 3.6.3.6.3.3, Multifamily Gross Loss Severity Outputs
	3–47, Inputs for each Distinct CE Combination (DCC)	R			
3.6.3.7.2, Stress Test Whole Loan Cash Flow Inputs	3–51, Inputs for Final Calculation of Stress Test Whole Loan Cash Flows	R			3.3.4, Interest Rates Outputs 3.6.3.3.4, Mortgage Amortization Schedule Outputs 3.6.3.4.4, Single Family Default and Prepayment Outputs 3.6.3.5.4, Multifamily Default and Prepayment Outputs 3.6.3.6.5.6, Single Family and Multifamily Net Loss Severity Outputs
3.6.3.8.2, Whole Loan Accounting Flows Inputs	3–54, Inputs for Whole Loan Accounting Flows	R			3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs
3.7.2, Mortgage-Related Securities Inputs	3–56, RBC Report Inputs for Single Class MBS Cash Flows	R			
	3–57, RBC Report Inputs for Multi-Class and Derivative MBS Cash Flows	R			
	3–58, RBC Report Inputs for MRBs and Derivative MBS Cash Flows	R			
3.8.2, Nonmortgage Instrument Inputs	3–66, Input Variables for Nonmortgage Instrument Cash flows	R			
3.9.2, Alternative Modeling Treatments Inputs	3–70, Alternative Modeling Treatment Inputs	R			

TABLE 3–1—SOURCES OF STRESS TEST INPUT DATA—Continued

Section of this Appendix	Table	Data Source(s) R = RBC Report P = Public Data F = Fixed Values			
		R	P	F	Intermediate Outputs
3.10.2, Operations, Taxes, and Accounting Inputs	3–71, Operations, Taxes, and Accounting Inputs	R			3.3.4, Interest Rates Outputs 3.6.3.7.4, Stress Test Whole Loan Cash Flow Outputs 3.7.4, Mortgage-Related Securities Outputs 3.8.4, Nonmortgage Instrument Outputs
3.12.2, Risk-Based Capital Requirement Inputs		R			3.3.4, Interest Rates Outputs 3.9.4, Alternative Modeling Treatments Outputs 3.10.4, Operations, Taxes, and Accounting Outputs

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3.1.2.1 * * *

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Reporting Date	The last day of the quarter for the loan group activity that is being reported to OFHEO	YYYY0331 YYYY0630 YYYY0930 YYYY1231
Enterprise	Enterprise submitting the loan group data	Fannie Mae Freddie Mac
Business Type	Single family or multifamily	Single family Multifamily
Portfolio Type	Retained portfolio or Sold portfolio	Retained Portfolio Sold Portfolio
Government Flag	Conventional or Government insured loan	Conventional Government
Original LTV	Assigned LTV classes based on the ratio, in percent, between the original loan amount and the lesser of the purchase price or appraised value	LTV<=60 60 <LTV<=70 70 <LTV<=75 75 <LTV<=80 80 <LTV<=90 90 <LTV<=95 95 <LTV<=100 100 <LTV
Current Mortgage Interest Rate	Assigned classes for the current mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0
Original Mortgage Interest Rate	Assigned classes for the original mortgage interest rate	0.0<=Rate<4.0 4.0<=Rate<5.0 5.0<=Rate<6.0 6.0<=Rate<7.0 7.0<=Rate<8.0 8.0<=Rate<9.0 9.0<=Rate<10.0 10.0<=Rate<11.0 11.0<=Rate<12.0 12.0<=Rate<13.0 13.0<=Rate<14.0 14.0<=Rate<15.0 15.0<=Rate<16.0 Rate=>16.0

TABLE 3–2—WHOLE LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
Mortgage Age	Assigned classes for the age of the loan	0<=Age<=12 12<Age<=24 24<Age<=36 36<Age<=48 48<Age<=60 60<Age<=72 72<Age<=84 84<Age<=96 96<Age<=108 108<Age<=120 120<Age<=132 132<Age<=144 144<Age<=156 156<Age<=168 168<Age<=180 Age>180
Rate Reset Period	Assigned classes for the number of months between rate adjustments	Period =1 1< Period <=4 4< Period <=9 9< Period <=15 15< Period <=60 60< Period <999 Period = 999 (not applicable)
Payment Reset Period	Assigned classes for the number of months between payment adjustments after the duration of the teaser rate	Period <=9 9< Period <=15 15< Period <999 Period = 999 (not applicable)
ARM Index	Specifies the type of index used to determine the interest rate at each adjustment	FHLB 11th District Cost of Funds. 1 Month Federal Agency Cost of Funds. 3 Month Federal Agency Cost of Funds. 6 Month Federal Agency Cost of Funds. 12 Month Federal Agency Cost of Funds. 24 Month Federal Agency Cost of Funds. 36 Month Federal Agency Cost of Funds. 60 Month Federal Agency Cost of Funds. 120 Month Federal Agency Cost of Funds. 360 Month Federal Agency Cost of Funds. Overnight Federal Funds (Effective). 1 Week Federal Funds 6 Month Federal Funds 1 Month LIBOR 3 Month LIBOR 6 Month LIBOR 12 Month LIBOR Conventional Mortgage Rate. 15 Year Fixed Mortgage Rate. 7 Year Balloon Mortgage Rate. Prime Rate 1 Month Treasury Bill 3 Month CMT 6 Month CMT 12 Month CMT 24 Month CMT 36 Month CMT 60 Month CMT 120 Month CMT 240 Month CMT 360 Month CMT
Cap Type Flag	Indicates if a loan group is rate-capped, payment-capped or uncapped	Payment Capped Rate Capped No periodic rate cap
OFHEO Ledger Code	OFHEO-specific General Ledger account number used in the Stress Test	Appropriate OFHEO Ledger Code based on the chart of accounts.

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Single Family Product Code	Identifies the mortgage product types for single family loans	Fixed Rate 30YR Fixed Rate 20YR Fixed Rate 15YR 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon

TABLE 3–3—ADDITIONAL SINGLE FAMILY LOAN CLASSIFICATION VARIABLES—Continued

Variable	Description	Range
		Adjustable Rate Step Rate ARMs Second Lien Other
Census Division	The Census Division in which the property resides. This variable is populated based on the property's state code	East North Central East South Central Middle Atlantic Mountain New England Pacific South Atlantic West North Central West South Central
Relative Loan Size	Assigned classes for the loan amount at origination divided by the simple average of the loan amount for the origination year and for the State in which the property is located. Average loan size for the appropriate quarter is provided by OFHEO based upon data from both Enterprises. It is expressed as a decimal	0<=Size<=.4 .4<Size<=.6 .6<Size<=.75 .75<Size<=1.0 1.0<Size<=1.25 1.25<Size<=1.5 Size>1.5

TABLE 3–4—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	''New Book'' is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Interest Only Flag	Indicates if the loan is currently paying interest only. Loans that started as I/Os and are currently amortizing should be flagged as ''N''	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR < 1.00 1.00 <=DCR<1.10 1.10 <=DCR<1.20 1.20 <=DCR<1.30 1.30 <=DCR<1.40 1.40 <=DCR<1.50 1.50 <=DCR<1.60 1.60 <=DCR<1.70 1.70 <=DCR<1.80 1.80 <=DCR<1.90 1.90 <=DCR<2.00 2.00 <=DCR<2.50 2.50 <=DCR<4.00 DCR >= 4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

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3.1.3.1 * * *

[c] * * *

TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W (index)
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M (index)
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index)
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association Bloomberg Ticker: US0001M (index)
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0003M (index)
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0006M (index)
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association, Bloomberg Ticker: US0012M (index)
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield, Ticker: AGDN030Y (index)
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield, Ticker: AGDN090Y (index)
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield, Ticker: AGDN180Y (index)
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield, Ticker: AGDN360Y (index)
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield, Ticker: AGAC02 (index)
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield, Ticker: AGAC03 (index)
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield, Ticker: AGAC05 (index)
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield, Ticker: AGAC10 (index)
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield, Ticker: AGAC30 (index)

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate Ticker: FHCR1510 (index)
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed

* * * * *

3.3.1 * * *

[b] The process for determining interest rates is as follows: first, identify values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20- and 30-year CMTs; fourth, project non-Treasury Interest Rates, including the Federal Agency Cost of Funds Index; and fifth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test.

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3.3.3 * * *

[a] * * *

3. * * *

c. *Enterprise Borrowing Rates.* In the Stress Test, the Federal Agency Cost of Funds Index is the same as the Enterprise Cost of Funds Index during the Stress Period, except that the Stress Test adds a 10 basis-point credit spread to the Federal Agency Cost of Funds rates to project Enterprise Cost of Funds rates for the last 108 months of the Stress Period.

* * * * *

3.4.2 * * *

TABLE 3–28—PROPERTY VALUATION INPUTS

Variable	Description	Source
$CMT10_m$	10-year CMT yield for months m = 1...120 of the Stress Test	section 3.3, Interest Rates
$ACMT_o$	Unweighted nine-month average of the ten-year CMT yield for the nine months immediately preceding the Stress Test. (Monthly rates are unweighted monthly averages of daily rates, bond equivalent yield)	section 3.3, Interest Rates
$HHPGR_q^{HSP}$	Quarterly single family historical house price growth rates computed from the HPI series for the Benchmark region and time period, unadjusted for inflation. The specific series is the West South Central Census Division for the years l984–1993, as reported in OFHEO's Third Quarter, 1996 HPI Report	Table 3–19 of section 3.1.3, Public Data
RG_m^{HSP}	Multifamily Rent Growth Rates for months m = 1...120 of the Benchmark region and time period, unadjusted for inflation	Table 3–20 of section 3.1.3, Public Data
RVR_m^{HSP}	Multifamily Rental Vacancy Rates for months m = 1...120 of the Benchmark region and time period	Table 3–20 of section 3.1.3, Public Data

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3.5.3 * * *

[a] * * *

2. * * *

d. The Stress Test will permit a higher rating to be used for an unrated seller-servicer who participates in a multifamily delegated underwriting and servicing program that requires a loss-sharing agreement when: (1) The loss sharing agreement is collateralized by a fully funded reserve account pledged to the Enterprise; and (2) the reserve account is in an amount that is equal to or exceeds the amount that OFHEO has determined to be adequate to support the seller-servicer's loss-sharing obligation under the program. Determinations of the reserve requirement and of the rating that will be permitted will be made on a program-by-program and Enterprise-by-Enterprise basis by the Director.

3. *Determine Maximum Haircuts.* The Stress Test specifies the Maximum Haircut (i.e., the maximum reduction applied to cash flows during the Stress Test to reflect the risk of loss due to counterparty (including security) default) by rating category and counterparty type as shown in Table 3–31.

a. The Maximum Haircut for a rating category is the product of its default rate and its loss severity rate. For all counterparties, the default rates are 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for Below BBB and Unrated. For non-derivative counterparties, the loss severity rate is 70 percent; for derivative counterparties, it is 10 percent. For all Below BBB and Unrated counterparties, the loss severity rate is 100 percent.

b. For periods prior to the implementation of netting, a separate set of Maximum Haircuts (set forth in Table 3–31) will be applied to derivative contract cash flows to approximate the impact of the net exposures to derivative contract counterparties (see section 3.8.3, Nonmortgage Instrument Procedures). After the implementation of netting, exposures will be netted as described in section 3.8.3 before the haircut is applied.

c. With the exception of haircuts for the Below BBB and Unrated category, haircuts for all counterparty categories are phased-in linearly over the 120 months of the Stress Period. The Maximum Haircut is applied in month 120 of the Stress Period. Haircuts for the Below BBB and Unrated category are applied fully starting in the first month of the Stress Test.

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
Cash	0%	0%	0%	N/A
AAA	0.3%	0.5%	3.5%	120
AA	0.75%	1.25%	8.75%	120

TABLE 3–31—STRESS TEST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION—Continued

Ratings Classification	Derivative Contract Counterparties prior to Implementation of Netting	Derivative Contract Counterparties after Implementation of Netting	Non-Derivative Contract Counterparties or Instruments	Number of Phase-in Months
A	1.2%	2%	14%	120
BBB	2.4%	4%	28%	120
Below BBB and Unrated	100%	100%	100%	1

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

2. Calculate $PNEQ_q$, the Probability of Negative Equity in quarter q:

$$PNEQ_q = N\left(\frac{ln LTV_q}{\sigma_q}\right),$$

where:

N designates the cumulative normal distribution function.

a. LTV_q is evaluated for a quarter q as:

$$LTV_{ORIG} \times \frac{\begin{pmatrix}\text{Ratio of current}\\ \text{Loan Group UPB}\\ \text{to Original UPB}\end{pmatrix}}{\begin{pmatrix}\text{Ratio of current property}\\ \text{value (based on HPI in}\\ \text{quarter q) to original}\\ \text{property value (based on}\\ \text{HPI at Origination)}\end{pmatrix}}$$

The HPI at Origination is updated to the beginning of the Stress Test using actual historical experience as measured by the OFHEO HPI; and then updated within the Stress Test using House Price Growth Factors from the Benchmark region and time period:

$$LTV_q = LTV_{ORIG} \times \frac{\left(\frac{UPB_{m=3_q-3}}{UPB_{ORIG}}\right)}{\left[CHPGF_0^{LG} \times exp\left(\sum_{k=1}^{q} HPGR_k\right)\right]}$$

Where:

$UPB_{m=3q-3}$ = UPB for the month at the end of the quarter prior to quarter q

$CHPGF_o^{LG}$ = 1.0 if the loan was originated in the same quarter as or after the most recently available HPI as of the reporting date

* * * * *

3. * * *

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6, ... 0, 1, ... 40):

* * * * *

3.6.3.5.1 * * *

[b] *Explanatory Variables for Default Rates.* Eight explanatory variables are used as specified in the equations in section 3.6.3.5.3.1, of this Appendix, to determine Default rates for multifamily loans: Mortgage Age, Mortgage Age Squared, New Book indicator, Not Ratio-updated ARM indicator, current Debt-Service Coverage Ratio, Underwater Current Debt-Service Coverage indicator, Loan-To-Value Ratio at origination/acquisition, and a Balloon Maturity indicator. Regression coefficients (weights) are associated with each variable. All of this information is used to compute conditional annual Default rates throughout the Stress Test. The annualized Default rates are converted to monthly conditional Default rates and are used together with monthly conditional Prepayment rates to calculate Stress Test Whole Loan Cash Flows. (*See* section 3.6.3.7, Stress Test Whole Loan Cash Flows, of this appendix).

* * * * *

3.6.3.5.2 * * *

TABLE 3–38—LOAN GROUP INPUTS FOR MULTIFAMILY DEFAULT AND PREPAYMENT CALCULATIONS

Variable	Description	Source
	Mortgage Product Type	RBC Report
A_o	Age immediately prior to start of Stress Test, in months (weighted average for Loan Group)	RBC Report
NBF	New Book Flag	RBC Report
RUF	Ratio Update Flag	RBC Report
LTV_{ORIG}	Loan-to-Value ratio at loan Origination	RBC Report
DCR_o	Debt Service Coverage Ratio at the start of the Stress Test	RBC Report
PMT_o	Amount of the mortgage Payment (principal and interest) prior to the start of the Stress Test, or first Payment for new loans (aggregate for Loan Group)	RBC Report
PPEM	Prepayment Penalty End Month number in the Stress Test (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
RGR_m	Benchmark Rent Growth for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
RVR_m	Benchmark Vacancy Rates for months m = 1...120 of the Stress Test	section 3.4.4, Property Valuation Outputs
PMT_m	Scheduled Payment for months m = 1... RM	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
OE	Operating expenses as a share of gross potential rents (0.472)	fixed decimal from Benchmark region and time period
RVR_o	Initial rental vacancy rate	0.10

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3.6.3.5.3.1 * * *

[a] * * *

2. Assign product and ratio update flags (NBF, NRAF). *Note:* these values do not change over time for a given Loan Group.

a. New Book Flag (NBF):

NBF = 1 for Fannie Mae loans acquired after 1987 and Freddie Mac loans acquired after 1992, *except* for loans that were refinanced to avoid a Default on a loan originated or acquired earlier.

NBF = 0 otherwise.

b. Not Ratio-updated Arm Flag (NRAF):

NRAF = 1 if both ARMF = 1 and RUF = 0,

NRAF = 0 otherwise.

Where:

ARMF = 1 for ARMs (including Balloon ARMs)

ARMF = 0 otherwise, and

RUF = 1 if the LTV and DCR were calculated or delegated to have been calculated at origination or recalculated or delegated to have been recalculated at Enterprise acquisition according to current Enterprise standards.

RUF = 0 otherwise

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3.6.3.5.3.2 * * *

[a] * * *

1. Compute the logits for multifamily Default using inputs from Table 3–38 and coefficients from Table 3–39. For indexing purposes, the Default rate for a period m is the likelihood of missing the m_{th} payment; calculate its corresponding logit ($X\delta_m$) based on Loan Group characteristics as of the period *prior* to m, i.e. *prior* to making the mth payment.

$$\begin{aligned} X\delta_m = {} & \delta_{AY}AY_{m-1} + \delta_{AY^2}AY_{m-1}^2 \\ & + \delta_{NBF}NBF + \delta_{NRAF}NRAF \\ & + \delta_{DCR}ln\left(DCR_{m-1}\right) \\ & + \delta_{UWDCRF}UWDCRF_{m-1} \\ & + \delta_{LTV}ln\left(LTV_{ORIG}\right) \\ & + \delta_{BMF}BMF_{m-1} + \delta_0 \end{aligned}$$

TABLE 3–39—EXPLANATORY VARIABLE COEFFICIENTS FOR MULTIFAMILY DEFAULT

Explanatory Variable (V)	Default Weight (δ_v)
AY	0.5256
AY^2	0.0284
NBF	−1.219
NRAF	0.4193
DCR	−2.368
UWDCRF	1.220
LTV	0.8165
BMF	1.518
Intercept (δ_0)	−4.553

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2. * * *

b. For the down-rate scenario,

APR_m = 0 percent during the Prepayment penalty period (i.e., when m ≤ PPEM)

APR_m = 25 percent after the Prepayment penalty period (i.e., when m > PPEM)

* * * * *

3. Convert annual Prepayment and Default rates to monthly rates (MPR and MDR) using the following formulas for simultaneous processes:

$$MPR_m = \frac{APR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]$$

If both ARMF = 0 and RUF = 0, then

$$MDR_m = \left[\frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]\right] \times 1.2$$

otherwise,

$$MDR_m = \frac{ADR_m}{ADR_m + APR_m} \times \left[1 - \left(1 - ADR_m - APR_m\right)^{\frac{1}{12}}\right]$$

* * * * *

3.6.3.6.3.2 * * *

TABLE 3–44—LOAN GROUP INPUTS FOR MULTIFAMILY GROSS LOSS SEVERITY

Variable	Description	Value or Source
	Government Flag	RBC Report
DR_m	Discount Rate in month m (decimal per annum)	6-month Enterprise Cost of Funds from Section 3.3, Interest Rates
MQ	Time during which delinquent loan interest is passed-through to MBS holders	4 for sold loans 0 otherwise
PTR_m	Pass Through Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
NYR_m	Net Yield Rate applicable to payment due in month m (decimal per annum)	section 3.6.3.3.4, Mortgage Amortization Schedule Outputs
RHC	Net REO holding costs as a decimal fraction of Defaulted UPB	0.07
MF	Time from Default to completion of foreclosure (REO acquisition)	9 months
MR	Months from REO acquisition to REO disposition	15 months
RP	REO proceeds as a decimal fraction of Defaulted UPB	0.63

* * * * * * *

3.6.3.6.4.3 * * *

[a] * * *

1. Determine Mortgage Insurance Payment (MI_m) for single family loans in the DCC, or Loss Sharing Payment (LSA_m) for multifamily loans in the DCC, as a percentage of Defaulted UPB, applying appropriate counterparty Haircuts from section 3.5., of this Appendix:

$$MI_m^{DCC} = \left(1 - MIExp_m^{LG}\right) \times C^{MI,DCC} \times CLM_m^{MI,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{MI,DCC}\right)\right]$$

$$LSA_m^{DCC} = C^{LSA,DCC} \times CLM_m^{LSA,LG} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{LSA,DCC}\right)\right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

$$MIExp_m^{LG} = 1 \text{ if } \left(LTV_{ORIG} \times \frac{UPB_m^{LG}}{UPB_{ORIG}^{LG}} \right) < 0.78$$

$$MIExp_m^{LG} = 0 \text{ otherwise}$$

0.78 (78%) = the LTV at which MI is cancelled if payments are current

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3. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C1,H} = PD_m^{DCC,C1} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C1}\right) \right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

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4. * * *

b. Determine CE Payment in Dollars after application of Haircuts:

$$PD_m^{DCC,C2,H} = PD_m^{DCC,C2} \times \left[1 - \frac{m'}{120} \times MaxHct\left(R^{DCC,C2}\right) \right]$$

Where:

m′ = m, except for counterparties rated below BBB, where m′ = 120

* * * * * * *

5. Convert Aggregate Limit First and Second Priority Contract receipts in Dollars for each DCC in month m to a percentage of DCC Defaulted UPB:

$$ALPD_m^{DCC} = \frac{\left(PD_m^{DCC,C1,H} \times ELPI^{DCC,C1}\right) + \left(PD_m^{DCC,C2,H} \times ELPI^{DCC,C2}\right)}{DEF_m \times UPB_{m-1}^{LG} \times P^{DCC}}$$

Where:

$ELPI^{DCC,C}$ = 0 if $ELPF^{DCC,C}$ = Y (Yes, indicating that Contract C is an Enterprise Loss Position)

$ELPI^{DCC,C}$ = 1 otherwise

* * * * * * *

3.6.3.7.3. * * *

[a] * * *

9. * * *

b. Float Income (FI) received in month m

$$FI_m = \left(\left[\left(\left[\left(SPR_m + NIR_m - GF_m \right) \times \frac{FDS}{365} \right] + \left[PPR_m \times \frac{FDP}{365} \right] \right) \times FER_m \right] - PIS_m \right) \times (1 - FREP)$$

where: Prepayment Interest Shortfall (PIS) in month m is:

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{12}$$

$$\text{if } FDP \geq 30$$

$$PIS_m = UPB_{m-1} \times PRE_m \times \frac{PTR_m}{24}$$

$$\text{if } 15 \leq FDP < 30$$

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3.7.3.1 * * *

[g] * * *

1. Compute:

$$HctFac_m = \frac{m'}{120} \times MaxHct\,(R)$$

Where:

m' = m, except for MBS credit rating below BBB where m'=120

R = MBS credit rating

* * * * *

3.8.1 * * *

[f] In a currency swap, the Enterprise receives payments that are denominated in a foreign currency and it makes payments in U.S. dollars. The main difference between currency swaps and the type of swaps discussed above is that in a currency swap principal amounts are actually exchanged between the two counterparties. Currency swaps are divided into two classes, as shown in Table 3–65.[5]

[5] *Ibid.*

TABLE 3–65—CURRENCY SWAP CONTRACT CLASSIFICATION

Classification	Description of Contract
Fixed-for-Fixed Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes fixed, US dollar-denominated payments
Fixed-for Floating Currency Swap	Enterprise receives fixed interest payments denominated in a foreign currency and makes payments in US dollar based on a floating interest rate

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3.8.3.1 * * *

[a] * * *

3. When applying the option exercise rule:

a. For zero coupon and discount securities, instruments with European options, and zero coupon swaps, evaluate option exercise only on dates listed in the instrument's option exercise schedule. For Bermudan options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent coupon dates (coupon dates on the fixed-rate leg for swaps). For American options, evaluate option exercise on the first option date in the instrument's option exercise schedule and subsequent monthly anniversaries of the instrument's first coupon date.

* * * * *

d. If the remaining maturity is greater than 360 months, use the equivalent-maturity Enterprise Cost of Funds as if the remaining maturity is 360 months.

e. In the Stress Test, no preferred stock issued by the Enterprise will be called.

* * * * *

3.8.3.10 * * *

[a] Finally, the interest and principal cash flows received by the Enterprises for non-mortgage instruments other than swaps and foreign currency-related instruments are Haircut (i.e., reduced) by a percentage to account for the risk of counterparty insolvency, if a counterparty obligation exists. The amount of the Haircut is calculated based on the public rating of the counterparty and time during the stress period in which the cash flow occurs, as specified in section 3.5, Counterparty Defaults, of this Appendix.

[b] An Enterprise may issue debt denominated in, or indexed to, foreign currencies, and eliminate the resulting foreign currency exposure by entering into currency swap agreements. The combination of the debt and the swap creates synthetic debt with principal and interest payments denominated in U.S. dollars. The Haircuts for currency swaps are applied to the pay (dollar-denominated) side of the currency swaps, or to the cash outflows of the synthetic debt instrument. Therefore, the payments made by the Enterprise on a foreign currency contract are increased by the haircut amount. The Haircuts and the Phase-in periods for currency swaps are detailed in Table 3–31, under Derivative Contracts.

[c] Haircuts for swaps that are not foreign currency related are applied to the Monthly Interest Accruals (as calculated in section 3.8.3.8, of this Appendix) on the receive leg minus the Monthly Interest Accruals on the pay leg when this difference is positive. Use the maximum haircut from Table 3–31 for periods before and after the implementation of netting, as appropriate. After the implementation of netting, net the swap proceeds for each counterparty before applying the haircuts. The following example applies to an Enterprise having two swaps with the same counterparty. On the first swap, the Enterprise pays fixed and receives floating and on the second swap it pays floating and receives fixed. If the counterparty is a net payer to the Enterprise, the haircuts will be applied to the sum of the two receive legs net of the sum of the two pay legs.

* * * * *

3.10.3.1 * * *

[b] * * *

2. In any month in which the cash position is negative at the end of the month, the Stress Test issues a mix of new short-term and long-term debt on the 15th day of that month. New short-term debt issued is six-month discount notes with a discount rate at the six-month Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, with interest accruing on a 30/360 basis. New long-term debt issued is five-year bonds not callable for the first year (''five-year-no call-one'') with an American call at par after the end of the first year, semiannual coupons on a 30/360 basis with principal paid at maturity or call, and a coupon rate set at the five year Enterprise Cost of Funds as specified in section 3.3, Interest Rates, of this Appendix, plus a 50 basis point premium for the call option. During the Stress Test, the call option for new long-term debt issued is not executed in the up-rate scenario and in the down-rate scenario follows the same call exercise rule as other debt. An issuance cost of 2.5 basis points is assessed on new short-term debt at issue and an issuance cost of 20 basis points is assessed on new long-term debt at issue. New long-term debt is issued to target a total debt mix of short- to long-term debt that is the same as the short- to long-term debt mix at the beginning of the Stress Test. Issuance fees for new debt are amortized on a straight line basis to the maturity of the appropriate instrument.

3. Given the Net Cash Deficit (NCD_m) in month m, use the following constants and method to calculate the amount of short-term and long-term debt to issue in month m:

a. Set the Issuance Cost on new short-term debt at issue (ISCOST):
ISCOST = 0.00025

b. Set the Issuance Cost on new long-term debt at issue (ILCOST):
ILCOST = 0.002

c. Calculate Net Short-term Debt Outstanding ($NSDO_0$) and Total Debt Outstanding (TDO_0) at the start of the Stress Test (m = 0) using the following methodology:

1) For each month m and each debt and swap instrument i (each swap leg is considered a separate instrument), determine the Month of Next Repricing (MNR_m) defined as the first month greater than m in which the instrument matures or repricing can occur whether or not the coupon rate actually changes. Set the Principal Balance (PB_m) to be:

a) The principal (or notional principal) outstanding if the instrument cash flows are paid by the Enterprise,

b) Minus the principal (or notional principal) outstanding if the instrument cash flows are received by the Enterprise.

c) Zero if m is less than or equal to the issue month or the month in which an option exercised during the stress test would begin accruing cash flows to or from the Enterprise.

d) Zero if m is greater than or equal to the maturity month or the month in which an option exercised during the stress test would cease further cash flows to or from the Enterprise.

2) Calculate $NSDO_m$ by summing $PB_{m,i}$ for all instruments where $MNR_{m,i}$ is less than or equal to m plus 12.

3) Calculate TDO_m by summing $PB_{m,i}$ for instruments where $MNR_{m,i}$, is greater than m.

d. Set the Maximum Proportion of Total Debt (MPD):

$$MPD = \frac{TDO_0 - NSDO_0}{TDO_0}$$

e. Calculate Discount Rate Factor (DRF_m):

$$DRF_m = \left(1 + \frac{CF_m}{12}\right)^6$$

Where: CF_m = six month Enterprise Cost of Funds for month m

f. Calculate the Adjustment Factor for Short-Term Debt Issuance Fees ($AFSIF_m$):

$$AFSIF_m = \frac{DRF_m}{1 - ISCOST \times DRF_m}$$

g. Calculate the Adjustment Factor for Long-Term Debt Issuance Fees ($AFLIF_m$):

$$AFLIF_m = \frac{1}{1 - ILCOST}$$

h. Calculate the Maximum Long-Term Issuance ($MLTI_m$):

$$MLTI_m = NCD_m \times AFLIF_m$$

i. Calculate Net Short-Term Debt Outstanding ($NSDO_m$) and Total Debt Outstanding (TDO_m) for month m using the methodology described in paragraph 3.10.3.1.[b]3.c. of this appendix. *Note:* This calculation must reflect all new issuances, option exercises, and maturities between the beginning of the Stress Test and month m.

j. Calculate Interim Face Amount of Long-Term Debt to be issued this month ($IFALD_m$):

$$IFALD_m = \frac{\left((MPD-1)\times TDO_m\right) + NSDO_m + \left(MPD \times AFSIF_m \times NCD_m\right)}{1 - MPD + \left(AFSIF_m \times \frac{MPD}{AFLIF_m}\right)}$$

k. Calculate Face Amount of Long-Term Debt to be issued ($FALD_m$):

$$FALD_m = min\left(MLTI_m, max\left(0, IFALD_m\right)\right)$$

l. Calculate Face Amount of Short-Term Debt to be issued ($FASD_m$):

$$FASD_m = AFSIF_m \times max\left(0, NCD_m - \frac{FALD_m}{AFLIF_m}\right)$$

* * * * *

3.10.3.6.2 * * *

[a] * * *

5. *Fixed Assets*. 25 percent of fixed assets (net of accumulated depreciation) as of the beginning of the Stress Test remain constant over the Stress Test. The remaining 75 percent is converted to cash on a straight line basis over the ten-year Stress Period. Depreciation is included in the base on which operating expenses are calculated for each month during the Stress Period.

* * * * *

4.0 * * *

Enterprise Cost of Funds: Cost of funds used in computing the cost of new debt for the Enterprises during the Stress Test, as specified in section 3.3.3.[a]3.c., of this Appendix.

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Dated: February 20, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–4417 Filed 3–14–02; 8:45 am]

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Federal Register

Friday,
March 15, 2002

Part VI

Small Business Administration

13 CFR Part 121 and 123

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program; Interim Final Rule and Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE93

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: For purposes of eligibility for economic injury disaster loan assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, New York and the Pentagon, Arlington, VA, the SBA is increasing the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action applies to small business Travel Agencies located in and outside of the declared areas for that disaster. This interim final rule is published in conjunction with SBA's proposed rule elsewhere in this issue of the **Federal Register** that recommends increasing the size standard for Travel Agencies from $1 million to $3 million for all Federal small business assistance programs. SBA believes that this action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This rule also changes the time at which size status is determined for economic injury disaster loan assistance in connection with the September 11, 2001 attacks.

DATES: Effective Date: This rule becomes effective March 15, 2002.

Comment Date: Comments must be received on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via e-mail to *SIZESTANDARDS@sba.gov.* Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

I. Justification for Increasing the Size Standard

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the declining pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html)* sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two ''base or anchor size standards'' that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the ''typical industry.''

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt

a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry'average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firms at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this interim final rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the ''four-firm concentration ratio''—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in Millions of Dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing anchor group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing anchor group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start-up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms involved in leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This

interim final rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agencies in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through General Services Administration (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percentage of Total to Small Business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms to provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the current $1 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below an amended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the amended size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the amended size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel

Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than the anchor nonmanufacturing size standard.

II. Justification for Changing Date of Determination of Size Status

SBA is also changing the date as of which size status is determined for purposes of Economic Injury Disaster Loan (EIDL) applications related to the September 11, 2001, terrorist attacks. Existing sections 121.302(c), 123.300(b), and 123.601(b) require an applicant for an EIDL loan to be small as of the date the disaster commenced, as set forth in the disaster declaration. SBA is changing the date size status is determined for September 11 EIDL assistance to ''the date SBA accepts the application for processing.''

SBA believes that this change will have only a minimal impact on eligibility. Under the size regulations, the receipts size of a business is calculated as an average for the business' last three completed fiscal years.

For purposes of September 11 EIDL assistance, receipts after September 11 to the end of the business' fiscal year would influence its three-year average if it filed an application after the end of that fiscal year. Most businesses use the calendar year as their fiscal year. The short period of time between September 11 and December 31 would have a relatively minor impact on the number of new firms that could qualify as small as a result of changing the date of size status to the date of application. A worst case example using the proposed $3 million Travel Agencies size standard demonstrates why this would affect few businesses.

Example: A business that averages $3.33 million per year could become an eligible small business if it had no receipts for the period September 11 to December 31. For Year 3, $2.34 million represents $3.3 million in annualized receipts.

Year 1 $3.33 million
Year 2 $3.33 million
Year 3 + $2.34 million
Sum = $9.00 million
Average = $3.00 million

Based on SBA's analysis of the Travel Agencies' industry and discussions with members of the industry, SBA has concluded that this scenario is highly unlikely.

SBA also believes this change is necessary to assist Travel Agencies and other small businesses that should have been considered small for purposes of September 11, 2001 EIDL assistance.

On January 23, 2002, SBA increased its size standards to reflect the effects of inflation since 1994. Businesses recognized as small under that rule will be able to file applications for September 11, 2001 EIDL assistance. Moreover, of all the industries severely impacted by the September 11 attacks, the Travel Agencies industry is the only one that did not have its size standard adjusted on January 23, 2002, to reflect the effect of inflation. SBA did not increase the size standard for Travel Agencies at that time since SBA was already in the process of re-evaluating the Travel Agencies size standard to reflect changing industry conditions, as further described under ''Justification for Increasing the Size Standard'' in this preamble.

The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

In addition, to avoid the burden of re-submitting an application, any previously submitted application which was pending or denied because of size status will be deemed to have been resubmitted on the effective date of this rule.

III. Justification for Publication as an Interim Final Rule

This interim final rule is specifically for EIDL assistance attributable to the September 11, 2001 terrorist attacks on the World Trade Center in New York, New York and the Pentagon in Arlington, Virginia. SBA is also publishing a separate proposed rule elsewhere in this issue of the **Federal Register** that addresses the Travel Agencies size standard for all other small business purposes.

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations might arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have directly impacted Travel Agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the terrorist attacks. Thus, many small travel agencies have seen their business decline precipitously by 20% to 50% due the events of September 11, 2001. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8%. The interim final rule had an applicability date of September 11, 2001, for this adjustment for the purposes of eligibility for economic injury disaster loans assistance as a result of the terrorist attacks on small businesses located in the declared disaster areas. The Travel Agencies $1 million size standard was not increased because the SBA decided

to handle this industry by this separate rulemaking. A proposed adjustment to the Travel Agencies size standard under NAICS Code 561510 was already under development at SBA when the tragic events of September 11, 2001 occurred. SBA now believes that any delay in the adoption of this size standard adjustment could cause serious harm to those Travel Agencies.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans available to businesses that should be considered small, but that do not qualify under SBA's existing size standards. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small Travel Agencies.

By changing the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, SBA will be able to assist these small businesses before the deadlines for application of September 11, 2001 EIDL assistance. The application deadline for expanded EIDL assistance (under 13 CFR Part 123, subpart G, §§ 123.600–.606) is April 22, 2002. The application deadline for EIDL assistance (under 13 CFR part 123, subpart D, §§ 123.300–.303) to the declared disaster areas of New York and Virginia is June 11, 2002.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before April 15, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule,'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification For Publication As An Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. SBA believes that this action is both in the public interest and does not tend to adversely affect any interested parties. SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule.

Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that the interim final rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is there a need for the regulatory action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry for purposes of EIDL resulting from the September 11, 2001 terrorist attacks.

ii. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for EIDL assistance resulting from the September 11, 2001 attacks. Under this rule, 723 additional Travel Agencies may obtain small business status and become eligible for this assistance. SBA estimates that $1.3 to $2.8 million in additional EIDL assistance may result from increasing the size standard for Travel Agencies. SBA also estimates an additional $2.3 million to $2.7 million in EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of Travel Agencies and small businesses in the industries covered by the size standard inflation adjustment.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth in the preamble, amend parts 121 and 123 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table ''Small Business Size Standards by NAICS Industry'', under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Code	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * *	* * *	*
Subsector 561—Administrative and Support Services		
* * *	* * *	*
561510	Travel Agencies	[10] $1
EXCEPT	Travel Agencies applying for economic injury disaster loan assistance resulting from the September 11, 2001 Terrorist Attacks.	[10] $3
* * *	* * *	*

* * * * * * *

[10] NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

3. In § 121.302(c), add a new sentence at the end of the paragraph to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For economic injury disaster loan assistance under disaster declarations for the September 11, 2001 terrorist attacks or under subpart G of part 123 of this chapter, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before March 15, 2002, whether denied because of size status or pending, such applications shall be deemed resubmitted on March 15, 2002.

* * * * *

PART 123—DISASTER LOAN PROGRAM

4. The authority citation of part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Public Law 102–395, 106 Stat.1828, 1864; Public Law 103–75, 107 Stat. 739; and Public Law 106–50, 113 Stat. 245.

5. Revise § 123.300(b) to read as follow:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for the September 11, 2001 terrorist attacks, for which size status is determined as of the date SBA accepts the application for processing and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002), you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

6. Revise paragraph § 123.601(b) to read as follows:

§ 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

* * * * *

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on the date SBA accepts your application for processing (and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonable available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6194 Filed 3–14–02; 8:45 am]

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Federal Register

Friday,
March 15, 2002

Part VI

Small Business Administration

13 CFR Part 121 and 123

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program; Interim Final Rule and Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE93

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Interim final rule with request for comments.

SUMMARY: For purposes of eligibility for economic injury disaster loan assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, New York and the Pentagon, Arlington, VA, the SBA is increasing the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action applies to small business Travel Agencies located in and outside of the declared areas for that disaster. This interim final rule is published in conjunction with SBA's proposed rule elsewhere in this issue of the **Federal Register** that recommends increasing the size standard for Travel Agencies from $1 million to $3 million for all Federal small business assistance programs. SBA believes that this action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This rule also changes the time at which size status is determined for economic injury disaster loan assistance in connection with the September 11, 2001 attacks.

DATES: Effective Date: This rule becomes effective March 15, 2002.

Comment Date: Comments must be received on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via e-mail to *SIZESTANDARDS@sba.gov.* Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

I. Justification for Increasing the Size Standard

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the declining pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html)* sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two ''base or anchor size standards'' that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the ''typical industry.''

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt

a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry'average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firms at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this interim final rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the ''four-firm concentration ratio''—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in Millions of Dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing anchor group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing anchor group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start-up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms involved in leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This

interim final rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agencies in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through General Services Administration (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percentage of Total to Small Business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms to provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the current $1 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below an amended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the amended size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the amended size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel

Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than the anchor nonmanufacturing size standard.

II. Justification for Changing Date of Determination of Size Status

SBA is also changing the date as of which size status is determined for purposes of Economic Injury Disaster Loan (EIDL) applications related to the September 11, 2001, terrorist attacks. Existing sections 121.302(c), 123.300(b), and 123.601(b) require an applicant for an EIDL loan to be small as of the date the disaster commenced, as set forth in the disaster declaration. SBA is changing the date size status is determined for September 11 EIDL assistance to ''the date SBA accepts the application for processing.''

SBA believes that this change will have only a minimal impact on eligibility. Under the size regulations, the receipts size of a business is calculated as an average for the business' last three completed fiscal years.

For purposes of September 11 EIDL assistance, receipts after September 11 to the end of the business' fiscal year would influence its three-year average if it filed an application after the end of that fiscal year. Most businesses use the calendar year as their fiscal year. The short period of time between September 11 and December 31 would have a relatively minor impact on the number of new firms that could qualify as small as a result of changing the date of size status to the date of application. A worst case example using the proposed $3 million Travel Agencies size standard demonstrates why this would affect few businesses.

Example: A business that averages $3.33 million per year could become an eligible small business if it had no receipts for the period September 11 to December 31. For Year 3, $2.34 million represents $3.3 million in annualized receipts.

Year 1 $3.33 million
Year 2 $3.33 million
Year 3 + $2.34 million
Sum = $9.00 million
Average = $3.00 million

Based on SBA's analysis of the Travel Agencies' industry and discussions with members of the industry, SBA has concluded that this scenario is highly unlikely.

SBA also believes this change is necessary to assist Travel Agencies and other small businesses that should have been considered small for purposes of September 11, 2001 EIDL assistance.

On January 23, 2002, SBA increased its size standards to reflect the effects of inflation since 1994. Businesses recognized as small under that rule will be able to file applications for September 11, 2001 EIDL assistance. Moreover, of all the industries severely impacted by the September 11 attacks, the Travel Agencies industry is the only one that did not have its size standard adjusted on January 23, 2002, to reflect the effect of inflation. SBA did not increase the size standard for Travel Agencies at that time since SBA was already in the process of re-evaluating the Travel Agencies size standard to reflect changing industry conditions, as further described under ''Justification for Increasing the Size Standard'' in this preamble.

The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

In addition, to avoid the burden of re-submitting an application, any previously submitted application which was pending or denied because of size status will be deemed to have been resubmitted on the effective date of this rule.

III. Justification for Publication as an Interim Final Rule

This interim final rule is specifically for EIDL assistance attributable to the September 11, 2001 terrorist attacks on the World Trade Center in New York, New York and the Pentagon in Arlington, Virginia. SBA is also publishing a separate proposed rule elsewhere in this issue of the **Federal Register** that addresses the Travel Agencies size standard for all other small business purposes.

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations might arise where an agency must issue a rule without public participation. On September 16, 2001, the President declared a national emergency as a result of the events of September 11, 2001. The events of that day have directly impacted Travel Agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the terrorist attacks. Thus, many small travel agencies have seen their business decline precipitously by 20% to 50% due the events of September 11, 2001. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8%. The interim final rule had an applicability date of September 11, 2001, for this adjustment for the purposes of eligibility for economic injury disaster loans assistance as a result of the terrorist attacks on small businesses located in the declared disaster areas. The Travel Agencies $1 million size standard was not increased because the SBA decided

to handle this industry by this separate rulemaking. A proposed adjustment to the Travel Agencies size standard under NAICS Code 561510 was already under development at SBA when the tragic events of September 11, 2001 occurred. SBA now believes that any delay in the adoption of this size standard adjustment could cause serious harm to those Travel Agencies.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to make disaster loans available to businesses that should be considered small, but that do not qualify under SBA's existing size standards. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would delay the delivery of critical assistance to these businesses by a minimum of three to six months. Any such delay would be extremely prejudicial to the affected businesses. It is likely that some would be forced to cease operations before a rule could be promulgated under standard notice and comment rulemaking procedures.

Furthermore, SBA has a statutory obligation to act in the public interest in determining eligibility for Federal assistance under the Small Business Act. 15 USC 633(d). Pursuant to that authority, SBA has determined that it is in the public interest to give immediate effect to SBA's current determination of small size status and that it would be impracticable to delay such implementation. SBA also notes the failure to adopt this rule immediately would work to the detriment of many small Travel Agencies.

By changing the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, SBA will be able to assist these small businesses before the deadlines for application of September 11, 2001 EIDL assistance. The application deadline for expanded EIDL assistance (under 13 CFR Part 123, subpart G, §§ 123.600–.606) is April 22, 2002. The application deadline for EIDL assistance (under 13 CFR part 123, subpart D, §§ 123.300–.303) to the declared disaster areas of New York and Virginia is June 11, 2002.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before April 15, 2002. SBA will consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule,'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification For Publication As An Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. SBA believes that this action is both in the public interest and does not tend to adversely affect any interested parties. SBA also believes, based on its contacts with interested members of the public, that there is strong interest in immediate implementation of this rule.

Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that the interim final rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is there a need for the regulatory action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry for purposes of EIDL resulting from the September 11, 2001 terrorist attacks.

ii. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for EIDL assistance resulting from the September 11, 2001 attacks. Under this rule, 723 additional Travel Agencies may obtain small business status and become eligible for this assistance. SBA estimates that $1.3 to $2.8 million in additional EIDL assistance may result from increasing the size standard for Travel Agencies. SBA also estimates an additional $2.3 million to $2.7 million in EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of Travel Agencies and small businesses in the industries covered by the size standard inflation adjustment.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth in the preamble, amend parts 121 and 123 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table ''Small Business Size Standards by NAICS Industry'', under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Code	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * *	* * *	*
Subsector 561—Administrative and Support Services		
* * *	* * *	*
561510	Travel Agencies	[10] $1
EXCEPT	Travel Agencies applying for economic injury disaster loan assistance resulting from the September 11, 2001 Terrorist Attacks.	[10] $3
* * *	* * *	*

* * * * * * *

[10] NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

3. In § 121.302(c), add a new sentence at the end of the paragraph to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For economic injury disaster loan assistance under disaster declarations for the September 11, 2001 terrorist attacks or under subpart G of part 123 of this chapter, size status is determined as of the date SBA accepts the application for processing, and for applications submitted before March 15, 2002, whether denied because of size status or pending, such applications shall be deemed resubmitted on March 15, 2002.

* * * * *

PART 123—DISASTER LOAN PROGRAM

4. The authority citation of part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Public Law 102–395, 106 Stat.1828, 1864; Public Law 103–75, 107 Stat. 739; and Public Law 106–50, 113 Stat. 245.

5. Revise § 123.300(b) to read as follow:

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

* * * * *

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced (except disaster declarations for the September 11, 2001 terrorist attacks, for which size status is determined as of the date SBA accepts the application for processing and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002), you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

6. Revise paragraph § 123.601(b) to read as follows:

§ 123.601 Is my business eligible to apply for an economic injury disaster loan under this subpart?

* * * * *

(b) Economic injury disaster loans are available under this subpart only if you were a small business (as defined in part 121 of this chapter) on the date SBA accepts your application for processing (and for applications submitted before March 15, 2002, whether denied or pending, such applications shall be deemed resubmitted on March 15, 2002, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonable available funds, and you are unable to obtain credit elsewhere (see § 123.104).

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6194 Filed 3–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE95

Small Business Size Standards; Travel Agencies

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to increase the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This proposed rule is published in conjunction with an interim final rule elsewhere in this issue of the **Federal Register** which makes the size standard change effective the date of its publication for purposes of SBA's Economic Injury Disaster Loan (EIDL) program as a result of the September 11, 2001 attacks in New York and Arlington, Virginia.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via-email to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: This proposed rule covers all small business programs. SBA is publishing a separate interim final rule elsewhere in this issue of the **Federal Register** addressing the Travel Agencies size standard for purposes of economic injury disaster loan (EIDL) assistance attributed to the September 11 terrorist attacks.

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http://www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two ''base or anchor size standards'' that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the ''typical industry.''

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry—average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also

examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firm at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the ''four-firm concentration ratio''—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a

specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel Agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing Anchor Group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel Agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing Anchor Group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This proposed rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to

the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agents in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies Services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through the General Services Administration's (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of Tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percent of total to small business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the $3 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and

as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than anchor the nonmanufacturing size standard.

SBA welcomes public comments on its proposed size standard for the Travel Agencies industry. Comments supporting an alternative to the proposal, including the option of retaining the size standard at $1 million, should explain why the alternative would be preferable to the proposed size standard, how it would impact current small businesses, and how it would effectively assist small businesses. SBA also welcomes comments and additional information on start-up costs of travel agencies serving corporate and government clients.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 723 additional firms may obtain small business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. In researching the Travel Agencies industry, SBA contacted representatives of the GSA and the DoD. These two agencies account for the largest proportion of Federal contracting for travel services. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would affect three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $450,000 in new Federal loan guarantees could be made to these newly defined small businesses. This represents 10% of the $4.5 million in loans that were guaranteed by the SBA under this financial program to Travel Agencies in FY 2000. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in only a small increase in small business guaranteed loans to Travel Agencies, and the $450,000 estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $347 million in sales out of approximately $9 billion in total Federal travel expenditures under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. Since most of these travel dollars will pass through to airlines, hotels, and automobile rental companies, SBA estimates actual revenues to Travel Agencies will range between $25 million and $42 million (7% to 12% of the estimated $347 million in sales). This also represents approximately $36 million of additional Federal contracts that may be awarded to businesses becoming newly designated small businesses. These estimates reflect a 10% increase in the awards to small businesses that the Federal government expends for travel services.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open

procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 732 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business SBA's procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set-aside for small businesses or reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set-aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUZone or small disadvantaged businesses instead of large businesses since those two categories of small business are eligible for price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set-aside for all small businesses. The number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government would limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. As described above in the Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses in the Travel Agencies industry competing for Federal Government procurements reserved for small business, and small disadvantaged businesses and HUBZone businesses eligible for price adjustment, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Travel Agencies may be set-aside for small business as the pool of eligible small businesses expands.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with GSA and DoD regarding a possible increase to the Travel Agencies size standard. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

The revision to the size standards NAICS code 561510 more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

(2) What is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Travel Agencies industry, 21,496 out of 22,687 businesses are small. Only a small proportion of businesses in this industry utilizes SBA programs. In SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 166 Travel Agencies are currently registered. In fiscal year 2000, 54 small business Travel Agencies

received 7(a) or 504 guaranteed loans. Thus, the likely impact of this rule would be limited to 732 small businesses, based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. The following table shows these data for the Travel Agencies Industry.

TRAVEL AGENCIES INDUSTRY DATA

Category	Travel agencies
Total businesses	22,687
Small businesses	21,946
Small businesses registered in PRO-Net	166
Small businesses with 7(a) loans	54

SBA estimates 732 additional businesses out of 22,687 firms in the Travel Agencies activity would be considered small as a result of this rule, if adopted. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate approximately $1.0 billion out of a total of $10 billion in revenues. The small business coverage in the Travel Agencies would increase by 10% of total receipts.

(3) What are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(5) What Alternatives Will Allow the Agency to Accomplish its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed, above, SBA believes the Travel Agencies characteristics support a size standard higher than the $1 million but lower than the nonmanufacturing size standard.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For reasons set forth in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table ''Small Business Size Standards by NAICS Industry'', under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * * * * * *		
Subsector 561—Administrative and Support Services		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * *	* * *	*
561510	Travel Agencies	[10] $3
* * *	* * *	*

Footnotes

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10. NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE95

Small Business Size Standards; Travel Agencies

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to increase the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) to $3 million from $1 million. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. This proposed rule is published in conjunction with an interim final rule elsewhere in this issue of the **Federal Register** which makes the size standard change effective the date of its publication for purposes of SBA's Economic Injury Disaster Loan (EIDL) program as a result of the September 11, 2001 attacks in New York and Arlington, Virginia.

DATES: Comments must be submitted on or before April 15, 2002.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6530, Washington, DC 20416; or via-email to *SIZESTANDARDS@sba.gov*. Upon request, SBA will make all public comments available.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: This proposed rule covers all small business programs. SBA is publishing a separate interim final rule elsewhere in this issue of the **Federal Register** addressing the Travel Agencies size standard for purposes of economic injury disaster loan (EIDL) assistance attributed to the September 11 terrorist attacks.

SBA has received requests from firms and trade associations in the travel industry to increase the $1 million size standard for Travel Agencies. These organizations believe that this action is warranted in light of the specialized equipment and systems required on Federal and corporate travel services contracts and the consolidated and regional approach by Federal agencies and large commercial clients in the performance of these contracts. They believe that the Federal government and corporate client travel markets have changed. These clients require specific equipment and systems, and have requirements on a regional or national basis. These requirements have raised the costs of doing business in this industry to the point that the pool of eligible small businesses performing government and corporate client travel services has seriously declined. Federal agencies also express concern regarding this trend. Specifically, agencies are concerned that the pool of eligible small businesses with the ability to perform these contracts will result in fewer contracts with small travel agencies.

SBA agrees that recent changes in the Travel Agencies industry warrant a review of the size standard. Below is a discussion of the SBA's size standards methodology and the analysis leading to the proposal to increase the size standard for Travel Agencies under NAICS code 561510 to $3 million.

Size Standards Methodology: Congress grants SBA discretion to establish detailed size standards. The Agency's Standard Operating Procedure (SOP) 90 01 3, ''Size Determination Program'' (available on SBA's Web site at *http://www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics, (2) SBA program objectives and the impact of different size standards on these programs, (3) whether a size standard successfully excludes those businesses which are dominant in the industry, and (4) other factors if applicable. Other factors may come to the attention of SBA during the public comment period or from SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: The Small Business Act requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics (Section 3(a)(3)). SBA has in place two ''base or anchor size standards'' that apply to most industries—500 employees for manufacturing industries and $6 million for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries has been periodically adjusted for inflation so that, currently, the anchor size standard for the nonmanufacturing industries is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than for the ''typical industry.''

The current size standard for Travel Agencies under NAICS code 561510 is $1 million, which is lower than the $6 million nonmanufacturing anchor. This size standard excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. In its review, SBA used the nonmanufacturing anchor for comparability purposes.

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping. If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group, the larger the difference between the appropriate industry size standard and the anchor size standard. Only when all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or other industry considerations strongly suggest the anchor size standard would be an unreasonably high size standard for the industry under review, will SBA adopt a size standard below the anchor size standard.

In 13 CFR 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry—average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also

examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard as the situation warrants for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. *Average firm size* is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry were significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases a lower size standard.

2. *The distribution of firms by size* examines the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. The opposite is the case for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, the SBA is comparing the size of firm within an industry to the size of firm in the comparison group at which predetermined percentages of total industry receipts are cumulatively generated by firm at that size and smaller. For example, for Travel Agencies, firms of $2.2 million in receipts and less generate 50% of total industry receipts. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of $5.8 million or less in receipts generated 50% of total industry receipts. Viewed in isolation, this significantly lower figure for the Travel Agencies suggests a size standard at or below the $6 million nonmanufacturing anchor size standard. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into an industry have greater financial requirements than firms do in other industries, SBA is justified in considering a higher size standard. SBA collected start-up costs data from trade organizations. In addition, SBA is using a proxy measure to assess the financial burden for entry-level firms. SBA is using nonpayroll costs per establishment as a proxy measure for start-up costs. This is derived by first calculating the percent of receipts in an industry that are either retained or expended on costs other than payroll costs. (The figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs that would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. *Industry competition* is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this proposed rule, SBA compared the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the ''four-firm concentration ratio''—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, SBA tends to set a size standard relatively higher than the anchor size standard to assist firms in a broader size range compete with firms that are larger and more dominant in the industry. In general, however, SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. *Competition for Federal procurements and SBA Financial Assistance.* SBA also evaluates the possible impact of a size standard on its programs to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining those loans is assessed to determine whether the current size standard may restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially, if it is already above the anchor size standard) may not be appropriate.

Evaluation of Industry Size Standard: The two tables below show the characteristics for Travel Agencies activities and of a comparison group. The primary comparison group is comprised of all industries with a $6 million receipt-based size standard (referred to as the nonmanufacturing anchor group). Since SBA's size standards analysis is assessing whether the Travel Agencies size standards should be higher as compared to the nonmanufacturing anchor size standard, this is the most logical set of industries to group together for the industry analysis. SBA examined economic data on these industries from the 1997 Economic Census prepared under contract by the U. S. Bureau of the Census. SBA also examined Federal contract award data for fiscal years 1998–2000 from the U. S. General Services Administration's (GSA) Federal Procurement Data Center, and GSA's award data and information on its Travel Management Centers.

Industry Structure Consideration: Table 1 below examines the size distribution of Travel Agencies. For this factor, SBA is evaluating the size of firms that account for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific size that, along with smaller firms, account for a

specific percentage of total industry receipts. For example, Travel Agencies with $900 thousand or less in receipts obtained 40% of total industry receipts. Within the nonmanufacturing anchor group, firms of $3.2 million or less in receipts obtained 40% of total industry receipts in the average industry.

TABLE 1.—SIZE DISTRIBUTIONS OF FIRMS OF TRAVEL AGENCIES

[Data in millions of dollars]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
Travel Agencies	$0.9	$2.2	$5.8	$27.1
Nonmanufacturing Anchor Group	3.2	5.8	11.9	28.0

These data show the prevalence of much smaller businesses in the Travel Agencies industry than for businesses in the nonmanufacturer anchor comparison group. Travel agencies accounting for between 40% to 60% of industry revenues are one-fourth to one-half of the size of businesses in the nonmanufacturing anchor group that capture a similar proportion of industry revenues. However, large firms at the 70% level are equivalent in size to those in the nonmanufacturer anchor group, which reflects the influence of large corporations offering travel services. The distribution of travel agencies revenues by size of business in relation to the nonmanufacturer anchor group indicate a size standard below the $6 million anchor size standard is appropriate. Also, that a size standard between $2 million to $3 million would represent a reasonable size standard for the Travel Agencies industry since these businesses capture approximately half of industry activity.

Table 2 lists the other three evaluation factors for Travel Agencies and the comparison groups. These include comparisons of average firm size, the measurement of start-up costs as measured by nonpayroll receipts per establishment, and the four-firm concentration ratio.

TABLE 2.—INDUSTRY CHARACTERISTICS OF TRAVEL AGENCIES

Category	Average firm size		Non payroll receipts per establishment (million $)	Four firm concentration ratio (in percent)
	Receipts (millions)	Employees		
Travel Agencies	$0.44	8.1	$0.188	16.3
Nonmanufacturing Anchor Group	0.95	10.6	0.562	14.4

For Travel Agencies, the average firm size in receipts is lower than the nonmanufacturing anchor group's size. However, the average number of employees is about the same as the nonmanufacturer anchor group size. Based on this factor, a size standard of $2.5 to $3.5 million, or approximately half the nonmanufacturer anchor size standard, is supportable.

Nonpayroll receipts per establishment, a measure of capital requirements to enter an industry, comparatively, are much lower (a three-to-one ratio) for Travel Agencies as those of the nonmanufacturer anchor group. These data do not support a basis for a higher size standard. However, SBA collected additional information on start up cost from the Society of Government Travel Professionals (SGTP). SBA's research has found that for travel agencies involved in arranging travel services for large corporate clients and the Federal Government, start-up costs are higher as compared with the firms leisure travel services. Corporate clients and the Federal government require firms to have dedicated equipment, secure lines, and access to two or more airline ticketing reservation services. The Federal Government and the corporate world insist on seamless travel management and back-end systems. Firms must be able to link to corporate and Federal travel systems that links customer, travel agent, billing systems, credit card reconciliation systems, provide 24 hour and seven days a week service centers; train government and contractor personnel; and provide quality control and inspection plans. Start-up costs for these requirements amount up to $160,000 to $200,000 on an average contract of approximately $8.5 million in travel bookings. These clients also require that travel agencies prepare periodic reports on their travel activities. This reporting responsibility requires travel agencies to utilize management information systems to monitor their clients and represents a service activity beyond the arrangement of travel and related accommodations. Therefore, higher start-up costs associated with serving Federal and corporate clients support an increase in the size standard for the Travel Agencies industry of at least twice the current size standard. SBA welcomes public comment on start-up costs for Travel Agencies, in particular, how these costs are relevant to corporate and Federal government contracts. Comments supporting these costs should include information and costs associated with what type of specialized equipment, bonding, management information systems, security and training requirements are needed for corporate and Federal government clients, along with any other relevant requirements and information.

The Travel Agencies four-firm concentration ratio, however, is relatively low, indicating that the industry is not dominated by large businesses. This factor does not support a basis for a higher size standard for Travel Agencies.

SBA Program Considerations: SBA also reviews its size standards in relationship to its programs. This proposed rule gives more consideration to the pattern of Federal contract awards than to the level of financial assistance to small businesses to assess whether its size standard should be revised.

In fiscal year 2000, 45 loans for $4.5 million were guaranteed to Travel Agencies, with 78% of these loans going to firms with less than $545,000 in receipts. It's unlikely that an increase to

the size standard will have much impact on the financial programs and, consequently, this factor is not part of the assessment of the size standard.

The Federal government spends approximately $7 billion on official travel per year. In addition, the Department of Defense awards contracts for leisure travel services, which are worth $5 billion per year (as reported to the House of Representatives, Small Business Committee on November 4, 1999 by the Society of Travel Agents in Government (STAG)). Federal Procurement Data System (FPDS) statistics for the fiscal years 1998 through 2000 show that awards to small businesses averaged less than 1% of the total dollars awarded for Travel Agencies Services. For Fiscal Year 2000, $206,000 out of $25 million was reportedly awarded to small businesses. However, Federal travel services are procured mostly through the General Services Administration's (GSA) Travel Management Centers (TMCs) and the Defense Travel System. Awards made through these contract vehicles are on a transaction fee basis and all travel costs that are purchased with a government credit card, are not recorded in the FPDS. In fiscal year 2002, the Department of Defense (DoD) hopes to set aside six of its 24 contracts to small business. Currently, GSA has awarded contracts to 49 firms for TMCs of which 20 firms are small businesses. Out of the 20 firms, 17 have task orders. GSA also provided SBA with its estimate for the fiscal year 2001 tickets, sales, revenues, and fees received by its TMCs.

TABLE 3.—GSA TMC SMALL BUSINESS CONTRACTOR'S SALES REVENUE

	Number of Tickets	Sales ($)	Commissions	Transaction fees	Total revenue
Total TMCs	1,292,917	$518,966,320	$24,423,055	$12,630,279	$33,647,038
Percent of total to small business TMCs	3.8	3.5	3.4	6.7	3.5

These statistics reveal that small business, despite the fact that they are awarded 41% of the number of contracts, receive very little of the ticket orders, commissions, fees, and revenues. These statistics also support the Federal contracting officers concerns that the pool of small businesses capable of submitting viable proposals for their travel service contracts is dwindling because of the sophistication and significant investments required of these firms. New procurements for travel management services require firms provide automation of the travel arrangements process through the use of on-line booking products; 24 hour and seven days a week service centers; interfaces with an agency's finance system; complex travel management information systems; secure or dedicated lines that meet privacy and security requirements; training for government and contractor personnel; compliance costs; and quality control and inspection plans. As mentioned earlier, the SGTP estimates these start-up costs to be $200,000 on an average contract of $8.5 million in travel bookings.

The FPDS statistics, plus other contract factors such as large start-up costs to implement a Federal travel service contract and the declining pool of small businesses submitting proposals suggest that a size standard significantly higher than $1 million may be appropriate for Travel Agencies.

Overview: Based on the analysis of each evaluation factor, SBA is proposing a $3 million size standard. Four out of the five factors support an increase to the $3 million size standard for Travel Agencies. Two factors support a size standard approximately half of the nonmanufacturer anchor size standard—average firm size and distribution of travel agencies. Two factors support an increase at least twice the current $1 million. Start-up costs, especially for those firms that have corporate and Federal clients, have higher costs due to client requirements than for travel agencies offering primarily leisure travel. Travel agencies providing services to corporate and government clients tend to be larger in size than travel agencies offering leisure travel in order to finance needed investment in the equipment and personnel. Procurement statistics, increasingly sophisticated procurement requirements, and higher contract start-up costs have lead to the decline in the pool of viable small businesses that have the ability to compete on travel service contracts, as evidenced by the extremely low small business percentages for tickets, sales, commissions, fees, and total revenues. A size standard at least twice the nonmanufacturer size standard will increase the pool of small businesses that can meet the government's requirements.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation and (3) within detailed definitions or size standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a proposed size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at the proposed or final size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standards for Travel Agencies would be of a sufficient size to dominate its field of operation. For Travel Agencies, a firm $3 million in size would generate an estimated .01% of the total industry receipts. This level of market share effectively precludes any ability for a firm at or below the proposed size standard to exert a controlling effect on these industries.

Alternative Size Standards: SBA considered doubling the Travel Agencies size standard from $1 million to $2 million, but believed that this level would not fully capture the small business segment of the Travel Agencies industry. A survey of Travel Agencies showed that those with $1 million and less in revenues have declined by more than one-third while Travel Agencies with more than $2 million have almost doubled. This fact indicates that Travel Agencies have needed to expand their operations to remain competitive. In addition, SBA is very concerned about the capabilities of smaller Travel Agencies to satisfy the requirements of government and corporate clients. The initial capital resources and recurring costs to obtain and maintain travel systems and to provide other travel related services also suggest a size standard greater than $2 million. These trends are reflected in the analysis of Travel Agencies' industry data. Two factors, distribution for receipts by firm size and average firm size, supported size standards of at least $2 million and

as high as $3 million to $3.5 million. These considerations, along with the uncertainties with regard to compensation for travel services and the expanding use of internet technology for travel reservations, convinced SBA that a size standard higher than $2 million should be considered.

SBA also contemplated as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors shows that the characteristics Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed above, SBA believes the characteristics of Travel Agencies support a size standard higher than the $1 million but lower than anchor the nonmanufacturing size standard.

SBA welcomes public comments on its proposed size standard for the Travel Agencies industry. Comments supporting an alternative to the proposal, including the option of retaining the size standard at $1 million, should explain why the alternative would be preferable to the proposed size standard, how it would impact current small businesses, and how it would effectively assist small businesses. SBA also welcomes comments and additional information on start-up costs of travel agencies serving corporate and government clients.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).

The Office of Management and Budget (OMB) has determined that the proposed rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of this rule explains the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for Travel Agencies is needed to better define small businesses in this industry.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 723 additional firms may obtain small business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. In researching the Travel Agencies industry, SBA contacted representatives of the GSA and the DoD. These two agencies account for the largest proportion of Federal contracting for travel services. However, in cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would affect three groups. First, businesses that benefit by gaining small business status from the proposed size standards and use small business assistance programs. Second, growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the proposed size standards. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $450,000 in new Federal loan guarantees could be made to these newly defined small businesses. This represents 10% of the $4.5 million in loans that were guaranteed by the SBA under this financial program to Travel Agencies in FY 2000. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in only a small increase in small business guaranteed loans to Travel Agencies, and the $450,000 estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $347 million in sales out of approximately $9 billion in total Federal travel expenditures under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. Since most of these travel dollars will pass through to airlines, hotels, and automobile rental companies, SBA estimates actual revenues to Travel Agencies will range between $25 million and $42 million (7% to 12% of the estimated $347 million in sales). This also represents approximately $36 million of additional Federal contracts that may be awarded to businesses becoming newly designated small businesses. These estimates reflect a 10% increase in the awards to small businesses that the Federal government expends for travel services.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open

procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 732 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business SBA's procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set-aside for small businesses or reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set-aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUZone or small disadvantaged businesses instead of large businesses since those two categories of small business are eligible for price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set-aside for all small businesses. The number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government would limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for Travel Agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. As described above in the Regulatory Impact Analysis, this rule may impact small entities in two ways. First, small businesses in the Travel Agencies industry competing for Federal Government procurements reserved for small business, and small disadvantaged businesses and HUBZone businesses eligible for price adjustment, may face greater competition from newly eligible small businesses. Second, additional Federal procurements for Travel Agencies may be set-aside for small business as the pool of eligible small businesses expands.

The proposed size standard may affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. For this particular proposed rule, SBA did consult with GSA and DoD regarding a possible increase to the Travel Agencies size standard. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the proposed rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

(1) What Is the Need for and Objective of the Rule?

The revision to the size standards NAICS code 561510 more appropriately defines the size of businesses in these industries that SBA believes should be eligible for Federal small business assistance programs. A review of the latest available industry data supports a change to the size standard.

(2) What is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Travel Agencies industry, 21,496 out of 22,687 businesses are small. Only a small proportion of businesses in this industry utilizes SBA programs. In SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 166 Travel Agencies are currently registered. In fiscal year 2000, 54 small business Travel Agencies

received 7(a) or 504 guaranteed loans. Thus, the likely impact of this rule would be limited to 732 small businesses, based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. The following table shows these data for the Travel Agencies Industry.

TRAVEL AGENCIES INDUSTRY DATA

Category	Travel agencies
Total businesses	22,687
Small businesses	21,946
Small businesses registered in PRO-Net	166
Small businesses with 7(a) loans	54

SBA estimates 732 additional businesses out of 22,687 firms in the Travel Agencies activity would be considered small as a result of this rule, if adopted. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Businesses becoming eligible for SBA assistance as a result of this rule, if finalized, cumulatively generate approximately $1.0 billion out of a total of $10 billion in revenues. The small business coverage in the Travel Agencies would increase by 10% of total receipts.

(3) What are the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Rule and an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements?

A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(4) What are the Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule?

This proposed rule overlaps other Federal rules that use SBA's size standards to define a small business. Under section 632(a)(2)(C) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA's size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs.

(5) What Alternatives Will Allow the Agency to Accomplish its Regulatory Objectives While Minimizing the Impact on Small Entities?

SBA considered as an alternative size standard adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the description of SBA's size standards methodology, SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless the industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of Travel Agencies are significantly below those of the nonmanufacturing anchor group industries. Thus, a size standard below the anchor size standard is appropriate for this industry. As discussed, above, SBA believes the Travel Agencies characteristics support a size standard higher than the $1 million but lower than the nonmanufacturing size standard.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, the SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For reasons set forth in the preamble, SBA proposes to amend part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. In § 121.201, the table ''Small Business Size Standards by NAICS Industry'', under the heading NAICS Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * * * * * *		
Subsector 561—Administrative and Support Services		

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS Codes	Description (N.E.C.=Not Elsewhere Classified)	Size standards in number of employees or million of dollars
* * *	* * *	*
561510	Travel Agencies	[10] $3
* * *	* * *	*

Footnotes

* * * * * * *

10. NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: March 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–6195 Filed 3–14–02; 8:45 am]

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