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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–053–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding nine counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: This interim rule is effective June 20, 2002. We will consider all comments that we receive on or before August 19, 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. 02–053–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–053–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–053–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Jones, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45–3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45–3(a) by adding nine counties in Wisconsin to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the State of Wisconsin, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Columbia, Florence, Forest, Green Lake, Jefferson, Langlade, Portage, Rock, and Wood Counties, WI. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.45–3, paragraph (a), the entry for Wisconsin is amended by adding new counties in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * * * *

Wisconsin

* * * * *

Columbia County. The entire county.

* * * * *

Florence County. The entire county.

* * * * *

Forest County. The entire county.

Green Lake County. The entire county.

Jefferson County. The entire county.

* * * * *

Langlade County. The entire county.

* * * * *

Portage County. The entire county.

* * * * *

Rock County. The entire county.

* * * * *

Wood County. The entire county.

Done in Washington, DC, this 14th day of June 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15587 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–080 2]

Citrus Canker; Packing in the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that allowed citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The interim rule provided that citrus fruit produced outside the quarantined areas, if moved into a quarantined area for packing, must be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area. The interim rule was necessary in order to relieve unnecessary restrictions on regulated fruit originating outside a quarantined area but packed within a quarantined area.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective October 29, 1999, and published in the **Federal Register** on November 4, 1999 (64 FR 60088–60092, Docket No. 99–080–1), we amended the regulations in ''Subpart Citrus Canker'' (7 CFR 301.75 through 301.75–16, referred to below as the regulations) to allow citrus fruit produced outside the quarantined areas to be moved into a quarantined area for packing and then moved from that quarantined area to any destination in the United States, including commercial citrus-producing areas. The interim rule provided that citrus fruit produced outside the quarantined areas, if moved into a quarantined area for packing, must be moved and handled according to specific conditions designed to prevent the artificial spread of citrus canker, including conditions to prevent its commingling with, and possible contamination by, citrus fruit produced within a quarantined area.

We solicited comments on the interim rule for 60 days ending on January 3, 2000. We received three comments by that date. They were from State agricultural agencies and a citrus industry organization. While two of the commenters supported the provisions of the interim rule, all three commenters expressed specific concerns. These are addressed below.

Current Detection and Quarantine Programs

All three commenters expressed concern that the description of quarantined areas in § 301.75–4 of the regulations was not current and did not, therefore, reflect all the areas in which citrus canker has been detected in Florida. This, the commenters stated, could result in the continuing spread of citrus canker due to the lack of restrictions on the movement of regulated articles from areas affected with citrus canker but not under Federal quarantine.

Despite close monitoring by Animal and Plant Health Inspection Service (APHIS) inspectors and frequent updates to the citrus canker regulations, unavoidable delays in the Federal rulemaking process occasionally result

in a lag between the detection of citrus canker in specific areas and the addition of those areas to the list of quarantined areas in § 301.75–4(a). While there may be some delay in listing specific areas in the regulations, paragraph (b) of § 301.75–4 does provide that the Administrator may designate any non-quarantined area as a quarantined area upon giving written notice of this designation to the owner or persons in possession of the non-quarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with the regulations. Given that the movement restrictions and other requirements of the regulations apply to growers, packers, and other regulated entities as soon as APHIS provides them with written notice, which we do following the detection of citrus canker in a new area, we do not believe that the delay between detection of the disease in a new area and that area's inclusion in the list of quarantined areas in the regulations detracts from the effectiveness of our regulatory program.

Monitoring for Compliance and Penalties for Noncompliance

All three commenters asked that we specify how we will ensure compliance with the provisions of the interim rule and explain what penalties there will be for noncompliance. One of the commenters suggested that provisions for ensuring compliance be incorporated into the regulations and that the penalties for noncompliance be specified.

The interim rule provides that regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be subsequently moved out of the quarantined area only if, in addition to other conditions provided in § 301.75–8(b), the regulated fruit is accompanied by a limited permit or a certificate issued in accordance with § 301.75–12. The regulations define a limited permit as an official document of the U.S. Department of Agriculture (USDA) authorizing the interstate movement of a regulated article from a quarantined area, but restricting the areas of the United States into which the regulated article may be moved. A certificate is an official document of the USDA authorizing the interstate movement of a regulated article from a quarantined area into any area of the United States. Under § 301.75–12, certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement. A compliance agreement is a written agreement between APHIS and a person engaged in the business of growing or handling regulated articles for interstate movement, in which the person pledges to comply with the regulations. If our inspectors have reason to believe there is not adequate compliance, we can refuse to issue the certificates and limited permits necessary for the movement of fruit. Additionally, the regulations provide that a certificate or limited permit may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of the regulations have not been met. Similarly, any compliance agreement may be canceled by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with the regulations.

Packing plants inside a quarantined area that pack fruit produced in nonquarantined areas must maintain certain conditions, which include meeting specific cleaning, disinfection, and handling requirements, in addition to segregating fruit within the packing plant—i.e., keeping regulated fruit produced outside the quarantined areas physically separated from regulated fruit produced within quarantined areas. APHIS and the State of Florida monitor packing plants with frequent site visits to ensure that these conditions are being met. Certificates, limited permits, and compliance agreements may be suspended or withdrawn in cases where there is a pattern of noncompliance. While the Plant Protection Act (PPA) provides civil and criminal penalties for violations of the regulations, we believe that canceling or suspending compliance agreements is by itself an effective penalty. Without a compliance agreement, a packer would need to call an inspector every time he or she wanted to move fruit, which could delay the movement of fruit from the packing plant. Given that APHIS and the State of Florida routinely visit packing plants to assess compliance, and given that the regulations and the PPA provide us with several options for responding to incidents of noncompliance, we believe no changes to the interim rule are necessary.

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

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 60088–60092 on November 4, 1999.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3. Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 14th day of June 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15584 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV02–955–1 IFR]

Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the reporting and assessment requirements under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia, and is administered locally by the Vidalia Onion Committee (Committee). This rule changes the provisions requiring handlers to file shipment reports from monthly reporting to weekly reporting and expands the information collected. It also changes when assessments are due and how delinquent assessments are handled. This rule will provide the industry with more accurate and timely shipment and supply and facilitate the collection of assessments.

DATES: Effective July 1, 2002; comments received by August 19, 2002, will be considered prior to issuance of a final rule. Pursuant to the Paperwork

Reduction Act, comments on the information collection burden must be received by August 19, 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.* 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: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884–1671; 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 and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, 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, 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 rule revises the reporting and assessment requirements prescribed under the order. This rule changes the provisions requiring monthly shipment reporting to weekly reporting. It also changes when assessments are due and how delinquent assessments are handled. This rule will provide the industry with more accurate and timely shipment and supply information and facilitate assessment collection. The Committee unanimously recommended these changes at a meeting held on December 6, 2001.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Prior to this action, handlers were required to file monthly reports including the name and address of the handler, the period covered in the report, the total Vidalia onions received by the handler, and the handler's total fresh market shipments.

Section 955.42 provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer the order. Section 955.42(f) provides the authority to impose a late payment charge or an interest charge or both, on any handler who fails to pay assessments in a timely manner and the authority to establish the time and rate of such charges. Section 955.142 of the rules and regulations outlines the procedures for applying interest charges to delinquent assessments.

This rule revises § 955.101 so that it requires handlers to file shipping reports on a weekly basis rather than monthly and increases the information collected. This rule also revises § 955.142, specifying when assessments are due and adjusting the way interest is applied to delinquent assessments.

Prior to this rule, § 955.101 required handlers to provide the Committee with information regarding the volume of Vidalia onions they received and shipped during each month of the shipping season. The shipping reports were to be filed no later than seven days after the end of each shipping month. The Committee provided a form to assist handlers with supplying the required shipping information. The main fresh shipping season for Vidalia onions generally runs from April through June. However, over the past 10 years, the industry has developed and refined Controlled Atmosphere (CA) storage, allowing Vidalia onions to be shipped throughout the year.

When the reporting requirement was originally implemented following the promulgation of the order in 1990, the Committee believed the best method for obtaining shipment data was by requiring handlers to report their volume of fresh market shipments at the end of each week. However, after the order had been in operation for a few seasons, the Committee found that many handlers considered weekly reporting too cumbersome. In the early 1990's, many Vidalia onion growers and handlers were small family operations. These operations did not pack large quantities or only packed for a limited time. Assessments owed were relatively small, and the industry found weekly reporting unnecessary and burdensome. Consequently, the Committee recommended a change to monthly reporting in 1993 (January 13, 1994, 59 FR 1896).

In the early years of the order, if a handler missed a report and owed assessments for a short period of time, it did not create a significant problem. The entities were small and the volumes shipped and the assessment amounts owed were often minimal. However, the Vidalia onion industry has grown from approximately 3,700 acres in 1989, to approximately 15,000 acres in 2001, producing a much larger volume of Vidalia onions. With advances in farming technology and changes in farm size, many smaller entities became part of larger enterprises or sell their onions to large handling operations rather than handle the onions themselves. These large operations can pack a considerable volume of Vidalia onions in a short amount of time. Under monthly reporting, the volumes shipped and assessments owed by a single handler can now be significant.

The Committee uses the information in the shipment reports to improve

decision-making and program administration with regards to marketing research, market development, and promotional activities. The more accurate the information obtained from handlers, the more precise the Committee can be in adjusting its marketing research and promotion efforts. The shipment information is also provided to the industry on a composite basis to aid growers and handlers in planning their individual operations and in making marketing decisions during the season.

The reports are also used by the Committee to calculate the assessments owed by each handler. These reports are the Committee's best source for industry shipping data. Because these reports are so closely tied to industry information and assessment collection, it is imperative that the reports be both timely and accurate. Timely reports translate into information that is more exact and current and helps expedite the collection of assessments. However, the Committee has been experiencing problems receiving timely reports from some handlers. With handling operations increasing in size, delays in receiving reports are magnifying the industry's information and assessment collection problems because of the volume shipped and assessments owed.

With handlers failing to file reports in a timely manner, the composite reports the Committee issues on this shipping data are compromised. Delayed reporting has made available industry information inaccurate. In some years, the Committee has not had accurate monthly pack-out figures until the end of the season. Consequently, Committee reports based on this data has limited value to the industry. In addition, in this time of rapidly changing markets, monthly reports offer handlers little insight into current market conditions. Because of these things, there is no reliable information regarding the amount of Vidalia onions in the current channels of commerce. Without good information regarding the supply of Vidalia onions available in the market, the pipelines become full, driving down prices.

Delayed reporting has also effected assessment collection. The Committee needs accurate and timely reporting to calculate and collect assessments due. Late reporting can lead to late assessment payments and corresponding interest charges on these late payments. If the handler has a small operation, this problem has little impact on the overall Committee budget. However, with the size of handler operations increasing, a larger handler can affect the Committee's cash flow and budget by falling behind in its reporting and with the corresponding assessment payments. This could force the Committee to delay, reduce, or eliminate projects due to lack of financial resources. The Committee does have the authority to go to lending institutions for operating capital, but would prefer not to incur debt or the accompanying interest expense. Thus, it is important that reports and assessments be forwarded in a timely manner.

To address these problems, the Committee voted unanimously to change the reporting requirement from monthly reporting to weekly reporting. Under this change, the shipping week is defined as Monday through Sunday. Reports for each shipping week are due no later than 4:00 p.m. on Tuesday of the following week. Handlers are required to file reports for each season, with each new season beginning January 1. Handlers begin reporting the first week of the season in which they have shipments. In weeks when no shipments are made the handler is still required to file a report indicating that they had zero shipments. This continues until the handler files a final report for the season. The reporting form provided by the Committee has a space for the handler to indicate when they are filing their final report.

The Committee believes this change will reduce the problems with late reporting and delinquent assessments. This change gives Committee staff an earlier indication of potential problems. By identifying these potential problems sooner, the Committee staff can address them in a shorter period than under the monthly reporting requirement and before the volumes and assessments due grow to significant amounts.

Weekly reporting compresses the reporting window and helps accelerate the compliance process. Identifying handlers that are not reporting can now be measured in weeks rather than months. With weekly reporting, the Committee's compliance officer will have a better indication of which operating handlers are filing timely reports and concentrate compliance efforts on non-reporting handlers. A quicker response to potential compliance problems should help reduce reporting delays. Therefore, this change will improve industry reporting and help the Committee staff more accurately track industry shipments.

The Committee believes weekly reporting will also improve the accuracy and benefits of their composite reports. Handlers will receive more accurate information regarding industry shipments and in a timelier manner. With a shipping week of Monday through Sunday, handlers will be required to file reports no later than 4 p.m. on Tuesday following the week shipments were made. The Committee will assemble composite reports by Wednesday and distribute them to handlers. Consequently, handlers will have information on shipments and the supply of onions on the market on a timelier basis.

Having weekly shipping data provides a clearer picture of market conditions and affords better information regarding the balance of supply and demand. This is expected to help handlers better address market swings, reduce market gluts, and increase grower returns.

Because reporting and assessments are tied closely, the Committee believes this change will also help expedite the collection of assessments. Reducing the volume of delayed reporting will provide the Committee with better, timelier information on which to determine assessments due. As with the filing of reports, the Committee staff will have an earlier indication under weekly reporting of those handlers that are not paying their assessments in a timely manner. Again, the earlier a problem can be identified, the quicker it can be addressed and compliance and collection efforts can be started.

Timely reports are important for both accurate reports and assessment collection. Therefore, the Committee recommended that the shipment reporting requirement in § 955.101 be changed from monthly reporting to weekly reporting. This increases the handler reporting from 27 hours to 136 hours. The 109 hour increase results from the increase in handler reporting frequency from the current 3 responses to 15 responses per handler at 5 minutes per response. The total burden of 136 hours is calculated by multiplying the number of handlers (109) by the number of minutes per response (5 minutes) by the number of responses per handler (15 responses).

In addition, this rule revises § 955.101 to add information currently being reported by handlers but not specified in the provisions. Under the revised provisions, handlers will report their name and address, the period covered by the report, the total onions received by the handler, the total fresh market onions shipped, as well as the amount of shipments from their own acreage, their total assessments due, the amount of onions sold, the volume of onions packed under contract for another handler and the handler name(s), onions sold to another handler, and information on onions placed in Controlled Atmosphere storage. These

provision changes do not affect the handler reporting burden.

This rule also revises the rules and regulations regarding the handling of delinquent assessments. Section 955.142 had stated that each handler must pay interest charges of 1 percent per month on any unpaid assessments levied, and on any accrued unpaid interest beginning thirty days after the date of billing, until the delinquent handler's assessment plus applicable interest had been paid in full. This rule changes this section by specifying when assessments are due from handlers and by adjusting the way interest is applied to delinquent assessments.

Under the current requirements, a handler reported shipments at the end of each month. The handler could then request to be billed for the assessments due on those shipments reported. The handler could further delay payment by holding the bill until the Committee sent a follow-up letter. This has created budgeting problems and angered those handlers paying on time.

To make the collection of assessments easier, timelier, and more cost-effective, the Committee voted to revise § 955.142 by making assessments due at the time when the handler's shipping volume is required to be reported. With the change to weekly reporting, assessments will be paid on a weekly basis for each week of shipments. Assessments are now due no later than 4:00 p.m. on Tuesday for those shipments made the previous week (Monday through Sunday). The option to request billing for assessments will no longer be available.

This change makes it easier to collect assessments. It is no longer necessary to keep track of who has paid, and who needs to be billed. Each handler's assessments are collected the same way and are due at the same time. With this change, the Committee also receives its money in a timelier manner. Rather than having to submit a bill and wait for payment, payment is due immediately on the date when the weekly shipments are required to be reported. This change also saves the Committee money by reducing mailing costs associated with having to bill handlers for assessments.

This change also improves the Committee's cash flow. Rather than lump sum payments at the end of the season or large monthly collections, assessment income will be received each week of the shipping season.

Therefore, the Committee voted that § 955.142 be changed so assessments are due not later than 4 p.m. on the Tuesday immediately following the week in which the shipments were made, at the same time weekly reports are due.

Finally, this rule further revises § 955.142 by adjusting the way interest charges are applied to delinquent assessments. Previously, § 955.142 specified that handlers must pay interest of 1 percent per month on any unpaid assessments and on any accrued unpaid interest beginning thirty days after the date of billing. The Committee recommended changing this language so that interest accrues at 1 percent per week on any unpaid assessments and any accrued unpaid interest beginning with the day the assessments were due until the delinquent handler's assessment plus applicable interest has been paid in full. Consequently, interest will begin accruing on delinquent assessments on the Wednesday immediately following the Tuesday when the assessments were due.

The Committee also voted to increase the interest charged to encourage handlers to pay on time. In the past, some handlers have waited until the end of the season to pay their assessments, in a way, forcing the Committee to basically loan them the assessment money.

This change provides more incentive for handlers to pay in a timely manner. The additional interest charge also will help compensate the Committee for the extra effort and expenditures required to collect the late assessments. This change is expected to improve assessment collection, provide more timely payments, reduce compliance costs, and reduce the need for the Committee to borrow operating funds.

The Committee has been looking for ways to improve the timeliness of reports and the payment of assessments. The Committee believes these changes help address these issues.

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 133 producers of Vidalia onions in the production area and approximately 109 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, which include handlers, are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2001 season was $13.75 per 50-pound bag. Total Vidalia onions shipments for the 2001 season were around 3,592,200 50-pound bags. Using available data, about 97 percent of Vidalia onion handlers could be considered small businesses under the SBA definition. In addition, based on acreage, production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is below $750,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Vidalia onions may be classified as small entities.

The Committee has not been receiving timely reports from some handlers. With handling operations increasing in size, this has had a negative impact on both industry information and assessment collection because the quantities shipped and assessments owed by some delinquent handlers is significant. This rule revises § 955.101 to require handlers to file shipping reports on a weekly basis rather than monthly and increases the information requested. This rule also revises § 955.142, specifying when assessments are due and adjusting the way interest is applied to delinquent assessments. By identifying problems sooner, they can be addressed in a shorter period than under monthly reporting and before the volumes and assessments due grow to significant amounts. This rule also encourages handlers to report and pay their required assessments in a timely manner to avoid increased interest charges and other compliance activities. These changes will help reduce the problems with late reporting and assessment collection and provide more accurate information on shipments and supply. Authority for these actions is provided in §§ 955.42 and 955.60 of the order. The Committee unanimously recommended these changes at a December 6, 2001, meeting.

Requiring handlers to file shipping reports on a weekly basis imposes an additional reporting burden on both small and large handlers. Total

reporting requirements per handler for monthly reporting totaled 15 minutes per handler (5 minutes per response times three responses per handler annually). This resulted in a total annual burden of about 27 hours (5 minutes per response times 3 responses times 109 handlers). Requiring handlers to report weekly, increases the annual burden by 1.25 hours per handler, for a total burden of 136 hours (5 minutes per response times 15 responses per handler times 109 handlers). Thus, the total annual burden for handlers is increased by 109 hours (136 total burden hours minus 27 total burden hours). Although this action places an additional burden on handlers of Vidalia onions, the benefits of having the additional and timely information regarding onion shipments is expected to outweigh the increase in reporting burden.

With weekly reporting, the Committee will have more accurate and timely information regarding industry shipments. Having this information and the resulting reports will help both the Committee and the industry make better decisions. Because the additional reporting will be required from all handlers regardless of size, the increased burden will be equitably distributed to all handlers.

This rule offers the potential for cost savings. Under this change, the Committee and the industry will have access to more current information. The Committee will be able to use this data when considering marketing research and promotion funding and activities. The industry can use the information to improve marketing decisions. Having access to information that is more current should help the industry balance supply with demand, thus reducing periods of oversupply and price variations. Even the slightest increase in price would more than compensate for any costs related to these changes.

These changes also are expected to reduce assessment collection costs for the Committee. By removing the option to be billed for assessments, the Committee is saving both employee time and postage. This rule may also lower compliance costs for the Committee. By reducing the number of handlers that are reporting late, the Committee will cut costs associated with identifying these handlers. This should decrease the overall number of compliance cases.

In addition, increasing the interest applied to late assessments will help curtail the volume of delinquent assessments. Such a reduction also will ease staff and mailing costs directed toward collecting past due assessments.

This rule will have a positive impact on affected entities. The changes were recommended to improve available industry information, facilitate assessment collection, and to reduce costs. The availability of more timely and accurate industry information will benefit both large and small handling operations. The changes this rule makes in terms of assessment collection mean that all handlers will be assessed the same way, with their assessments due at the same time. The reduction in Committee costs is also expected to benefit all handlers regardless of their size. Consequently, the opportunities in benefits of this rule are expected to be equally available to all.

An alternative to the actions recommended by the Committee was considered prior to making the final recommendations. The alternative considered was implementing a mandatory inspection program under the marketing order. However, the Committee recognized this alternative would require amending the order and take further time to implement. While not ruling out this alternative in terms of future action, the Committee believed the recommended actions give them a more timely solution while they consider other alternatives.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. 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 Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 6, 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 these actions 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.

This action requires an additional collection of information. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that AMS has received emergency approval for a new information collection request for Vidalia Onions Grown in Georgia, Marketing Order No. 955. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. This collection will be merged with the forms currently approved for use under OMB No. 0581–0178 ''Vegetable and Specialty Crops'', and will replace the existing FV–181 ''Vidalia Onion Handler Report Form''.

Title: Vidalia Onions Grown in Georgia, Marketing Order No. 955.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Vidalia onion marketing order program, which has been operating since 1990.

On December 6, 2001, the Committee unanimously recommended revising the order's administrative rules and regulations to require handlers to report to the Committee information on Vidalia onion shipments on a weekly rather than monthly basis. This information will be reported on a *Form FV–181, Vidalia Onion Handler Report Form.* This report is used by handlers to inform the Committee of their weekly receipts and shipments of onions during the season, assessments due, and other information. The estimated increase in burden due to the increased reporting frequency is one hour per handler, with a total increased burden estimated at 109 hours.

The weekly reports are needed so the Committee can collect information on Vidalia onion shipments on a weekly basis during the season. The Committee will evaluate this information and determine whether a handler is in compliance with order regulations. These reports will ensure compliance with the regulations and assist the Committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

The request for approval of the revised information collection under the order is as follows:

Form FV–181, Vidalia Onion Handler Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Handlers who acquire and/or ship Vidalia onions during the season.

Estimated Number of Respondents: 109.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 136 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Vidalia onion marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS has obtained emergency approval from OMB for the use of the revised form for the season. This collection will be merged with the forms currently approved for use under OMB No. 0581–0178 ''Vegetable and Specialty Crops'', and will replace the existing *FV–181, Vidalia Onion Handler Report Form.* 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.

In addition to the change in the information collection burden, this rule revises the provisions requiring handlers to file shipment reports from monthly reporting to weekly reporting. It also changes when assessments are due and how delinquent assessments are handled. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule should be in place as early as possible in the current season which began April 1. Also, these issues have been widely discussed at industry meetings, and the Committee has kept the industry well informed. Further, handlers are aware of this rule, which was recommended at public meetings. Also, this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.101 and the section heading are revised to read as follows:

§ 955.101 Vidalia Onion Handler Report.

(a) Each handler shall furnish shipping reports with the Vidalia Onion Committee on a weekly basis. Such reports shall be made on forms provided by the Committee and shall include: (1) The name and address of the handler; (2) weekly period covered by the report; (3) total quantity of Vidalia onions received; (4) total fresh market shipments of Vidalia onions; (5) shipment volume coming from acreage owned by the handler; (6) total assessments owed; (7) volume of onions packed under contract for another handler and those handler names; (8) onions sold to another handler; and (9) information on onions placed in Controlled Atmosphere storage.

(b) Handlers shall file reports each fiscal period beginning the first week they make shipments and shall continue filing reports until they submit a final report for the season. Each such report shall be filed with the Committee not later than 4 p.m. on the Tuesday immediately following the shipping week. For the purpose of this section, the shipping week is defined as Monday through Sunday.

3. Section 955.142 is revised to read as follows:

§ 955.142 Delinquent assessments.

Each handler shall submit assessments to the Vidalia Onion Committee on a weekly basis for each week during the fiscal period in which they made shipments. Each such assessment shall be paid to the Committee not later than 4 p.m. on the Tuesday immediately following the week in which the shipments were made. Each handler shall pay interest of one percent per week on any unpaid assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the weekly assessments were due, until the delinquent handler's assessments plus applicable interest has been paid in full.

Dated: June 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–15507 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV01–981–610 REVIEW]

California Almond Marketing Order; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results of an Agricultural Marketing Service (AMS) review of Marketing Order 981, which regulates the handling of almonds grown in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based upon its review, AMS has

determined that the marketing order should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should 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.*

FOR FURTHER INFORMATION CONTACT: Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901; Fax: (202) 487–5906; E-mail: *Martin.Engeler@usda.gov;* 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; E-mail: *George.Kelhart@usda.gov.*

SUPPLEMENTARY INFORMATION: Marketing Order No. 981, as amended (7 CFR Part 981), regulates the handling of almonds grown in California. The marketing order is authorized under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674).

Marketing Order 981, originally established in 1950, authorizes research and promotion activities, quality control, volume control, mandatory inspection, and reporting requirements. The marketing order establishes the Almond Board of California (Board), consisting of five producers and five handlers and their respective alternates. Currently, four of the members represent cooperative marketing associations and six represent independents (those not affiliated with a cooperative). Eight of the members and alternates serve staggered, three-year terms of office. Two members (one grower and one handler) serve one-year terms. These two positions are represented by the group (cooperative or independent) that accounted for over fifty percent of the production in the preceding year. Independent producer members are nominated by independent producers, and independent handlers members are nominated by independent handlers through a mail balloting process. Cooperative representatives are nominated by the cooperative marketing organizations. The California almond industry currently consists of approximately 7,000 producers and 110 handlers.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 981, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). AMS published a notice of review and request for written comments on the California almond marketing order in the June 13, 2001, issue of the **Federal Register** (66 FR 31850). During the comment period, two written comments in support of the marketing order were received. The comments were received from the Board and an almond handler.

The AMS review was undertaken to determine whether the California almond marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

In its written comment, the Board addresses the various activities and programs administered under the order, describes benefits of the activities, and expresses support for the programs. It also summarizes the evolution of the order from its inception in 1950 to the present day.

The handler comment also expresses support for the order. It notes that the order provides a valuable product to consumers, increases the consumption of almonds, and facilitates the orderly marketing of almonds in the marketplace. The comment also notes that the order accomplishes these things without duplicating the efforts of individual handlers or engaging in activities that affect the competitive advantage of handlers in the marketplace.

The marketing order was established to help the California almond industry work with AMS to solve marketing problems that were characterized by abundant supplies and relatively low producer returns. These problems continue today and the industry needs the marketing tools available under the marketing order in overcoming these problems. The industry has undergone dramatic growth in production since the marketing order's inception. Production has increased almost 1,000 percent since the order's inception and nearly 500 percent since 1972. The marketing order has been used effectively in expanding markets and in finding new uses for almonds to absorb the increasing production.

Based on its review, AMS has determined that the marketing order should be continued without change.

Neither AMS nor the Board has received any complaints regarding Marketing Order 981 or the rules and regulations issued thereunder. In 1998, USDA conducted a continuance referendum and the marketing order was supported by nearly 90 percent of the producers who voted in the referendum. The marketing order is not unduly complex, and AMS has not identified any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the California almond marketing order.

AMS provides Federal oversight of the order and, along with the Board, monitors marketing operations on a continuing basis. AMS works with the Board to ensure that the regulations issued and production and market activities undertaken address current market and industry conditions, and that the regulations and administrative procedures implemented are appropriate for current practices within the industry. The producers and handlers of California almonds support the activities that help ensure the marketing of a high quality product in expanding markets, and believe that this order has been effectively used for these purposes.

AMS will continue to work with the California almond industry in maintaining an effective marketing order program.

Dated: June 14, 2002.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 02–15509 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–398–AD; Amendment 39–12784; AD 2002–12–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, that currently requires repetitive inspections to detect cracking on certain wing-to-fuselage frame angles; and repair, if necessary. This amendment decreases the compliance time for the initial inspection to detect cracking on certain wing-to-fuselage frame angles and decreases the interval between repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking in the wing-to-fuselage frame angles, which could result in reduced structural integrity of the airframe.

DATES: Effective July 25, 2002.

The incorporation by reference of Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of July 25, 2002.

The incorporation by reference of Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as September 7, 1999 (64 FR 41775, August 2, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–16–04, amendment 39–11239 (64 FR 41775, August 2, 1999), which is applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, was published in the **Federal Register** on February 8, 2002 (67 FR 5958). The action proposed to continue to require repetitive inspections to detect cracking on certain wing-to-fuselage frame angles, and repair, if necessary. The action also proposed to decrease the compliance time for the initial inspection to detect cracking on certain wing-to-fuselage frame angles and to decrease the interval between repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There is one airplane of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 99–16–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The new inspections that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11239 (64 FR 41775, August 2, 1999), and by adding a new airworthiness directive (AD), amendment 39–12784, to read as follows:

2002–12–12 Bombardier, Inc.: Amendment 39–12784. Docket 2000–NM–398–AD. Supersedes AD 99–16–04, Amendment 39–11239.

Applicability: Model CL–215–1A10 and CL–215–6B11 series airplanes, serial numbers 1001 through 1125 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the wing-to-fuselage frame angles, which could result in reduced structural integrity of the airframe, accomplish the following:

Restatement of Requirements of AD 99–16–04

(a) Perform an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with Bombardier Alert Service Bulletin 215-A476, Revision 3, dated August 21, 1998. Thereafter, repeat the inspection at intervals not to exceed 415 flight hours.

(1) Prior to the accumulation of 2,300 total flight hours.

(2) Within 150 flight hours or 4 months after September 7, 1999 (the effective date of AD 99–16–04, amendment 39–11239), whichever occurs first.

Note 2: Accomplishment of the eddy current inspections of the lower surfaces of the frame angles conducted in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 1, dated January 14, 1997, or Bombardier Alert Service Bulletin 215–A476, Revision 2, dated June 15, 1998, prior to the effective date of this AD, is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD for that area only.

(b) If the results of any inspection required by paragraph (a) of this AD are outside the limits specified in paragraph 2.C.(7) of Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998, or Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000: Prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA.

New Actions Required by This AD

Initial Inspection

(c) Unless paragraph (a) of this AD has been accomplished, perform an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage at the later of the times specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000.

(1) Prior to the accumulation of 2,300 total flight hours or 7,500 total water drops, whichever occurs first.

(2) Within 60 days after the effective date of this AD.

Repetitive Inspection

(d) Perform an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage, in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000, at intervals not to exceed 415 flight hours or 1,500 water drops, whichever occurs first.

Corrective Action

(e) If the results of any inspection required by paragraph (c) or (d) of this AD are outside the limits specified in paragraph 2.C.(7) of Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000: Prior to further flight, repair in accordance with a method approved by the Manager, New York ACO, FAA.

Reporting

(f) Within 10 days after performing any inspection required by paragraph (a), (c), or (d) of this AD: Report the findings, positive or negative, to Bombardier Inc., Amphibious Aircraft Division, Customer Support, Department 645, Attention: Manager of Technical Support, Fax Number (514) 855–7602. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Incorporation by Reference

(i) Except as provided by paragraphs (b) and (e) of this AD, the actions shall be done in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998; and Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000; as applicable.

(1) The incorporation by reference of Bombardier Alert Service Bulletin 215–A476, Revision 4, dated August 18, 2000, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998, was approved previously by the Director of the Federal Register as of September 7, 1999 (64 FR 41775, August 2, 1999).

(3) Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–1997–07R2, dated August 17, 2000.

Effective Date

(j) This amendment becomes effective on July 25, 2002.

Issued in Renton, Washington, on June 11, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–15242 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2001–10666; Airspace Docket No. ASD 01–ASW–12]

Revision of Jet Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Jet Route 180 (J–180) between the Daisetta, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Little Rock, AR, VORTAC by moving the route to the east over the new Sawmill, LA, VORTAC. The FAA is taking this action to enhance aviation safety and the management of the aircraft operations in the Texas area.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic

Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA is redesigning the nation's airspace to reduce the volume of air traffic operations in certain congested areas commonly referred to as ''choke-points.'' As part of this effort, the FAA believes that revising the affected segment of J–180 to reroute it over the new Sawmill, LA, VORTAC will alleviate air traffic congestion in specific ''choke-point'' areas.

Public Input

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA (66 FR 56250). No comments were received in response to the proposal.

The Rule

This amendment to 14 CFR part 71 realigns J–180 between the Daisetta, TX, VORTAC and the Little Rock, AR, VORTAC by moving the route eastward over the new Sawmill, LA, VORTAC. This action is necessary to support the national airspace redesign project and reduces air traffic congestion in identified ''choke-point'' areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–180 [Revised]

From Humble, TX; Daisetta, TX; Sawmill, LA; Little Rock, AR.

* * * * *

Issued in Washington, DC, on June 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–15600 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–12100; Airspace Docket No. 02–AGL–5]

RIN 2120–AA66

Change Using Agency to Restricted Area R–4305; Lake Superior, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the using agency for Restricted Area R–4305 Lake Superior, MN. Specifically, this action changes the using agency from ''USAF, Detachment 1, HQ Air Combat Command (DOSR), Offutt AFB, NE'' to ''USAF, 55th Wing, Offutt AFB, NE.'' This rule makes no other changes to R–4305. The FAA is issuing this amendment because the DOSR is no longer in existence.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2002, the United States Air Force (USAF) requested that the FAA take action to change the using agency of R–4305 from ''USAF, Detachment 1, HQ Air Combat Command (DOSR), Offutt AFB, NE'' to ''USAF, 55th Wing, Offutt AFB, NE.'' This change is needed because the DOSR is no longer in existence and the 55th Wing, Offutt AFB has assumed the responsibility of the using agency for R–4305.

The Rule

This amendment to 14 CFR part 73 changes the using agency of R–4305 from ''USAF, Detachment 1, HQ Air Combat Command (DOSR), Offutt AFB, NE'' to ''USAF, 55th Wing, Offutt AFB, NE.'' No other changes to R–4305 are made by this action.

Since this action simply changes the using agency for the restricted area and does not involve a change in the dimensions or operations requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.43 of part 73

was republished in FAA Order 7400.8J, dated September 20, 2001.

This regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.43 [Amended]

2. Section 73.43 is amended as follows:

* * * * *

R–4305 Lake Superior, MN [Amended]

By removing the words ''Using Agency. USAF, Detachment 1, HQ Air Combat Command (DOSR), Offutt AFB, NE'' and inserting the words ''Using Agency. USAF, 55th Wing, Offutt AFB, NE.''

* * * * *

Issued in Washington, DC, on June 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–15601 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) sunscreen drug products are generally recognized as safe and effective and not misbranded. This amendment updates the monograph to incorporate United States Pharmacopeia (U.S.P.) name changes for four active ingredients included in the monograph. This final rule is part of FDA's ongoing review of OTC drug products.

DATES: This final rule is effective September 1, 2002. Submit written or electronic comments by August 19, 2002.

ADDRESSES: Submit written or electronic 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: John D. Lipnicki, 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 May 21, 1999 (64 FR 27666), FDA issued a final monograph for OTC sunscreen drug products (21 CFR part 352). Section 352.10 of that monograph included the active ingredients menthyl anthranilate, octyl methoxycinnamate, octyl salicylate, and phenylbenzimidazole sulfonic acid.

In 2000 (Ref. 1), the U.S.P. proposed (for inclusion in the Third Supplement to U.S.P. 24) name changes for these four ingredients based on names adopted by the United States Adopted Names (USAN) Council. The new names are: Meradimate for menthyl anthranilate, octinoxate for octyl methoxycinnamate, octisalate for octyl salicylate, and ensulizole for phenylbenzimidazole sulfonic acid. These name changes became official on March 1, 2001, and were subsequently included in the U.S.P. with an effective date of September 1, 2002 (Ref. 2).

II. Naming Process

The Federal Food, Drug, and Cosmetic Act (the act) requires the label of a drug to bear the established name of the drug to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula) (21 U.S.C. 352(e)(1)(A)(i)). The established name of the drug is defined as:

> (A) the applicable official name designated pursuant to section 508 [of the Act], or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient * * *.

21 U.S.C. 352(e)(3)

Section 508 of the act (21 U.S.C. 358) authorizes FDA to designate an official name for any drug if FDA determines ''that such action is necessary or desirable in the interest of usefulness and simplicity'' (21 U.S.C. 358(a)). FDA does not, however, routinely designate official names for drug products under section 508 of the act (§ 299.4(e) (21 CFR 299.4(e))). In the absence of designation by FDA of an official name, interested persons may rely on the current compendial name as the established name (§ 299.4(e)).

III. The Technical Amendment

FDA has not designated official names for the following active ingredients: Menthyl anthranilate, octyl methoxycinnamate, octyl salicylate, and phenylbenzimidazole sulfonic acid. Thus, their established names are the current compendial names. The U.S.P. has now changed the compendial names to: Meradimate for menthyl anthranilate, octinoxate for octyl methoxycinnamate, octisalate for octyl salicylate, and ensulizole for phenylbenzimidazole sulfonic acid. To be consistent with the change in official compendial names, the agency is changing these names in § 352.10 in the

ingredient listing and in § 352.20 in the permitted combinations listing. Because the active ingredients are listed in alphabetical order in § 352.10, the ingredients listed in paragraphs (f) through (n) are rearranged because of these name changes. These name changes will become effective on September 1, 2002, to coincide with the U.S.P. effective date.

Because section 502(e)(1) and (e)(3) of the act (21 U.S.C. 352(e)(1) and (e)(3)) require the established name of a drug to be used, any sunscreen drug product initially introduced or initially delivered for introduction into interstate commerce after September 1, 2002, will need to bear the new established names ''meradimate,'' ''octinoxate,'' ''octisalate,'' and ''ensulizole.''

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of agency procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. As discussed above, manufacturers must relabel their products as a result of the U.S.P. name change to remain in compliance with the act. This amendment updates the names of four active ingredients in the final monograph for OTC sunscreen drug products to reflect this official name change that has already been implemented by the U.S.P. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to update the final monograph for OTC sunscreen drug products to incorporate U.S.P. name changes for four active ingredients included in the monograph. As discussed in section II of this document, section 502(e)(1) and (e)(3) of the act require that the established name of a drug be used. Under § 299.4(e), because FDA does not routinely designate official names under section 508 of the act, the established name under section 502(e) of the act ordinarily is the compendial name of the drug. Therefore, because FDA has not designated an official name under section 508 of the act, manufacturers must relabel their products as a result of the U.S.P. name change to remain in compliance with the act. Updating the names of the active ingredients in the sunscreen monograph to reflect their current established names will eliminate possible confusion by the public. The U.S.P. allows manufacturers 18 months to comply with the name changes, and the agency's effective date coincides with that of the U.S.P.

Because manufacturers must relabel their products as a result of the U.S.P. name change to remain in compliance with the act, this rule does not impose any additional costs on industry. Consequently, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is required.

V. Paperwork Reduction Act of 1995

The agency concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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 Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Opportunity for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments by August 19, 2002. Two 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.

IX. References

The following references have been placed on display in the Dockets

Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Pharmacopeial Forum,'' The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 693 to 694, 717 to 719, and 726 to 729, May and June, 2000.

2. ''Third Supplement,'' United States Pharmacopeia 24, National Formulary 19, The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 3025, 3053, 3061 to 3062, January 2, 2001.

List of Subjects in 21 CFR 352

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 352 is amended as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 352.10 is amended by revising paragraphs (f) through (n) to read as follows:

§ 352.10 Sunscreen active ingredients.

* * * * *

(f) Ensulizole up to 4 percent.
(g) Homosalate up to 15 percent.
(h) [Reserved].
(i) Meradimate up to 5 percent.
(j) Octinoxate up to 7.5 percent.
(k) Octisalate up to 5 percent.
(l) Octocrylene up to 10 percent.
(m) Oxybenzone up to 6 percent.
(n) Padimate O up to 8 percent.

* * * * *

3. Section 352.20 is amended by revising paragraphs (a)(1) and (a)(2) as follows:

§ 352.20 Permitted combinations of active ingredients.

* * * * *

(a) *Combinations of sunscreen active ingredients.* (1) Two or more sunscreen active ingredients identified in § 352.10(a), (c), (e), (f), (g), and (i) through (r) may be combined with each other in a single product when used in the concentrations established for each ingredient in § 352.10. The concentration of each active ingredient must be sufficient to contribute a minimum SPF of not less than 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2.

(2) Two or more sunscreen active ingredients identified in § 352.10(b), (c), (e), (g), (j) through (m), (o), and (q) may be combined with each other in a single product when used in the concentrations established for each ingredient in § 352.10. The concentration of each active ingredient must be sufficient to contribute a minimum SPF of not less than 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2.

* * * * *

Dated: June 11, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–15632 Filed 6–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 529

Certain Other Dosage Form New Animal Drugs; Progesterone Intravaginal Inserts

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by DEC International, Inc. The NADA provides for use of progesterone intravaginal inserts for manipulation of estrus in cattle.

DATES: This rule is effective June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Harlan J. Howard, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0231, e-mail: hhoward@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: DEC International, Inc., 1919 South Stoughton Rd., P.O. Box 8050, Madison WI 53708–8050, filed NADA 141–200 that provides for use of EAZI–BREED CIDR Progesterone Intravaginal Inserts for synchronization of estrus in suckled beef cows and replacement beef and dairy heifers, for advancement of first postpartum estrus in suckled beef cows, and for advancement of first pubertal estrus in replacement beef heifers. The NADA is approved as of May 2, 2002, and the regulations in 21 CFR part 529 are amended by adding § 529.1940 to reflect the approval. The regulation in 21 CFR 522.690 is being amended to add a cross-reference for the concurrent use of dinoprost solution by intramuscular injection and is being revised to reflect a current format. The basis of approval is discussed in the freedom of information summary.

In addition, DEC International, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning May 2, 2002.

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

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 522 and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''DEC International, Inc.'' and in the table in paragraph (c)(2) by numerically adding an entry for ''067080'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	* *
DEC International, Inc., 1919 South Stoughton Rd., P.O. Box 8050, Madison, WI 53708–8050	067080
* * * * *	* *

(2) * * *

Drug labeler code	Firm name and address
* * * * *	* *
067080	DEC International, Inc., 1919 South Stoughton Rd., P.O. Box 8050, Madison, WI 53708–8050
* * * * *	* *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

4. Section 522.690 is revised to read as follows:

§ 522.690 Dinoprost solution.

(a) *Specifications*. Each milliliter (mL) of solution contains dinoprost tromethamine equivalent to 5 milligrams (mg) dinoprost.

(b) *Sponsors*. See Nos. 000009 and 059130 in § 510.600(c) of this chapter.

(c) *Special considerations*. (1) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) Women of child-bearing age, asthmatics, and persons with bronchial and other respiratory problems should exercise extreme caution when handling this product. Dinoprost tromethamine is readily absorbed through the skin and can cause abortion and bronchiospasms. Accidental spillage on the skin should be washed off immediately with soap and water.

(d) *Conditions of use*—(1) *Horses*—(i) *Amount*. 1 mg per 100 pounds of body weight as a single intramuscular injection.

(ii) *Indications*. For its luteolytic effect to control timing of estrus in estrus cycling mares and in clinically anestrous mares that have a corpus luteum.

(iii) *Limitations*. Not for use in horses intended for food.

(2) *Cattle*—(i) *Beef cattle and nonlactating dairy heifers*—(A) *Amount*. 25 mg as an intramuscular injection either once or twice at a 10- to 12-day interval.

(B) *Indications*. For its luteolytic effect to control timing of estrus and ovulation in estrous cycling cattle that have a corpus luteum.

(ii) *Beef cattle and nonlactating dairy heifers*—(A) *Amount*. 25 mg as a single intramuscular injection.

(B) *Indications*. For treatment of pyometra (chronic endometritis).

(iii) *Nonlactating cattle*—(A) *Amount*. 25 mg as a single intramuscular injection during the first 100 days of gestation.

(B) *Indications*. For its abortifacient effect in nonlactating cattle.

(iv) *Lactating dairy cattle*—(A) *Amount*. 25 mg as a single intramuscular injection.

(B) *Indications*. For treatment of unobserved (silent) estrus in lactating dairy cattle that have a corpus luteum.

(v) Dinoprost solution as provided by No. 000009 in § 510.600(c) of this chapter may be used concurrently with progesterone intravaginal inserts as in § 529.1940 of this chapter.

(3) *Swine*—(i) *Amount*. 10 mg as a single intramuscular injection.

(ii) *Indications*. For parturition induction in swine when injected within 3 days of normal predicted farrowing.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 529 continues to read as follows:

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

6. Section 529.1940 is added to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

(a) *Specifications*. Each insert contains 1.38 grams of progesterone in molded silicone over a nylon spine.

(b) *Sponsor*. See No. 067080 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.540(a) of this chapter.

(d) *Special considerations*. (1) Wear latex gloves when handling inserts. Store removed inserts in a plastic bag or other sealable container until they can be disposed in accordance with applicable local, State, and Federal regulations.

(2) This product is approved with the concurrent use of dinoprost solution on day 6 of the 7-day administration period. See § 522.690(c) of this chapter.

(e) *Conditions of use*—(1) *Amount*. Administer one intravaginal insert per animal for 7 days. Administer 25 milligrams (mg) dinoprost (5 milliliters (mL) of 5 mg/mL solution as in § 522.690(a) of this chapter) 1 day prior to insert removal.

(2) *Indications for use*. For synchronization of estrus in suckled beef cows and replacement beef and dairy heifers, for advancement of first postpartum estrus in suckled beef cows, and for advancement of first pubertal estrus in replacement beef heifers.

(3) *Limitations*. Do not use in animals with abnormal, immature, or infected genital tracts; or in beef cows that are fewer than 20 days postpartum; or in beef or dairy heifers of insufficient size or age for breeding; or in lactating dairy cows. Do not use an insert more than once. To prevent the potential transmission of venereal and bloodborne diseases, the inserts should

be disposed after a single use. Administration of vaginal inserts for periods greater than 7 days may result in reduced fertility. Dinoprost solution as provided by No. 000009 in § 510.600(c) of this chapter.

Dated: June 6, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–15633 Filed 6–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–021–FOR]

Montana Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Montana abandoned mine land reclamation (AMLR) plan (hereinafter referred to as the ''Montana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed revisions and additional explanatory information about the Department of Environmental Quality (DEQ), its authority, organization, personnel staffing policies, and purchasing and procurement policies. Montana also provided information about the AMLR plan, the goals and objectives of the emergency program, reclamation project ranking and selection, the coordination among agencies, policies and procedures for land acquisition, reclamation of private land, consent for entry, the accounting system, and a new appendix concerning the abandoned inactive mines scoring system (AIMSS). Montana revised its plan to meet the requirements of the corresponding Federal regulations and to be consistent with SMCRA, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office; Telephone: (307) 261–6550; Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Montana Plan

The AMLR Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee which is collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a ''plan'') for the reclamation of abandoned coal mines.

On November 24, 1980, the Secretary of the Interior approved the Montana plan. You can find general background information on the Montana plan, including the Secretary's findings and the disposition of comments, in the October 24, 1980, **Federal Register** (45 FR 70445). You can also find later actions concerning Montana's plan and plan amendments at 30 CFR 926.21 and 926.25.

II. Submission of the Proposed Amendment

By letter dated August 15, 2000, Montana sent us a proposed amendment to its plan (SPATS No. MT–021–FOR, Administrative Record No. MT–18–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to a required plan amendment at 30 CFR 926.21(a) and at its own initiative.

Montana proposed to delete its abandoned mine land (AML) rule definitions of ''abandoned mine land reclamation fund,'' ''emergency,'' and ''extreme danger'' at the Administrative Rules of Montana (ARM) 26.4.301 and its definitions of ''abandoned mine land reclamation fund,'' ''emergency,'' ''expended,'' ''extreme danger,'' ''fund,'' ''left or abandoned in either an unreclaimed or inadequately reclaimed condition,'' ''Montana abandoned mine reclamation program,'' and ''reclamation activities'' at ARM 26.4.1231. Montana proposed a revised definition of ''abandoned'' at ARM 26.4.301 and a revised ARM 26.4.1303. Montana also proposed to delete the AML rules at ARM 26.4.1232 through 26.4.1242 and to rely instead on its AMLR plan and on the statutory provisions at the Montana Code Annotated (MCA) 82–4–239, 242, 323, 371, 372, 424, 445 and 446. Montana proposed revisions to MCA 82–4–239 to reflect the reorganized duties of the Board of Environmental Review and the DEQ. Montana presented its 1995 reorganization plan abolishing the Department of State Lands and creating the DEQ.

We announced receipt of the proposed amendment in the September 25, 2000, **Federal Register** (65 FR 57581; Administrative Record No. MT–18–06). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 25, 2000. We received comments from three Federal agencies.

During our review of the amendment, we identified concerns relating to the deletion of Montana's rules concerning non-emergency AML reclamation, the deletion of Montana's rules concerning emergency reclamation, the statutes relating to Montana's AMLR plan, cross-references and quotes in the Montana plan which cited the deleted rules, and the reference to the former Department of State Lands, now the DEQ. We notified Montana of these concerns by letter dated January 24, 2001 (Administrative Record No. MT–18–08).

Montana responded in a letter dated April 30, 2001, by submitting additional explanatory information and a revised 2001 plan amendment (Administrative Record No. MT–18–11). Montana responded to each of our January 24, 2001, concerns, in particular, explaining where Montana believes it retains authority to implement its approved AMLR program (both emergency and non-emergency reclamation activities) for each deleted rule, where Montana intends to rely upon Federal authority, that the 2001 plan amendment supercedes earlier plans which may conflict with subsequent revisions, and referencing additional statutes which provide AML authority. Montana revised the AMLR plan to provide 2001 updated information, delete obsolete rule cites, change the State agency name to the Department of Environmental Quality, provide missing pages, provide an organizational chart for the DEQ, and make other editorial changes. By letter dated June 5, 2001 (Administrative Record No. MT–18–13), Montana provided a complete Attachment C to its revised plan.

Based on Montana's explanatory information and revised 2001 plan amendment, we reopened the public comment period in the June 1, 2001,

Federal Register (66 FR 29744, Administrative Record No. MT–18–12) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period closed on July 2, 2001. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment.

A. Montana State Reorganization To Create the Board of Environmental Review and the Department of Environmental Quality

In 1995, the Montana legislature renamed the former Board of Land Commissioners to become the Board of Environmental Review and created the DEQ, formerly the Department of State Lands. This reorganization was performed in order to streamline the natural resource functions of State government. Montana submitted the statute changes resulting from the State reorganization in SPATS No. MT–017–FOR (Administrative Record No. MT–14–01).

When we reviewed the MT–017–FOR submittal, we did not find any regulatory (Title V) problems with the Montana submittal concerning the State reorganization. However, we deferred on the approval of MCA 82–4–239 concerning AML (Title IV) reclamation and placed a required plan amendment upon the Montana program (30 CFR 926.21(a)) in order to obtain more information concerning the revised AMLR plan and the AMLR reorganization. For more information, please refer to the final rule **Federal Register** notice dated January 22, 1999, on MT–017–FOR (64 FR 3604; Administrative Record No. MT–14–13).

In the August 15, 2000, submittal (SPATS No. MT–021–FOR; Administrative Record No. MT–18–01), Montana presented a copy of the 2000 State handbook concerning the creation of the Montana DEQ. This handbook contains the information we requested regarding a new organizational chart for the AMLR plan under the DEQ.

In addition, Montana has submitted a rewritten Reclamation Plan 2001 plan amendment. In this document, Montana has updated references from the former Department of State Lands to reflect management under the current DEQ. The following pages have been revised to reflect that name change: pages 1 and 2, Introduction; page 3, the Designation of the DEQ as Authorized Agency; page 5, Legal Opinion of Authority to Conduct AML Program; page 7, Goals and Objectives; page 8, Reclamation Projects Ranking and Selection; page 9, Coordination of Agencies; page 10, Policies and Procedures for Land Acquisition, Management and Disposal; page 11, Reclamation of Private Land; page 12, Consent for Entry; pages 13 through 15, Administrative and Management Structure; page 16, Personnel Staffing Policies; page 17, Purchasing and Procurement Policies; page 18, Accounting System; page 19, Parameters Related to Montana AML Reclamation Program; and Attachments C, D, E, and F concerning Abandoned Inactive Mine Scoring System (AIMSS), DEQ Personnel Staffing Policies, Purchasing and Procurement Delegation Agreement, and the Montana Administrative Register which published notices of the Montana AML plan revision in 1996, respectively.

In the response letter dated April 30, 2001 (Administrative Record No. MT–18–11), Montana stated that there are no further revisions to the State AMLR plan, other than what is included in this submittal. This explanation satisfies the required plan amendment at 30 CFR 926.21(a) as it provides us with adequate information concerning Montana's reorganization. We find Montana's AMLR plan amendment to be in compliance with SMCRA and consistent with the Federal regulations. We remove the required plan amendment at 30 CFR 926.21(a).

B. Deletion of Definitions Concerning ''Abandoned Mine Land Reclamation Fund,'' ''Emergency'' and ''Extreme Danger'' at ARM 26.4.301; Revision of Definition of ''Abandoned'' at ARM 26.3.301 and ARM 26.4.1303; and the Deletion of ARM 26.4.1231, 26.4.1232, 26.4.1233, 26.4.1234, 26.4.1235, 26.4.1236, 26.4.1237, 26.4.1238, 26.4.1239, 26.4.1240, 26.4.1241, and 26.4.1242

As part of the Montana Governor's directive to reduce ARM rules by at least 5%, Montana proposed to delete all State rules (listed above) concerning its AMLR program (see Attachment F, 2001 State Plan Amendment) in 1996. Montana decided to rely on its AMLR plan; the State statutes at MCA 82–4–239, 242, 323, 371, 372, 424, 445, and 446; and the Federal authority contained in the Code of Federal Regulations at 30 CFR subchapter R.

In response to these deletions, we sent Montana a letter dated January 24, 2001, requesting a description of where the deleted sections were covered elsewhere, either in the approved AMLR plan or the State statutes (Administrative Record No. MT–18–08). In response, Montana provided a rewritten AMLR plan, as well as a letter dated April 30, 2001, detailing where the information from the deleted rules is addressed elsewhere in the State AMLR plan (Administrative Record No. MT–18–11). The replacement authority for the deleted rules in the Montana AMLR plan is as follows:

a. Montana's Emergency AMLR Program

Montana states that it will use the Federal definitions for ''emergency'' and ''extreme danger'' which are contained in 30 CFR 870.5. Montana has also attached its approved 1983 Emergency Program Plan Amendment to the 2001 State Plan Amendment as Attachment A. The 1983 Emergency Program Plan and the original 1980 plan address the provisions of ARM 26.4.1231 and 26.4.1232 concerning AMLR definitions and the AMLR fund. Montana states that most of the remaining rule deletions do not pertain to Montana's emergency AMLR program and are covered elsewhere in the plan. A copy of Montana's original 1980 AMLR plan, which is referenced in the following discussions, may be obtained from the DEQ.

b. ARM 26.4.1233, Abandoned Mine Land Reclamation: Eligible Lands and Waters

The most current definition of eligible lands and waters is contained in the 1995 Montana plan amendment (SPATS No. MT–016–FOR; Administrative Record No. MT–AML–01). This definition was expanded to include certain coal mine sites where there had been a forfeiture of inadequate bonds or where bonds were forfeited from an insolvent surety.

c. ARM 26.4.1234, Abandoned Mine Land Reclamation: Reclamation Objectives and Priorities

The requirements for this deleted rule are contained in the original 1980 plan beginning on page 11, Volume 1. The AML goals and objectives are addressed on page 7 of the 2001 State Plan Amendment (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

d. ARM 26.4.1235, Abandoned Mine Land Reclamation: Reclamation Project Evaluation

Montana's criteria for AML project ranking and selection are contained on page 14, Volume 1 of the 1980 original AMLR plan. In addition, Montana has incorporated at Attachment C of the 2001 State Plan Amendment, the

AIMSS, a procedure for ranking and evaluating projects (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

e. ARM 26.4.1236, Abandoned Mine Land Reclamation: Consent to Enter Lands

Montana's original 1980 plan lists the criteria for AML consent of entry on page 25, Volume 1. In addition, page 12 of the 2001 State Plan Amendment addresses consent for entry (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

f. ARM 26.4.1237, Abandoned Mine Land Reclamation: Land Eligible for Acquisition

Montana's original 1980 plan defines the policies and procedures for land acquisition, management, and disposal on pages 19 through 21, Volume 1, as does page 10 of the 2001 State Plan Amendment (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

g. ARM 26.4.1238, Abandoned Mine Land Reclamation: Procedures for Acquisition

Montana's original 1980 AMLR plan addresses the procedures for land acquisition on pages 19 through 21, Volume 1, as does the 2001 State Plan Amendment on page 10 (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

h. ARM 26.4.1239, Abandoned Mine Land Reclamation: Acceptance of Gifts of Land

Montana's original 1980 AMLR plan defines the policies and procedures for land acquisition, management, and disposal on pages 19 through 21, Volume 1.

i. ARM 26.4.1240, Abandoned Mine Land Reclamation: Management of Acquired Lands

Montana's original 1980 AMLR plan defines the policies and procedures for land acquisition, management and disposal on pages 19 through 21, Volume 1.

j. ARM 26.4.1241, Abandoned Mine Land Reclamation: Disposition of Reclaimed Lands

Montana's original 1980 AMLR plan defines the policies and procedures for land acquisition, management, and disposal on pages 19 through 21, Volume 1.

k. ARM 26.4.1242, Abandoned Mine Land Reclamation: Reclamation on Private Land

The requirement to reclaim private land is addressed in the Montana Constitution at Article IX, in the original 1980 AMLR plan on page 24, and in the 2001 State Plan Amendment at page 11 (SPATS No. MT–021–FOR; Administrative Record No. MT–18–11).

In addition to discussion a. through k. above, pages five through 19 of the 2001 Plan Amendment address the content of an AML plan. The Federal equivalent is contained at 30 CFR 884.13. Therefore, based on the above description, we find that the proposed Montana deletions and revisions, considered together with other statutes and plan amendments, compare, all together, with applicable requirements of the Federal regulations and SMCRA sufficient to ensure that the Montana plan, as a whole, meets all applicable Federal requirements.

C. MCA 82–4–239, Reclamation

Montana revised MCA 82–4–239 in SPATS No. MT–017–FOR to reflect the reorganized duties of the Board of Environmental Review and the DEQ. However, we deferred our decision on MCA 82–4–239 in SPATS No. MT–017–FOR as it was unclear what the new reorganization of the Montana AMLR plan consisted of, as well as which AMLR rules and statutes had been revised as a result of the 1995 State reorganization (January 22, 1999, **Federal Register** notice; 64 FR 3604).

In MT–021–FOR, Montana has presented the same revisions to MCA 82–4–239 as we reviewed in MT–017–FOR. However, in MT–021–FOR, Montana has also presented the information that we requested in the required plan amendment at 30 CFR 926.21(a). Specifically, Montana has presented an organizational chart for the new DEQ, a narrative description of changes made to the AMLR plan in a letter dated May 30, 2001, a rewritten AMLR plan (see finding B of this final rule), as well as assurances that no other revisions exist to the AMLR program. With this information, we can approve revised MCA 82–4–239 as in compliance with SMCRA and consistent with Federal regulations. We approve the revisions to MCA 82–4–239.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment by letter dated September 13, 2000 (Administrative Record No. MT–18–03), but did not receive any.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana plan by letter dated September 13, 2000 (Administrative Record No. MT–18–03). The Bureau of Indian Affairs (BIA) responded by letters dated September 29, 2000, and May 30, 2001, that it had no concerns with the proposed Montana AMLR revisions (Administrative Record Nos. MT–18–05 and MT–18–14). The BIA's September 29, 2000, letter also gave positive comments concerning Montana's revegetation program, which is the subject of another State Program Amendment, SPATS No. MT–019–FOR. The Mine Safety and Health Administration (MSHA) sent in letters from three offices (Denver, CO; Arlington, VA; and Pittsburgh, PA) which stated that it had no concerns with the proposed Montana AMLR revisions. Those letters are dated October 18, 2000, November 13, 2000, and June 11, 2001 (Administrative Record Nos. MT–18–04, MT–18–07, and MT–18–15).

V. OSM's Decision

Based on the above findings, we approve Montana's August 15, 2000, amendment as revised by the submittal dated April 30, 2001.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a)

and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof because each plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR part 884.

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 13, 2002.

Peter Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA ABANDONED MINE LAND RECLAMATION PROGRAM

1. The authority citation for part 926 continues to read as follows:

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

* * * * *

2. Section 926.25 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 15, 2000	June 20, 2002	Deletion of ARM 26.4.301(1), (37), and (41), 26.4.1231, 26.4.1232, 26.4.1233, 26.4.1234, 26.4.1235, 26.4.1236, 26.4.1237, 26.4.1238, 26.4.1239, 26.4.1240, 26.4.1241, and 26.4.1242; and revision of ARM 26.4.301(1), ARM 26.4.1303, MCA 82–4–239, and the Montana Reclamation Plan 2001 Plan Amendment are approved.

§ 926.21 [Amended]

3. Section 926.21 is amended by removing and reserving paragraph (a).

[FR Doc. 02–15582 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–029]

RIN 2115–AE46

Special Local Regulations for Marine Events; Back River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Langley Air Force Base Airshow, an event to be held over the waters of the Back River near Langley Air Force Base, Hampton, Virginia, on June 22 and June 23, 2002. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Back River during the event.

DATES: This rule is effective from 7 a.m. local time on June 22, 2002 to 10 p.m. local time on June 23, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–029 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will begin on Saturday, June 22, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the dangers posed by low flying aircraft over a confined space, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On June 22 and June 23, 2002, Langley Air Force Base will conduct a low-flying, high-speed aerial demonstration above a portion of the Back River, including the Southern and Northwest Branches. A fleet of spectator vessels is expected to gather near the event site to view the aerial demonstration. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the aerial demonstration.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Back River, including the Southern and Northwest Branches. The temporary special local regulations will be enforced daily from 7 a.m. to 10 p.m. (local time) on June 22 and June 23, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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).

Although this rule prevents traffic from transiting a portion of the Back River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Back River during the event.

Although this rule prevents traffic from transiting a portion of the Back River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 7 a.m. on June 22, 2002, to 10 p.m. on June 23, 2002, add a temporary § 100.35–T05–029 to read as follows:

§ 100.35–T05–029 Back River, Hampton, Virginia.

(a) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Regulated area.* All waters of the Back River east of a line drawn along longitude 076°19′12.0″ W, including the Southern and Northwest Branches, from shoreline to shoreline. All coordinates reference Datum NAD 1983.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Enforcement period.* This section will be enforced daily from 7 a.m. to 10 p.m. local time on June 22 and June 23, 2002.

Dated: June 12, 2002.

T.C. Paar,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–15608 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–031]

RIN 2115–AE46

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Cock Island Race to be held Saturday, June 22, 2002, on the waters of the Elizabeth River, between Norfolk and Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators, participants and vessels transiting the event area.

EFFECTIVE DATES: This rule is effective from 8:30 a.m. to 4 p.m. (local time) on June 22, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–031 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will be held on Saturday, June 22, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the large concentration of boats in a confined area, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On Saturday, June 22, 2002, Ports Events, Inc. will sponsor the Cock Island Race on the waters of the Elizabeth River, between Norfolk and Portsmouth, Virginia. The event will consist of approximately 300 sailboats, ranging in length from 22 feet to 60 feet, sailing out of the Elizabeth River into Hampton Roads and returning. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the race.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Elizabeth River, between Norfolk and Portsmouth, Virginia. The temporary special local regulations will be in effect from 8:30 a.m. to 4 p.m. (local time) on June 22, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the start of the event to enhance the safety of spectators and transiting vessels.

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).

Although this rule prevents traffic from transiting a portion of the Elizabeth River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the affected portions of the Elizabeth River during the event.

Although this rule prevents traffic from transiting a portion of the Elizabeth River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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

Energy Effects

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

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 8:30 a.m. to 4 p.m. on June 22, 2002, add a temporary § 100.35–T05–031 to read as follows:

§ 100.35–T05–031 Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia

(a) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(c) *Regulated area.* Includes all waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ North, longitude 76°18′09.0″ West and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ North, longitude 76°17′52.0″ West; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ North, longitude 76°18′10.0″ West, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ North, longitude 76°17′52.0″ West; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ North, longitude 76°17′47.0″ West, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ North, longitude 76°17′39.0″ West; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ North, longitude 76°17′14.5″ West, and Norfolk at latitude 36°50′35.0″ North, longitude 76°17′10.0″ West. All coordinates reference Datum NAD 1983.

(d) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(e) *Enforcement period.* This section will be enforced from 8:30 a.m. to 4 p.m. local time on June 22, 2002.

Dated: June 13, 2002.

T.C. Paar,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–15607 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–032]

RIN 2115–AE46

Special Local Regulations for Marine Events; Northeast River, North East, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Salute to Cecil County Veterans Fireworks Celebration, an event to be held over the waters of the Northeast River, North East, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Northeast River during the fireworks display.

DATES: This rule is effective from 9 p.m. to 10 p.m. (local time) on July 3, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–032 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The event will be held on Wednesday, July 3, 2002. There is not sufficient time to allow for an appropriate notice and comment period, prior to the event. Because of the danger inherent in pyrotechnic displays, special local regulations are necessary to provide for the safety of spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

On July 3, 2002, the Salute to Cecil County Veterans Committee will sponsor a fireworks display over the Northeast River, adjacent to North East Community Park, North East, Maryland. The pyrotechnics will be launched from a barge anchored approximately 1000 yards south of North East Community Park. A fleet of spectator vessels is expected to gather near the event site to view the fireworks display. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the fireworks display.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Northeast River adjacent to North East Community Park, North East, Maryland. The regulated area is a 300-yard radius around the fireworks barge. The temporary special local regulations will be in effect from 9 p.m. to 10 p.m. local time on July 3, 2002. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

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).

Although this rule prevents traffic from transiting a portion of the Northeast River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Northeast River during the event.

Although this rule prevents traffic from transiting a portion of the Northeast River during the event, the effect of this rule will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(h) and (35)(a) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit for an event not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, state, or local government, are specifically excluded from further analysis and documentation under those sections. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 9 p.m. to 10 p.m. on July 3, 2002, add a temporary § 100.35–T05–032 to read as follows:

§ 100.35–T05–032 Northeast River, North East, Maryland .

(a) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Official Patrol.* The Official Patrol is any commissioned, warrant, or petty officer of the Coast Guard on board a vessel displaying a Coast Guard ensign.

(c) *Regulated area.* All waters of the Northeast River, enclosed within the arc of a circle 600-yards in diameter with the center at latitude 39°35′18″ N, longitude 075°57′18″ W. All coordinates reference Datum NAD 1983.

(d) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(e) *Enforcement period.* This section will be enforced from 9 p.m. to 10 p.m. local time on July 3, 2002.

Dated: June 12, 2002.

T.C. Paar,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–15606 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–013]

RIN 2115–AE46

Special Local Regulations for Marine Events; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Sharptown Outboard Regatta, a marine event to be held on the waters of the Nanticoke River, near Sharptown, Maryland, on June 29 and 30, 2002. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

DATES: This rule is effective from 11 a.m. (local time) on June 29, 2002 to 6 p.m. local time on June 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–013 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2002, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Nanticoke River, Sharptown, Maryland, in the **Federal Register** (67 FR 22023). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on June 29 and 30, 2002. The event consists of approximately 50 hydroplanes and runabouts conducting high-speed competitive races on the waters of the Nanticoke River between the Maryland S.R. 313 Bridge at Sharptown, Maryland and the

Nanticoke River Light 43 (LLN–24175). A fleet of spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

No comments were received. No changes have been made to the proposed regulatory text.

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).

Although this rule will prevent traffic from transiting a portion of the Nanticoke River during the event, the effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. The Patrol Commander will also allow non-participating vessels to transit the regulated area between races, whenever safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the owners or operators of vessels, some of which may be small entities, intending to transit or anchor in the effected portions of the Nanticoke River during the event.

Although this rule prevents traffic from transiting a portion of the Nanticoke River during the event, the effect of this proposed regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. The Patrol Commander will also allow non-participating vessels to transit the regulated area between races, whenever it is safe to do so.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. No assistance was requested by any small business, organization, or governmental jurisdiction.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would 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.

Energy Effects

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

significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. From 11 a.m. on June 29 to 6 p.m. on June 30, add a temporary § 100.35–T05–013 to read as follows:

§ 100.35–T05–013 Nanticoke River, Sharptown, Maryland.

(a) *Definitions.*

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Regulated area.* Includes all waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Bridge and the Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W; to latitude 38°32′42″ N, longitude 75°43′09″ W; thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W; thence northwesterly to latitude 38°33′09″ N, longitude 75°42′44″ W; thence southwesterly to latitude 38°32′46″ N, longitude 75°43′14″ W. All coordinates reference Datum NAD 1983.

(c) *Special local regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign; and

(ii) Proceed as directed by any Official Patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced from 11 a.m. to 6 p.m. local time on June 29 and 30, 2002.

Dated: June 12, 2002.

T.C. Paar,

Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 02–15609 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–009]

RIN 2115–AA97

Safety Zone; Fort Vancouver Fireworks Display, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Columbia River in the vicinity of Vancouver, Washington on July 4, 2002. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9:50 p.m. (PDT) to 10:50 p.m. (PDT) on July 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket (CGD13–02–009), are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jeff Pile, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, at (503) 240–2585.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. 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**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching barge. Due to the complex planning and coordination, the event sponsor, the Fort Vancouver Fireworks Committee, was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation to allow a safe fireworks display. The fireworks display is scheduled to start at 10 p.m. (PDT) on July 4, 2002. This event may result in a number of vessels congregating near the fireworks launching barge. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with fireworks display. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

Discussion of Rule

The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. The safety zone will encompass all waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37′16.5″ N, longitude 122°40′22.5″ W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36′51.5″ N, longitude 122°40′39″ W; thence east along Hayden Island to latitude 45°36′36″ N, longitude 122°39′48″ W (not to include Hayden Bay); thence north across the river to the Washington shoreline at latitude

45°36′55″ N, longitude 122°39′17″ W; thence west along the Washington shoreline to the point of origin (NAD 83). Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

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 this rule under that Order. This rule is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the rule will encompass less than one mile of the Columbia River for a period of only one hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Columbia River from 9:50 p.m. to 10:50 p.m. on July 4, 2002. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one hour in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion'' is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of one hour.

List of Subjects in 33 CFR Part 165

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

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

PART 165—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. A temporary § 165.T13–006 is added to read as follows:

§ 165.T13–006 Safety Zone; Fort Vancouver Fireworks Display, Columbia River Vancouver, Washington.

(a) *Location.* The following area is a safety zone: all waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37′16.5″ N, longitude 122°40′22.5″ W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36′51.5″ N, longitude 122°40′39″ W; thence east along Hayden Island to latitude 45°36′36″ N, longitude 122°39′48″ W (not to include Hayden Bay); thence north across the river to the Washington shoreline at latitude 45°36′55″ N, longitude 122°39′17″ W; thence west along the Washington shoreline to the point of origin (NAD 83).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on July 4, 2002, from 9:50 p.m. (PDT) to 10:50 p.m. (PDT).

Dated: June 10, 2002.

James D. Spitzer,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 02–15501 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–015]

RIN 2115–AA97

Security Zone; Waters Adjacent to San Onofre, San Diego County, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period for a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego County, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: The amendment to § 165.T11–048(b) in this rule is effective June 20, 2002. Section 165.T11–048, added at 67 FR 5482, February 6, 2002, effective from 6 p.m. October 25, 2001 to 3:59 p.m. June 21, 2002, as amended in this rule, is extended in effect through 11:59 p.m. March 21, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 02–015, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Raymond Taylor, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 6, 2002, we published a temporary final rule for waters adjacent to the San Onofre Nuclear Generating Station entitled ''Security Zone; Waters adjacent to San Onofre, San Diego County, California'' in the **Federal Register** (67 FR 5480) under § 165.T11–048. It has been in effect since October 25, 2001 and is set to expire 3:59 p.m. PDT on June 21, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station. The original TFR was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties near the San Onofre Nuclear Generating Station. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The Coast Guard plans to utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Diego. Therefore, the public will still have the opportunity to comment on this rule. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. In this case, doing a NPRM will be repetitious in nature and since delay is inherent in the NPRM process, any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to the San Onofre Nuclear Generating Station vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to San Onofre Nuclear Generating Station. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

The Coast Guard plans to publish a NPRM to establish permanent security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed.

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

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a temporary security zone in the navigable waters of the United States

adjacent to the San Onofre Nuclear Generating Station. This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Onofre Nuclear Generating Station area.

As of today, the need for this security zone still exists. The effective period of this temporary final rule will extend through 11:59 p.m. PST March 21, 2003. During this time, the Coast Guard plans to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by this security zone.

Discussion of Rule

This regulation extends the current security zone that prohibits all vessel traffic from entering, transiting or anchoring within a one nautical mile radius of San Onofre Nuclear Generating Station that is centered at the following coordinate: 33° 22′ 30″ N, 117° 33′ 50″ W.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This temporary final 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).

Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people. Because these security zones are established in an area near the San Onofre Nuclear Generating Station that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

This security zone will not have a significant impact on a substantial number of small entities because the portion of the security zone that affects the San Onofre Nuclear Generating Station area is infrequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Raymond Taylor, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.1D, this rule, which establishes a security zone, is categorically excluded from further environmental documentation because we are establishing a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.T11–048(b) to read as follows:

§ 165.T11–048 Security Zone; Waters adjacent to San Onofre, San Diego County, California

* * * * *

(b) Effective dates. These security zones are in effect from 6 p.m. (PDT) on October 25, 2001 to 11:59 p.m. (PST) March 21, 2003.

* * * * *

Dated: June 12, 2002.

S.P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–15604 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–35–2–7339a; FRL–7234–3]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Volatile Organic Compounds From Industrial Wastewater Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound (VOC) emissions from industrial wastewater facilities by means of Reasonable Available Control Technology (RACT). The intended effect of these rules is to reduce VOC emissions into the ambient air and thereby reduce ground-level ozone concentrations. This action applies to Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge Parishes. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on August 19, 2002 without further notice, unless we receive adverse comment by July 22, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Office of Environmental Assessment, H. B. Garlock Building, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

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I. What Is the Background on This Action?

Section 172(c)(1) of the CAA contains general requirements for States to adopt RACT [1] rules for major stationary sources of VOCs located in ozone nonattainment areas.

Section 182(b)(2) [2] of the CAA requires that states submit a revision to their SIP to include provisions to require RACT for each category of VOC [3]

[1] The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility (see 44 FR 53761, September 17, 1979).

[2] Section 182(b)(2) applies to ozone nonattainment areas classified as moderate or above. Although Calcasieu Parish is a former nonattainment area, now reclassified to ozone attainment (see 62 FR 5555, February 6, 1997), the State of Louisiana opted to expand the scope of the industrial wastewater rules to include this parish.

[3] VOC refers to a class of chemicals that react in the atmosphere in the presence of sunlight to form

sources covered by a Control Techniques Guideline (CTG). RACT is required for major sources in moderate and above ozone nonattainment areas and for minor sources where EPA has issued a CTG. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

Under section 183 of the CAA as amended in 1990, entitled ''Federal Ozone Measures,'' the EPA was required to issue CTGs for 13 source categories by November 15, 1993. Two specific source categories, aerospace coatings and solvents, and shipbuilding operations were listed. The other 11 categories (as listed in 57 FR 18077, April 28, 1992) are Synthetic Organic Chemical Manufacturing industry (SOCMI) distillation, SOCMI reactors, wood furniture, plastic parts business machines, plastic parts coating (other), offset lithography, industrial wastewater, SOCMI batch processing, volatile organic liquid storage tanks, and clean-up solvents. To date, CTGs have been published for four of the thirteen source categories: SOCMI distillation, SOCMI reactors, wood furniture, and shipbuilding.

The EPA also made available Alternative Control Technology (ACT) documents for the CTG source categories for which CTG documents have not yet been published. These ACT documents provide much of the same information as the CTG documents, however, instead of establishing a presumptive norm for RACT rule, these documents provide options for control.

On April 28, 1992 (57 FR 18077), the EPA interpreted the CAA to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG. For post-enactment CTGs, the amended Act requires States to submit RACT rules in accordance with the schedule specified in the corresponding CTG document. If the EPA failed to issue a CTG by November 15, 1993, the responsibility shifted to the State to submit a non-CTG RACT rule for those sources by November 15, 1994.

In addition, if there are no major sources of VOC emissions in a CTG source category located in a nonattainment area, EPA policy allows a State to submit a formal statement of their nonexistence of such major sources (i.e., a negative declaration). On April 6 and June 20, 1994, the State of Louisiana submitted letters of negative declaration for the following CTG source categories: aerospace coatings and solvents, shipbuilding operations, offset lithography, plastic parts—business machines, plastic parts—other, and wood furniture. The EPA approved these letters on October 30, 1996, in 61 FR 55894.

A CTG document was subsequently published in April 1996, for wood furniture which lowered the threshold for a source to be considered major in the wood furniture source category to 25 tons per year or more in an ozone nonattainment area. On January 28, 1997, the State of Louisiana submitted a letter of negative declaration for the wood furniture category based on the lower major source threshold. The EPA approved this letter of negative declaration on December 2, 1997 (FR 62 63658), along with a conditional approval of a revision to the SIP to control VOC emissions utilizing RACT from the SOCMI batch processing source category. By this action, the EPA also fully approved revisions to the SIP to control VOC emissions utilizing RACT from the SOCMI distillation, SOCMI reactor, and clean-up solvents major source categories. On November 9, 1998 (FR 63 47429) EPA converted this SOCMI batch processing conditional approval to a full approval.

As a result of this November 9, 1998 action, the applicable requirements relating to VOC RACT rules of 12 of the 13 CTG source categories were met. The industrial wastewater source category, which is the subject of this action, was the only remaining CTG source category for which no action had been taken.

II. What Has the State Submitted?

On April 29, 1994, the EPA issued ACT documents for Industrial Wastewater, Shipbuilding and Automobile refinishing. The Industrial Wastewater ACT is a compendium of three references. First, options for controlling emissions from industrial wastewater are covered in the draft CTG issued September, 1992 and announced for comment on December, 1993. Second, a document entitled ''Revisions to Impacts of the Draft Industrial Wastewater Control Techniques Guideline'' contains an overview of the changes that were made to the draft CTG to reflect changes to the Hazardous Organic NESHAP (HON). Also, the impacts of various control options were revised. Finally, the April 29, 1994 memorandum explained that the HON could be used as model rule for VOC control.

These documents were used by the Louisiana Department of Environmental Quality (LDEQ) in promulgating revisions, known as the ''VOC RACT Rules,'' to the Louisiana Administrative Code, LAC 33:III, Chapter 21, on September 20, 1995. The VOC RACT Rules were submitted to the EPA on December 15, 1995. These rules in part implemented requirements to control emissions from industrial wastewater at facilities with the potential to emit more than 50 tons/year of VOC's. LDEQ's wastewater VOC rules appear in section 2153 of LAC 33:III.

The LDEQ promulgated revisions to section 2153 on December 20, 1996, and submitted them (along with other revisions to LAC 33.III) to the EPA on April 30, 1997. These revisions to section 2153 involved changes to various VOC emission test methods.

The LDEQ again promulgated revisions to section 2153 on January 20, 1998, and submitted them (along with other revisions to LAC 33.III) to the EPA on February 2, 2000. These revisions to section 2153 involved changes to affected source categories.

The LDEQ again promulgated revisions to section 2153 on May 20, 1999, and submitted them (along with other revisions to LAC 33.III) to the EPA on September 7, 1999. These revisions to section 2153 involved numerous changes that were necessary for approval of the VOC RACT rule by the EPA.

III. What Analysis Was Done by the EPA on the State's Submittal?

The EPA has written a Technical Support Document that details the review that was performed on the wastewater VOC rules discussed above. Basically, these rules (LAC 33.III.2153) were compared to the HON to determine if they met the requirements of section 182(b)(2)(C) of the Clean Air Act.

IV. What Action Is EPA Taking?

The EPA is taking direct final action to approve revisions to the Louisiana SIP, to control VOC emissions from industrial wastewater facilities by means of RACT. Specifically, the EPA is approving LAC 33.III.2153, and all revisions to section 2153 up to and including those adopted on May 20, 1999.

V. Why Is This a ''Final Action?''

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules''

ozone. Sources include vehicle exhaust, gasoline vapors, oil-based paints and industrial operations. A regulatory definition of VOCs can be found at 40 CFR Part 51.100(s)

section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the revisions to incorporate regulations to control VOC emissions from industrial wastewater facilities by means of RACT if adverse comments are received. This rule will be effective on August 19, 2002 without further notice unless we receive adverse comment by July 22, 2002. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. What Administrative Requirements Apply for This Action?

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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (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 SIP 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 a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the 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 August 19, 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 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 5, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

2. In § 52.970 the table in paragraph (c) is amended under Chapter 21 by adding, immediately after ''Section 2151'' and before ''Table 8'', a new centered heading entitled ''Subchapter M—Limiting Volatile Organic Compound Emissions from Industrial Wastewater,'' immediately followed by a new Section 2153, Limiting Volatile Organic Compound Emissions from Industrial Wastewater to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
*	*	*	*	*
Chapter 21. Control of Emission of Organic Compounds				
*	*	*	*	*
Subchapter M, Section 2153	Limiting Volatile Organic Compound Emissions from Industrial Wastewater.	Limiting Volatile Organic Compound Emissions from Industrial Wastewater May, 1999, LR 25:850	June 20, 2002, and **Federal Register** citation.	
*	*	*	*	*

[FR Doc. 02–15453 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0042; FRL–6835–3]

RIN 2070–AB78

Hydrogen Peroxide; An Amendment to an Exemption From the Requirement of a Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: In the **Federal Register** of February 28, 2002, EPA issued a revised exemption from the requirement of a tolerance for residues of the biochemical hydrogen peroxide. In the **SUMMARY** and the codified text, a phrase was inadvertently omitted. This document corrects those errors.

DATES: This document is effective June 20, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Diana Hudson, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (703) 308–8713; and e-mail address: hudson.diana@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0042. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Does This Technical Correction Do?

In the **Federal Register** of February 28, 2002 (67 FR 9214) (FRL–6822–7), EPA revised an exemption from the requirement of a tolerance for residues of the biochemical hydrogen peroxide. In the **SUMMARY** and the codified text, a phrase was inadvertently omitted. This document corrects those errors.

On page 9214, third column, the first sentence of the summary is corrected to read as follows: ''This regulation establishes an amendment to an exemption from the requirement of a tolerance for residues of the biochemical hydrogen peroxide in or on all food commodities when applied/used at the rate of ≤ 1% hydrogen peroxide per

application on growing and postharvest crops.''

The codified text is corrected in the regulatory text of this document.

B. Why is This Technical Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely adding a phrase that was inadvertently omitted from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

III. Regulatory Assessment Requirements

This final rule implements a technical amendment to the Code of Federal Regulations, and it does not otherwise impose or amend any requirments. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IV. Submission to Congress and the Comptroller General?

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 2002.

Janet L. Andersen.

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.1197 is revised to read as follows:

180.1197 Hydrogen peroxide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of hydrogen peroxide in or on all food commodities at the rate of ≤ 1% hydrogen peroxide per application on growing and postharvest crops.

[FR Doc. 02–15618 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–013]

RIN 2115–AA97

Security Zones; Cruise Ships, Port of San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period for a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of San Diego. This security zone is needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Capitan of the Port San Diego, or his designated representative.

DATES: The amendment to § 165.T11–30(c) in this rule is effective June 20, 2002. Section 165.T11–30, added at 67 FR 6649, February 13, 2002, effective from 11:59 p.m. PST November 5, 2001 through 11:59 p.m. PDT June 21, 2002, as amended in this rule, is extended in effect through 11:59 p.m. PST December 21, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP San Diego 02–013 and are available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Raymond Taylor, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 13, 2002, we published a temporary final rule for cruise ships entitled ''Security Zones; Port of San Diego, California'' in the **Federal Register** (67 FR 6648) under § 165.T11–030. It has been in effect since November 5, 2001 and is set to expire 11:59 p.m. PDT on June 21, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around all cruise ships near the port of San Diego. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near the port. The original TFR was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties in and near the port of San Diego. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment with the Captain of the Port (COTP) San Diego. Therefore, the public will still have the opportunity to comment on this rule. The measures contemplated by the rule were intended to facilitate ongoing response efforts and prevent future terrorist attack. In this case, doing a NPRM will be repetitious in nature and since delay is inherent in the NPRM process, any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to cruise ships vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

The Coast Guard will be publishing a NPRM to establish permanent security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed.

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

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) has issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important facilities and vessels to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a cruise ship would have to the public interest, makes these security zones prudent on the navigable waterways of the United States. To mitigate the risk of terrorist actions, the Coast Guard has increased safety and security measures on the navigable waterways of the port of San Diego by establishing larger security zones around cruise ships. Vessels operating near cruise ships present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels or adjacent population centers. As a result, the Coast Guard is taking additional measures to prevent vessels or persons from accessing the navigable waters close to cruise ships in the port of San Diego.

As of today, the need for security zones around cruise ships still exists. The effective period of this temporary final rule will extend through 11:59 p.m. PST December 21, 2002. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be put into effect without there being an interruption in the protection provided by cruise ship security zones.

Discussion of Rule

This regulation extends the current security zone that prohibits all vessels and people from approaching cruise

ships that are underway or moored near San Diego, California. Specifically, no vessel or person may close to within 100 yards of a cruise ship that is entering, moored in, or departing the Port of San Diego.

A security zone is automatically activated when a cruise ship passes the San Diego sea buoy while entering port and remains in effect while the vessel is moored within in the Port of San Diego, California. When activated, this security zone will encompass a portion of the waterway described as a 100 yard radius around a cruise ship in the Port of San Diego. This security zone is automatically deactivated when the cruise ship passes the San Diego sea buoy on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ships calls at each location occur on only one day each week, and are generally less than 18 hours in duration. Also, vessels and people may be allowed to enter the zones on a case-by-case basis with authorization from the Captain of the Port.

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.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information 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 will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise temporary § 165.T11–030(c) to read as follows:

§ 165.T11–030 Security Zones; Cruise ships, Port of San Diego.

* * * * *

(c) *Effective Dates.* This section is effective at 11:59 p.m. PST on November 5, 2001 and will terminate at 11:59 p.m. PST on December 21, 2002.

* * * * *

Dated: June 12, 2002.

S.P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–15605 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 45

[USCG–1998–4623]

RIN 2115–AF38

Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; announcement of effective date.

SUMMARY: The Coast Guard is announcing the approval of a collection-of-information requirement pertaining to the special load line regime that was established for Lake Michigan by an interim rule published in April 2002. Owners or operators of dry cargo river barges desiring to operate on certain Lake Michigan routes must submit barge information in order to qualify for the special regime.

DATES: 46 CFR 45.181 and 45.183, as published April 23, 2002 (67 FR 19692), are effective June 20, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Thomas Jordan, Naval Architecture Division (G–MSE–2), telephone 202–267–0142 or fax 202–267–4816. If you have questions on viewing the docket [USCG–1998–4623], call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: Administration of the U.S. load line regulations requires vessel owners or operators to submit certain information to the Coast Guard or the American Bureau of Shipping (which issues load lines on behalf of the Coast Guard). This load line collection of information is controlled by the Office of Management and Budget under the Office of Management and Budget (OMB) control no. 2115–0043.

Recently, a special load line regime was established through an interim rule for river barges operating on certain Lake Michigan routes. This interim rule was published in the **Federal Register** on April 23, 2002 (67 FR 19685), and is available electronically through the docket [USCG–1998–4623] web site at *http://dms.dot.gov.* It became effective on May 23, 2002, with the exception of two sections, 46 CFR 45.181 and 45.183, that contain collection-of-information requirements associated with the new regime.

Because these two sections required the collection of information, they could not become effective until they were reviewed and approved by the Office of Management and Budget. As required by 44 U.S.C. 3507(d), we submitted a copy of this interim rule to OMB for its review. On May 28, 2002, after reviewing the rule and the overall load line collection-of-information burden under control no. 2115–0043, OMB approved the collection of information required by this interim rule.

Dated: June 14, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–15603 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27, 87, 90 and 95

[WT Docket No. 02–08; FCC 02–152]

License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts service rules for 27 megahertz of electromagnetic spectrum in the 216–220 MHz, 1390–1395 MHz, 1427–1429.5 MHz, 1429.5–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, recently reallocated for non-Government use. The licensing plan adopted in this proceeding implements, in part, the Commission's November 1999 Spectrum Policy Statement. The service rules adopted herein establish a flexible

regulatory and licensing framework. The Commission believes that this decision will provide opportunities for new services to utilize this spectrum, thus addressing spectrum scarcity concerns, as well as to promote the delivery of technologically innovative services to the public.

DATES: Effective August 19, 2002, except for §§ 27.602 and 90.176 which contains information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the proposed and/or modified information collections are due on or before August 19, 2002.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy B. Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *jherman@fcc.gov*, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or to *Edward.Springer@omb.eop.gov* via the Internet.

FOR FURTHER INFORMATION CONTACT: Zenji Nakazawa or Keith Fickner regarding legal matters, and/or Brian Marenco or Tim Maguire regarding engineering matters via phone at (202) 418–0680, via TTY (202) 418–7233, or via e-mail at *znakazaw@fcc.gov*, *kfickner@fcc.gov*, *bmarenco@fcc.gov* or *tmaguire@fcc.gov*, respectively, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC. 20554.

Paperwork Reduction Analysis

1. This *Report and Order* contains either a new or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *Report and Order* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due August 19, 2002. Comments should address:

- 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.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- 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.

Written comments by the public on the proposed and/or modified information collections are due 60 days after the date of publication in the **Federal Register**. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 120 days after the date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–445 12th Street, SW, Washington, DC 20554, or via the Internet to *jherman@fcc.gov*, and to Ed Springer, OMB Desk Officer, Room 10236 New Executive Office Building, 725 Seventeenth Street, NW., Washington, DC 20503, or to *Edward.Springer@omb.eop.gov via the Internet.*

OMB Control No.: 3060–0783.

Title: 90.176 Coordinator notification requirements on frequencies below 512 MHz, at 764–776/794–806 MHz, or at 1427–1432 MHz.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Frequency of Response: On occasion.

Total Annual Burden: 2925.

Total Annual Cost: 0.

Needs and Uses: This Rule is necessary to require each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pools, and, if necessary, an engineering analysis.

OMB Control No.: 3060–xxxx.

Title: 27.602 Guard Band Manager agreements.

Form No: N/A.

Type of Review: New.

Frequency of Response: On occasion.

Total Annual Burden: 216.

Total Annual Cost: 0.

Needs and Uses: This rule is necessary for Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records need to be kept current and be made available upon request for inspection by the Commission or its representatives.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 02–152, adopted on May 16, 2002 and released on May 24, 2002. The full text of this document including the chart summary of the band is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov* via the Internet. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

2. In this *Report and Order*, we make the following major determinations regarding the subject bands:

- Assign the 1390–1392 MHz band by Major Economic Areas (MEAs), the paired 1392–1395 MHz and 1432–1435 MHz bands by Economic Area Groups (EAGs), the 1670–1675 MHz and the 2385–2390 MHz bands on a single, nationwide basis, and the 1429.5–1432 MHz band on a site-by-site basis with frequency coordination.
- Permit open eligibility for initial licenses assigned by geographic area licensing in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. Adopt technical standards that are both consistent with our part 27 rules and provide licensees flexibility.
- License telemetry on a primary basis in the 1429.5–1432 MHz band and on a secondary basis in the 217–220 MHz and 1427–1429.5 MHz bands using a frequency coordinated site-by-site approach consistent with the technical specifications provided for telemetry operations under our part 90 rules, as modified herein.
- Adopt our proposed framework for a ten-year license term from the date of grant in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. Require licensees to demonstrate that they are providing substantial service when they file their renewal application.
- Allow licensees in the paired 1392–1395 MHz and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands to partition and/or disaggregate their licenses.

• Apply the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's Rules to the paired 1392–1395 and 1432–1435 MHz bands and in the unpaired 1390–1392 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands. Adopt small business size standards for these bands, but decline to adopt a public safety bidding credit.

• Require non-Government users to file an application on the Universal Licensing System (ULS) requesting Frequency Assignment Subcommittee (FAS) coordination of fixed sites and mobile operations within the protection radii of co-primary Government incumbents. We specify that geographic area licensees are responsible for determining whether a particular operation requires FAS approval. We also clarify that a licensee may request coordination of multiple fixed and mobile stations via a single application. Finally, we indicate that users of the Low Power Radio Services (LPRS) are not required to coordinate with FAS.

• Hold that radioastronomy, radiosondes, and the Earth Exploration Satellite Service operations will be protected by out-of-band emission limits.

• Establish coordination procedures for licensees in the 2385–2390 MHz band operating near non-Government aeronautical flight-test telemetry sites and interim coordination procedures for terrestrial licenses along the Canadian and Mexican borders.

• Implement the band ''flip'' portion of the AHA-Itron Joint Agreement and switch the primary allocation between Wireless Medical Telemetry Service (WMTS) in the 1427–1429.5 MHz band and Telemetry in the 1429.5–1432 MHz band, in seven defined geographic areas.

• Limit the field strength telemetry in the 1427–1432 MHz band may radiate—into the WMTS portion of the band—to a measured or predicted field strength of 150 uV/m at the site of any WMTS operation.

• Limit the field strength that facilities in the 1392–1395 MHz band may radiate—into the WMTS band at 1395–1400 MHz—to a measured or predicted field strength of 150 uV/m at the site of any WMTS operation.

I. Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* 67 FR 7113, February 15, 2002, (*Service Rules Notice*). The Commission sought written public comment on the proposals in the *Service Rules Notice,* including comment on the IRFA. The comments received are discussed further. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

4. In this Report and Order, we adopt rules for the licensing and operation of fixed and mobile services in the 216–220 MHz, 1390–1395 MHz, 1427–1429.5 MHz, 1429.5–1432 MHz, 1432–1435 MHz, 1670–1675 MHz and 2385–2390 MHz bands, pursuant to the provisions of the Communications Act of 1934, as amended, the Omnibus Budget Reconciliation Act of 1993 (OBRA–93), and the Balanced Budget Act of 1997 (BBA–97). These seven frequency bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that the rules adopted herein will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

5. The *Report and Order* also establishes competitive bidding rules and small business definitions for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands similar to those applied to the WCS 2.3 GHz band and the 700 MHz Guard Bands. Consistent with the Commission's responsibility under Section 309(j) to promote opportunities for, and disseminate licenses to, a wide variety of applicants, the *Report and Order* adopts small business size standards and bidding preferences for qualifying bidders that will provide such bidders with opportunities to compete successfully against large, well-financed entities. Specifically, with respect to the aforementioned bands, we will define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million, and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million. Correspondingly, we will adopt a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure is consistent with our standard schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. All of the commenters addressing this issue support our proposal to adopt the two small business size standards that the Commission adopted for the WCS 2.3 GHz band and the 700 MHz Guard Bands. As we noted in the *Service Rules Notice,* the capital requirements and characteristics of the services proposed in the aforementioned bands are comparable to those found in the WCS 2.3 GHz band and 700 MHz Guard Bands. Consequently, as with the WCS 2.3 GHz band and 700 MHz Guard Bands, we believe that these two size standards will provide a variety of businesses with the opportunity to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission has long recognized that bidding preferences for qualifying bidders provides such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also has found that the use of tiered or graduated small business definitions is useful in furthering our mandate under Section 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. Although no comments were submitted specifically in response to the IRFA, some commenters expressed concern with our proposals to license new services on a wide geographic area basis. For example, the National Telecommunications Cooperative Association (NTCA) and the Rural Telecommunications Group (RTG) support smaller geographic area licensing, rather than the use of nationwide or very large economic areas, in order to promote smaller carriers and rural telecommunications development. We have considered the effect of these rule changes on small entities and considered other alternatives. We expect, however, that our actions will benefit all entities subject to these rule changes, including small entities.

7. The policies and rules adopted in this *Report and Order* affect all small entities that seek to acquire licenses in the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and the paired 1392–1395 MHz and 1432–1435 MHz bands. As noted above, the Commission has adopted small

business size standards that define a ''small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $40 million and a ''very small business'' as any entity with average annual gross revenues for the three preceding years not exceeding $15 million. The Small Business Administration (SBA) has approved these small business size standards for the aforementioned bands. However, the Commission cannot know until the auction begins how many entities will seek small or very small business status. The Commission will allow partitioning and disaggregation, yet it cannot determine in advance how many licensees will partition their license areas or disaggregate their spectrum blocks. In view of our lack of knowledge of these factors, it is therefore assumed that, for purposes of our evaluations and conclusions in the FRFA, all of the prospective licenses are small entities, as that term is defined by the SBA or the Commission's small business definitions for these bands.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities.

9. *Wireless Service Providers.* The SBA has developed a definition for small business within the two separate categories of (1) Cellular and (2) Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's *Telephone Trends Report* data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules adopted herein. Except as noted, these services are associated with the above SBA small business size standard.

10. With respect to the 1390–1392 MHz band, the Commission will award a single 2 MHz license in each of fifty-two Major Economic Areas (MEAs). For the 1670–1675 MHz, and 2385–2390 MHz bands, the Commission will award a single nationwide license in each band. For the paired 1392–1395 MHz and 1432–1435 MHz bands, the Commission will award a pair of 1.5 MHz licenses in each of six Economic Area Groupings (EAGs). For the 1432–1435 MHz band, the Commission will award licenses on a site by-site basis. The Commission does not yet know how many applicants or licensees in any of these bands will be small entities.

11. Existing services in other bands include entities that might be affected by the rules, either as existing licensees or potential applicants or licensees. Incumbent services in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include wireless medical telemetry (WMTS) and general telemetry.

12. *Telemetry.* Incumbent non-medical telemetry operators in the 1427–1429.5 MHz and 1429.5–1432 MHz bands include Itron, Inc., Pueblo Service Company of Colorado, E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. Itron, Inc. is the primary user of the 1427–1429.5 MHz and 1429.5–1432 MHz bands. Itron, Inc., with an investment of $100 million in equipment development, is not likely to be a small business. One licensee, Zytex, a manufacturer of high-speed telemetry systems, may be a small business. The Commission does not yet know how many applicants or licensees in these bands will be small entities.

13. *WMTS.* Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses. The broad category of ''Hospitals'' consists of the following categories and the following small business providers with Annual Receipts of $29 million or less: ''General Medical and Surgical Hospitals,'' ''Psychiatric and Substance Abuse Hospitals,'' and ''Specialty Hospitals.'' For all these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than $25 million. An additional 45 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories.

14. The broad category of ''Nursing and Residential Care Facilities'' consists of the following categories and the following small business size standards. The category of ''Nursing and Residential Care Facilities with Annual Receipts of $6 million or less' consists of: Residential Mental Health and Substance Abuse Facilities, Homes for the Elderly, and Other Residential Care Facilities. The category of ''Nursing and Residential Care Facilities with Annual Receipts of $8.5 million or less' consists of Residential Mental Retardation Facilities. The category of ''Nursing and Residential Care Facilities with Annual Receipts of less than $11.5 million'' consists of: Nursing Care Facilities and Continuing Care Retirement Communities. For all of these health care providers, census data indicate that there is a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below $5 million. In addition, 1,205 firms had annual receipts of $5 million to $9.99 million, and 450 firms had receipts of $10 million to $24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. Applicants for licenses to provide terrestrial fixed and mobile services in the paired 1392–1395 MHz and 1432–1435 MHz bands, and the unpaired 1390–1392 MHz, 1670–1675 MHz, and

2385–2390 MHz bands will be required to submit short-form auction applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC Form 601 for those individual stations that (1) require submission of an Environmental Assessment under § 1.1307 of our Rules; (2) require international coordination; (3) would operate in the quiet zones listed in § 1.924 of our Rules; or (4) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC).

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. Regarding our decision to apply generally our part 27 rules to the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, and to the paired 1392–1395 MHz and 1432–1435 MHz bands, we do not anticipate any adverse impact on small entities. The flexibility afforded by part 27 of our rules should benefit large and small entities alike, because licensees will be in a stronger position to meet changes in demand for services. Under this approach, all licensees will have the freedom to determine the services to be offered and the technologies to be used in providing those services. An alternative to this decision would have been to determine specific allowable services in each frequency band and apply the applicable rule part to the licensing of such services. This approach, however, would be unsatisfactory because it is too restrictive, and in any event, it is unclear that this would benefit small entities more than the flexible licensing approach we have decided upon today.

18. Regarding our decision to license the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands by geographic area, we anticipate that, on balance small entities will benefit from this licensing approach. A geographic licensing approach in these bands is consistent with the Commission's overall spectrum management goals in that it allows licensees to quickly respond to market demand. Small entities that acquire spectrum licensed on a geographic area basis, will benefit from such flexibility. Moreover, we have attempted to strike a balance here by using varying sizes of geographic areas. For example, small entities may be more interested in spectrum licensed by smaller geographic areas rather than in spectrum licensed on a nationwide basis. Consequently, we have decided to license the 1390–1392 MHz band using fifty-two MEAs, and license the paired 1392–1395 MHz and 1432–1435 MHz bands using six EAGs. Combined with our decision to employ flexible use licensing, which includes band manager licensing (see discussion below), small entities should be able to acquire spectrum that fits their individual needs. An alternative to our decision to use geographic areas to license the subject frequency bands would have been to employ a site-by-site licensing approach. Site-by-site licensing, however, would be an inefficient licensing method for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, because it would cause a greater strain on Commission resources and have less flexibility for licensees.

19. Regarding our decision to license secondary telemetry in the 217–220 MHz and 1427–1429.5 MHz bands and primary telemetry in the 1429.5–1432 MHz band on a site-by-site basis, we anticipate no adverse impact on small entities. In fact, our approach here is particularly beneficial for small entities that have more localized spectrum needs, because such entities can apply for just the site that is needed for their communications systems. An alternative to this approach would have been to license telemetry in these bands on a geographic area basis. This is unsatisfactory, however, because, inter alia, of potential harmful interference issues that a geographic overlay would entail.

20. Regarding our decision to license the 1390–1392 MHz band using a single 2 MHz block in each MEA, we do not anticipate any adverse impact on small entities. Our approach here provides maximum flexibility for both small and large entities to offer a wide range of communications services. In addition, in those cases in which less than 2 MHz is required, band managers would be able to coordinate spectrum under their control so as to maximize its use. An alternative to this decision would have been to divide the spectrum available in the 1390–1392 MHz band into two or more blocks. While this might promote diversity, it makes more sense to license this band using a single 2 MHz spectrum block in order to allow both small and large entities the opportunity to offer a wider range of services and to quickly meet changes in market demand.

21. Regarding our decision to license the paired 1392–1395 MHz and 1432–1435 MHz bands using two pairs of 1.5 MHz spectrum blocks, we do not anticipate any adverse impact to small entities. Our approach here promotes competition by allowing more than one licensee in each market and thus offers a greater opportunity for small entities to acquire spectrum. An alternative to this approach would have been to license these bands using a single pair of 3 MHz spectrum blocks. This approach, however, is less desirable than the one we adopt today because of the competition and diversity benefits realized by dividing the spectrum into two blocks.

22. Regarding our decision to adopt the AHA-Itron Joint Agreement's band flip proposal, we do not anticipate any adverse impact to small entities. Our implementation of this private agreement should benefit small and large entities by allowing telemetry and WMTS to operate where such services are needed the most. An alternative to this approach would have been to keep telemetry primary only in the 1429.5–1432 MHz band and WMTS primary only in the 1427–1429.5 MHz band. However, allowing telemetry and WMTS to operate in the seven geographic ''carve-out'' areas in each other's primary allocation, allows greater flexibility in operations while avoiding harmful interference. The geographic ''carve-out'' areas refer to those service areas specifically designated in the AHA-Itron Joint Agreement where telemetry may operate on a primary basis in the 1427–1429 MHz band and 1431.5–1432 MHz band; and where WMTS may operate on a primary basis in the 1429–1431.5 MHz band.

23. Regarding our decision to license the 1670–1675 MHz band using a single 5 MHz spectrum block, we do not

believe that there will be any adverse impact on small entities. Although dividing this spectrum into two or more blocks might offer more opportunities for small entities to compete for a license, we agree with the commenters that a single 5 MHz spectrum block will promote the development of new technologies and services and therefore, promotes the public interest.

24. Regarding our decision to license the 2385–2390 MHz band using a single 5 MHz spectrum block, we do not believe that there will be any adverse impact on small entities. Although dividing this spectrum into two or more blocks might offer more opportunities for small entities to compete for a license, this is outweighed by the benefits that a larger spectrum block provides in terms of flexibility. In addition, we note that no commenters, including small entities, proposed an alternate spectrum block size for this frequency band.

25. Regarding our decision to employ a flexible use licensing scheme for the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1394 MHz and 1432–1435 MHz bands (see paras. 38–39, supra) we do not anticipate any adverse impact on small entities. In fact, this approach should generally provide small entities with greater opportunities to acquire spectrum specifically tailored for their needs. For example, through a band manager licensee, small entities can obtain spectrum rights that are suited for operations of a local nature, rather than obtaining an entire geographic area that would result in less efficient spectrum use. An alternative to this approach would have been to prohibit band managers from being licensed in these frequency bands. We find that this would be unsatisfactory, however, because the results would have been less efficient spectrum markets and less spectrum access for small entities.

26. Regarding our decision to require a showing of ''substantial service'' at license renewal time, (*see* paras. 72–73, *supra*) we do not anticipate any adverse impact on small entities. An alternative would have been to adopt a ''minimal coverage'' requirement. We believe, however, that the substantial service standard is better because it will provide both small and large entities the flexibility to determine how to best implement their business plans based on actual service to end users.

27. Regarding our decision to allow licensees in the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands to partition and/or disaggregate their spectrum, (see paras. 80–83, supra) we do not anticipate any adverse impact on small entities. In fact, allowing licensees to partition/disaggregate their licensed spectrum should improve opportunities for small entities to acquire spectrum for their particular needs. An alternative to this approach would have been to prohibit partitioning/disaggregation, but we received no comments proposing such a prohibition.

28. Regarding our decision to require frequency coordination for primary and secondary telemetry operations in the 217–220 MHz, 1427–1429.5 MHz and 1429.5–1432 MHz bands (*see* paras. 88–98, *supra*) we do not anticipate any adverse impact on small entities. Although there are certain costs associated with filing an application through an FCC-certified frequency coordinator, on balance, the benefits of frequency coordination, especially the avoidance of harmful interference, outweigh any costs. An alternative to this approach would have been to not require frequency coordination, but this is unacceptable because of high congestion, primary incumbent operations that must be protected, and the fact that licensees in these bands must share frequencies.

II. Ordering Clause

1. Pursuant to Sections 1, 4(i), 301, 302, 303(f) and (r), 309(j) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 301, 302, 303(f) and (r), 309(j) and 332, this *Report and Order* is *adopted.*

2. Parts 1, 2, 27, 90, and 95 of the Commission's Rules *are amended* as specified in Appendix E, effective 60 days after publication in the **Federal Register**. Information collections contained in §§ 27.106 and 90.176 will be effective upon OMB approval.

3. The Petition for Rulemaking filed by Data Flow Systems, *is granted, in part, and denied in part* as described herein.

4. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 27

Communications common carriers, Radio.

47 CFR Part 87

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 27, 87, 90 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e) unless otherwise noted.

2. Section 1.924(f) is revised to read as follows:

§ 1.924 Quiet zones.

* * * * *

(f) *GOES.* The requirements of this paragraph are intended to minimize harmful interference to Geostationary Operational Environmental Satellite earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

(1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37°56′47″ N, 75°27′37″ W (Wallops Island) or 64°58′36″ N, 147°31′03″ W (Fairbanks) or within the area bounded by a circle with a radius of 65 kilometers (40.4 miles) that is centered on 39°00′02″ N, 76°50′31″ W (Greenbelt) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination web page at *http://www.osd.noaa.gov/radio/frequency.htm,* which provides the technical parameters of the earth

stations and the point-of-contact for the notification. The notification shall include the following information: requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) *Protection.* (i) *Wallops Island and Fairbanks.* Licensees are required to protect the Wallops Island and Fairbanks sites at all times.

(ii) *Greenbelt.* Licensees are required to protect the Greenbelt site only when it is active. Licensees should coordinate appropriate procedures directly with NOAA for receiving notification of times when this site is active.

(3) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (f)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (f)(1) of this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(4) If an objection is received during the 20-day period from NOAA, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

* * * * *

3. Section 1.1307(b)(1) is amended by revising the entry of ''Wireless Communications Service (part 27)'' to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.

* * * * *

(b) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (Title 47 CFR Rule Part)	Evaluation required if . . .
* * * *	* * *
Wireless Communications Service (Part 27)	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz 1670–1675 MHz and 2385–2390 MHz bands: *Non-building-mounted antennas:* height above ground level to lowest point of antenna <10m and total power of all channels > 2000 W ERP (3280 W EIRP). *Building-mounted antennas:* total power of all channels >2000 W ERP (3280 W EIRP). (2) For the 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands. Total power of all channels >1000 W ERP (1640 W EIRP).
* * * *	* * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

4. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

5. In § 2.106 in the Table of Frequency Allocations, footnotes US74, US350 and US362 are revised to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * * * *

UNITED STATES (US) FOOTNOTES

* * * * * * *

US74 In the bands 25.55–25.67, 73.0–74.6, 406.1–410.0, 608–614, 1400–1427, 1660.5–1670.0, 2690–2700 and 4990–5000 MHz and in the bands 10.68–10.7, 15.35–15.4, 23.6–24.0, 31.3–31.5, 86–92, 105–116 and 217–231 GHz, the radio astronomy service shall be protected from extraband radiation only to the extent that such radiation exceeds the level which would be present if the offending station were operating in compliance with the technical standards or criteria applicable to the service in which it operates. Radio astronomy observations in these bands are performed at the locations listed in US311.

* * * * * * *

US350 In the bands 608–614 MHz and 1395–1400 MHz the Government and non-Government land mobile service is limited to medical telemetry and medical telecommand operations. Availability and use of medical telemetry and telecommand and non-medical telemetry and telecommand in the band 1427–1432 MHz are described further:

Location (see §§ 90.259(b)(4) and 95.630(b) of this chapter for a detailed description)	1427–1429 MHz 1431.5–1432 MHz	1429–1431.5 MHz
Austin/Georgetown, Texas Battle Creek, Michigan Detroit, Michigan Pittsburgh, Pennsylvania Richmond/Norfolk, Virginia Spokane, Washington	Non-Government land mobile service is limited to telemetry and telecommand operations.	Government and non-Government land mobile service is limited to medical telemetry and telecommand operations.
Washington, DC metropolitan area		Non-Government telemetry and telecommand use is permitted on a secondary basis.

Location (see §§ 90.259(b)(4) and 95.630(b) of this chapter for a detailed description)	1427–1429 MHz 1431.5–1432 MHz	1429–1431.5 MHz
Rest of U.S	Government and non-Government land mobile service is limited to medical telemetry and telecommand operations. Non-Government telemetry and telecommand use is permitted on a secondary basis.	Non-Government land mobile service is limited to telemetry and telecommand operations.
* *	* * *	* *

US362 The band 1670–1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Government use. Earth station use of this allocation is limited to Wallops Island, VA (37°56′47″ N, 75°27′37″ W), Fairbanks, AK (64°58′36″ N, 147°31′03″ W), and Greenbelt, MD (39°00′02″ N, 76°50′31″ W). Applicants for non-Government stations within 100 kilometers of the Wallops Island or Fairbanks coordinates and within 65 kilometers of the Greenbelt coordinates shall notify NOAA in accordance with the procedures specified in 47 CFR 1.924.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337, unless otherwise noted.

7. Section 27.1 is amended by adding paragraphs (b)(4) through (b)(7) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(4) 1390–1392 MHz.

(5) 1392–1395 MHz and 1432–1435 MHz.

(6) 1670–1675 MHz.

(7) 2385–2390 MHz.

8. Section 27.4 is amended by revising the definition of ''Affiliate'' and by adding a definition in alphabetical order to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Affiliate. This term shall have the same meaning as that for ''affiliate'' in part 1, § 1.2110(b)(5) of this chapter.

* * * * *

Band Manager. The term *Band Manager* refers to a licensee in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, 1670–1675 MHz and 2385–2390 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Band Manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

* * * * *

9. Section 27.5 is amended by adding paragraphs (d) through (g) to read as follows:

§ 27.5 Frequencies.

* * * * *

(d) *1390–1392 MHz band.* The 1390–1392 MHz band is available for assignment on a Major Economic Area basis.

(e) *The paired 1392–1395 and 1432–1435 MHz bands.* The paired 1392–1395 MHz and 1432–1435 MHz bands are available for assignment on an Economic Area Grouping basis as follows: Block A: 1392–1393.5 MHz and 1432–1433.5 MHz; and Block B: 1393.5–1395 MHz and 1433.5–1435 MHz.

(f) *1670–1675 MHz band.* The 1670–1675 MHz band is available for assignment on a nationwide basis.

(g) *2385–2390 MHz band.* The 2385–2390 MHz band is available for assignment on a nationwide basis.

10. Section 27.6 is amended by adding paragraphs (d) through (g) to read as follows:

§ 27.6 Service areas.

* * * * *

(d) *1390–1392 MHz band.* Service areas for the 1390–1392 MHz band is based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(e) *The paired 1392–1395 and 1432–1435 MHz bands.* Service areas for the paired 1392–1395 and 1432–1435 MHz bands are as follows. Service areas for Block A in the 1392–1393.5 MHz and 1432–1433.5 MHz bands and Block B in the 1393.5–1395 MHz and 1433.5–1435 MHz bands are based on Economic Area Groupings (EAGs) as defined in paragraph (b)(2) of this section.

(f) *1670–1675 MHz band.* Service areas for the 1670–1675 MHz band are available on a nationwide basis.

(g) *2385–2390 MHz band.* Service areas for the 2385–2390 MHz band are available on a nationwide basis.

11. Section 27.10 is amended by revising the introductory text to read as follows:

§ 27.10 Regulatory status.

Except with respect to *Band Manager* licenses and *Guard Band Manager* licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status of licensees in the frequency bands specified in § 27.5.

* * * * *

12. Section 27.11 is amended by adding paragraphs (e) through (h) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(e) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band shall be for 2 megahertz of spectrum in accordance with § 27.5(c). Authorizations will be based on Major Economic Areas (MEAs), as specified in § 27.6(c).

(f) *The paired 1392–1395 MHz and 1432–1435 MHz bands.* Initial authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands shall be for 3 megahertz of paired spectrum in accordance with § 27.5(d). Authorization for Blocks A and B will be based on Economic Areas Groupings (EAGs), as specified in § 27.6(d).

(g) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(e). Authorizations will be on a nationwide basis.

(h) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band shall be for 5 megahertz of spectrum in accordance with § 27.5(f). Authorizations will be on a nationwide basis.

13. Section 27.12 is revised to read as follows:

§ 27.12 Eligibility.

(a) Except as provided in § 27.604, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

(b) *Band Manager licenses.* For the 1392–1395 MHz, 1670–1675 MHz, and 2385–2390 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, applicants applying for an initial license may elect to operate as a Band Manager, subject to the rules governing Guard Band Managers under subpart G of part 27, provided however, that the following rules do not apply to Band Managers:

(1) The prohibition in §§ 27.601(a) and (b) against employing a cellular system architecture;

(2) The requirement in § 27.601(d)(1) to notify Public Safety frequency coordinators;

(3) The requirement in § 27.603(c) to lease the predominant amount of its spectrum to non-affiliates;

(4) The prohibition in § 27.604 against a single applicant becoming the winning bidder of both blocks A and B in a single geographic service area; and

(5) The requirement in § 27.605 that any entity that acquires a portion of a Guard Band Manager's spectrum or geographic area through partitioning or disaggregation must also act as a band manager.

14. Section 27.13 is amended by adding paragraphs (c) through (f) to read as follows:

§ 27.13 License period.

* * * * *

(c) *1390–1392 MHz band.* Initial authorizations for the 1390–1392 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(d) *The paired 1392–1395 and 1432–1435 MHz bands.* Initial WCS authorizations for the paired 1392–1395 MHz and 1432–1435 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal.

(e) *1670–1675 MHz band.* Initial authorizations for the 1670–1675 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(f) *2385–2390 MHz band.* Initial authorizations for the 2385–2390 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

15. Section 27.50 is amended by redesignating paragraph (d) as paragraph (g) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(d) The following power limits apply to the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band (1.4 GHz band):

(1) Fixed stations transmitting in the 1390–1392 MHz and 1432–1435 MHz bands are limited to 2000 watts EIRP peak power. Fixed stations transmitting in the 1392–1395 MHz band are limited to 100 watts EIRP peak power.

(2) Mobile stations transmitting in the 1390–1392 MHz and 1432–1435 MHz bands are limited to 4 watts EIRP peak power. Mobile stations transmitting in the1392–1395 MHz band are limited to 1 watt EIRP peak power.

(e) The following power limits apply to the 1670–1675 MHz band:

(1) Fixed and base stations are limited to 2000 watts EIRP peak power.

(2) Mobile stations are limited to 4 watts EIRP peak power.

(f) The following power limits apply to the 2385–2390 MHz band:

(1) Fixed and base stations are limited to 2000 watts EIRP peak power.

(2) Mobile and aeronautical mobile stations are limited to 4 watts EIRP peak power.

* * * * *

16. Section 27.53 is amended by adding paragraphs (h) through (k) to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) For operations in the unpaired 1390–1392 MHz band and the paired 1392–1395 MHz and 1432–1435 MHz bands, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(i) For operations in the 1670–1675 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(j) For operations in the 2385–2390 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) by at least 43 + 10 log (P) dB. Compliance with these provisions is based on the procedures described in paragraph (a)(4) of this section.

(k) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

17. Section 27.55(a) is amended by adding paragraph (a)(3) to read as follows:

§ 27.55 Field strength limits.

* * * * *

(a) * * *

(3) The paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz band (1.4 GHz band): 47 dBuV/m.

* * * * *

18. Subpart I is added to read as follows:

Subpart I—1.4 GHz Band

§ 27.801 Scope.

This subpart sets out the regulations governing service in the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band (1.4 GHz band).

§ 27.802 Permissible communications.

Licensees in the paired 1392–1395 MHz and 1432–1435 MHz bands and unpaired 1390–1392 MHz band are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of this subpart.

§ 27.803 Coordination requirements.

(a) Licensees in the 1.4 GHz band will be issued geographic area licenses in accordance with the service areas listed in § 27.6(d) and (e).

(b) Licensees in the 1.4 GHz Service must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed in part 1, § 1.924 of this chapter; or

(4) That requires approval of the Frequency Advisory Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Stations that require FAS approval are as follows:

(i) Licensees in the 1390–1392 MHz and 1392–1395 MHz band must receive FAS approval prior to operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government sites listed in footnote US351 of § 2.106 of this chapter.

(ii) Licensees in the 1432–1435 MHz band must receive FAS approval, prior

to operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government sites listed in footnote US361 of § 2.106 of this chapter.

(c) Prior to construction of a station, a licensee in the 1.4 GHz Band must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(d) It is the licensee's responsibility to determine whether an individual station needs referral to the Commission.

(e) The application required in paragraph (b) of this chapter must be filed on the Universal Licensing System.

§ 27.804 Field Strength Limits at WMTS Facility.

For any operation in the 1392–1395 MHz band, the predicted or measured field strength—into the WMTS band at 1395–1400 MHz—shall not exceed 150 uV/m at the location of any registered WMTS healthcare facility. When performing measurements to determine compliance with this provision, measurement instrumentation employing an average detector and a resolution bandwidth of 1 MHz may be used, provided it accurately represents the true interference potential of the equipment.

§ 27.805 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a 1.4 GHz band licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 1.4 GHz band licensee and is subject to the obligations and restrictions on the 1.4 GHz band license as set forth in this subpart.

§ 27.806 1.4 GHz Service licenses subject to competitive bidding.

Mutually exclusive initial applications for 1.4 GHz Band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands as well as the unpaired 1390–1392 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.807 Designated entities.

(a) Eligibility for small business provisions for 1.4 GHz band licenses in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz band.

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

19. Subpart J is added to read as follows:

Subpart J—1670–1675 MHz Band

§ 27.901 Scope.

This subpart sets out the regulations governing service in the 1670–1675 MHz band (1670–1675 MHz band).

§ 27.902 Permissible communications.

Licensees in the 1670–1675 MHz band are authorized to provide fixed or mobile service, except aeronautical mobile service, subject to the technical requirements of this subpart.

§ 27.903 Coordination requirements.

(a) The licensee in the 1670–1675 MHz band will be issued a geographic area license on a nationwide basis in accordance with § 27.6(f).

(b) Licensees in the 1670–1675 MHz band must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed under part 1, § 1.924 of this chapter.

(c) The application required in paragraph (b) of this section must be filed on the Universal Licensing System.

(d) Prior to construction of a station, a licensee must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(e) It is the licensee's responsibility to determine whether an individual station requires referral to the Commission.

§ 27.904 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a 1670–1675 MHz band licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 1670–1675 MHz licensee and is subject to the obligations and restrictions on the 1670–1675 MHz license as set forth in this subpart.

§ 27.905 1670–1675 MHz Service licenses subject to competitive bidding.

Mutually exclusive initial applications for the 1670–1675 MHz Band license are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.906 Designated entities.

(a) *Eligibility for small business provisions.*

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually

independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

20. Subpart K is added to read as follows:

Subpart K—2385–2390 MHz Band.

§ 27.1001 Scope.

This subpart sets out the regulations governing service in the 2385–2390 MHz band (2385–2390 MHz band).

§ 27.1002 Permissible communications.

Licensees in the 2385–2390 MHz band are authorized to provide fixed or mobile service, including aeronautical mobile, subject to the technical requirements of this subpart.

§ 27.1003 Coordination requirements.

(a) The licensee in the 2385–2390 MHz band will be issued a geographic area license on a nationwide basis in accordance with § 27.6(g).

(b) The licensee in the 2385–2390 MHz Band must file a separate station application with the Commission and obtain an individual station license, prior to construction or operation, of any station:

(1) That requires submission of an Environmental Assessment under part 1, § 1.1307 of this chapter;

(2) That requires international coordination;

(3) That operates in the quiet zones listed in part 1, § 1.924 of this chapter;

(4) That requires approval of the Frequency Advisory Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). The Licensee in the 2385–2390 MHz Band must receive FAS approval prior to operation of fixed sites or mobile units within the NTIA recommended protection radii of the Government aeronautical telemetry sites listed in footnote US363 of § 2.106 of this chapter.

(c) The licensee in the 2385–2390 MHz Band must file a separate station application with the Commission and obtain an individual station license prior to construction or operation of any station that would require approval of the Aeronautical Flight Test Radio Coordinating Council (AFTRCC). Any fixed sites or mobile units within the protection radii of the non-Government flight test operations listed in footnote US363 of § 2.106 of this chapter will require AFTRCC approval. The licensee in the 2385–2390 MHz Band must receive AFTRCC approval prior to filing an application and the application must contain a showing of AFTRCC approval.

(d) Prior to construction of a station, the 2385–2390 MHz licensee must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(e) It is the licensee's responsibility to determine whether a referral to the Commission is needed for any individual station constructed.

(f) The application required in paragraphs (b) and (c) of this section must be filed on the Universal Licensing System.

§ 27.1004 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a 2385–2390 MHz licensee's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a 2385–2390 MHz licensee and is subject to the obligations and restrictions on the 2385–2390 MHz license as set forth in this subpart.

§ 27.1005 2385–2390 MHz Service licenses subject to competitive bidding.

Mutually exclusive initial applications for the 2385–2390 MHz Band license are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.1006 Designated entities.

(a) *Eligibility for small business provisions.*

(1) A very small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average annual gross revenues not exceeding $40 million for the preceding three years.

(3) A consortium of very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section. A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(2) of this section.

(4) For purposes of determining whether an entity meets any of the definitions set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered in the manner set forth in § 1.2110(b) and (c) of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 87—AVIATION SERVICES

21. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e) unless otherwise noted.

22. Section 87.173(b), in the Frequency table, is amended by adding an entry in numerical order to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) * * *

Frequency or frequency band	Subpart	Class of station	Remarks
* * *	*	*	* * *
2310–2390 MHz [3]	J	MA,FAT	Aeronautical telemetry and telecommand operations.
* * *	*	*	* * *

[3] All operation in the 2385–2390 MHz portion of the 2310–2390 MHz band are secondary to WCS operations in accordance with subpart K of Part 27 except at the locations listed in footnote US363 of § 2.106. Operations at the locations listed in footnote US363 of § 2.106 will remain primary until January 1, 2007. After January 1, 2007, all operations in the 2385–2390 MHz portion of the 2310–2390 MHz band will be secondary to WCS operations in accordance with subpart K of part 27 of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

23. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

24. Section 90.20(c)(3), Public Safety Pool Frequency Table, is amended removing frequency 1427 to 1435 and by adding one new entry in numerical order to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) *Frequencies.*

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
* * *	* * *	*	*
Megahertz			
* * *	* * *	*	*
1427 to 1432	Base, mobile or operational fixed	72	
* * *	* * *	*	*

25. Section 90.35(b)(3), Industrial/Business Pool Table, is amended by removing frequency 216 to 220 and 1427 to 1435 and by adding three new entries in numerical order to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
* * *	* * *	*	*
Megahertz			
216 to 217	Base or mobile	55	
217 to 220	Base, mobile, or operational fixed	55	
* * *	* * *	*	*
1427 to 1432	Base, mobile or operational fixed. 55.		
* * *	* * *	*	*

26. Section 90.175 is revised to read as follows:

§ 90.175 Frequency coordinator requirements.

Except for applications listed in paragraph (j) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137 must include a showing of frequency coordination as set forth further.

(a) Frequency coordinators may request, and applicants are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend

the most appropriate frequency. Additionally, applicants bear the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation.

(b) *For frequencies between 25 and 470 MHz:* (1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

(2) On frequencies designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) and 90.35(b), the applicable frequency coordinator shall provide a written supporting statement in instances in which coordination or concurrence is denied. The supporting statement shall contain sufficient detail to permit discernment of the technical basis for the denial of concurrence. Concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.

(3) In instances in which a frequency coordinator determines that an applicant's requested frequency or the most appropriate frequency is one designated for coordination or concurrence by a specific frequency coordinator as specified in §§ 90.20(c)(3) or 90.35(b), that frequency coordinator may forward the application directly to the appropriate frequency coordinator. A frequency coordinator may only forward an application as specified above if consent is received from the applicant.

(c) *For frequencies above 800 MHz:* When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

(d) *For frequencies in the 450–470 MHz band:* When used for secondary fixed operations, frequencies shall be assigned and coordinated pursuant to § 90.261.

(e) *For frequencies between 470 and 512 MHz, 764–776/794–806 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz:* A recommendation of the specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service, frequency pool, or category of user involved is required from an applicable frequency coordinator.

(f) *For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494:* A statement is required from the coordinator recommending the most appropriate frequency.

(g) *For frequencies between 1427–1432 MHz:* A statement is required from the coordinator recommending the most appropriate frequency, operating power and area of operation in accordance with the requirements of § 90.259(b).

(h) Any recommendation submitted in accordance with paragraphs (a), (c), (d), or (e) of this section is advisory in character and is not an assurance that the Commission will grant a license for operation on that frequency. Therefore, applicants are strongly advised not to purchase radio equipment operating on specific frequencies until a valid authorization has been obtained from the Commission.

(i) Applications for facilities near the Canadian border north of line A or east of line C in Alaska may require coordination with the Canadian government. See § 1.955 of this chapter.

(j) The following applications need not be accompanied by evidence of frequency coordination:

(1) Applications for frequencies below 25 MHz.

(2) Applications for a Federal Government frequency.

(3) Applications for frequencies in the 72–76 MHz band except for mobile frequencies subject to § 90.35(c)(77).

(4) Applications for a frequency to be used for developmental purposes.

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations, and applications requesting operation on 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

(6) Applications in the Radiolocation Service.

(7) [Reserved]

(8) Applications for frequencies listed in the SMR tables contained in §§ 90.617 and 90.619.

(9) Applications indicating license assignments such as change in ownership, control or corporate structure if there is no change in technical parameters.

(10) Applications for mobile stations operating in the 470–512 MHz band, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 764–776/794–806 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 764–776/794–806 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

(13) Applications for itinerant operation in the 217–220 MHz band.

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

(15) Applications for a state license under § 90.529.

(16) Applications for narrowband low power channels listed for itinerant use in § 90.531(b)(4)

23. Section 90.176 is revised as follows:

§ 90.176 Coordinator notification requirements on frequencies below 512 MHz, at 764–776/794–806 MHz, or at 1427–1432 MHz.

(a) *Frequencies below 470 MHz.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other frequency coordinators who are also certified to coordinate that frequency.

(1) The applicable frequency coordinator for each frequency is specified in the coordinator column of the frequency tables of §§ 90.20(c)(3) and 90.35(b)(3).

(2) For frequencies that do not specify any frequency coordinator, all certified in-pool coordinators must be notified.

(3) For frequencies that are shared between the Public Safety Pool and the Industrial/Business Pool (frequencies subject to §§ 90.20(d)(7), (d)(25), (d)(34), or (d)(46) in the Public Safety Pool, and subject to §§ 90.35(c)(13), (c)(25), or (d)(4) in the Industrial/Business Pool), all certified coordinators of both pools must be notified.

(b) *Frequencies in the 470–512 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other certified frequency coordinators in the Public Safety Pool and the Industrial/Business Pool.

(c) *Frequencies in the 764–776/794–806 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to all other certified frequency coordinators in the Public Safety Pool.

(d) *Frequencies in the 1427–1432 MHz band.* Within one business day of making a frequency recommendation, each frequency coordinator must notify and provide the information indicated in paragraph (g) of this section to the WMTS frequency coordinator designated in § 95.113 and to all other frequency coordinators who are also certified to coordinate that frequency.

(e) Each frequency coordinator must also notify all other certified in-pool coordinators on any day that the frequency coordinator does not make any frequency recommendations.

(f) Notification must be made to all coordinators at approximately the same time and can be made using any method that ensures compliance with the one business day requirement.

(g) At a minimum the following information must be included in each notification:

(1) Name of applicant;

(2) Frequency or frequencies recommended;

(3) Antenna locations and heights;

(4) Effective radiated power (ERP);

(5) Type(s) of emissions;

(6) Description of the service area; and

(7) Date and time of recommendation.

(h) Upon request, each coordinator must provide any additional information requested from another certified coordinator regarding a pending recommendation that it has processed but has not yet been granted by the Commission.

(i) It is the responsibility of each coordinator to insure that its frequency recommendations do not conflict with the frequency recommendations of any other frequency coordinator. Should a conflict arise, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

28. Section 90.203(a)(1) is revised to read as follows:

§ 90.203 Certification required.

(a) * * *

(1) Effective October 16, 2002, except in the 1427–1432 MHz band, an equipment approval may no longer be obtained for in-hospital medical telemetry equipment operating under the provisions of this part. The requirements for obtaining an approval for medical telemetry equipment after this date are found in subpart H of part 95 of this chapter.

* * * * *

29. Section 90.205 is amended by redesignating paragraphs (e) through (k) as paragraphs (f) through (l), redesignating paragraphs (l) through (o) as paragraphs (n) through (q), and adding new paragraphs (e) and (m) to read as follows:

§ 90.205 Power and antenna height limits.

* * * * *

(e) *217–220 MHz.* Limitations on power and antenna heights are specified in § 90.259.

* * * * *

(m) *1427–1429.5 MHz and 1429.5–1432 MHz.* Limitations on power are specified in § 90.259.

* * * * *

30. Section 90.209(b)(5) in the Standard Channel Spacing/Bandwidth, is amended by removing frequency 1427–1435 and by adding two new entries in numerical order and to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* * * * *		
216–220[5]	6.25	6.25
* * * * *		
1427–1432[5]	12.5	12.5
* * * * *		

* * * * *

[5] Licensees will be allowed to combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification per § 90.259(a)(8) and (b)(10).

31. Section 90.213(a) in the Minimum Frequency Stability, a new an entry is added in numerical order to read as follows:

§ 90.213 Frequency stability.

(a) * * *

MINIMUM FREQUENCY STABILITY

[Parts per million (ppm)]

Frequency range (MHz)	Fixed and base stations	Mobile stations	
		Over 2 watts output power	2 watts or less output power
* * * * *		*	*
216–220	1.0		1.0
* * * * *		*	*

* * * * *

32. Section 90.259 is revised to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.

(a) *216–220 MHz band.* (1) Frequencies in the 216–220 MHz band may be assigned to applicants that establish eligibility in the Industrial/Business Pool.

(2) All operation is secondary to the fixed and mobile services, including the Low Power Radio Service.

(3) In the 216–217 MHz band, no new assignments will be made after January 1, 2002.

(4) In the 217–220 MHz band, the maximum transmitter output power is 2 watts. The maximum antenna height above average terrain (HAAT) is 152 m (500 feet).

(5) In the 217–220 MHz band, base, mobile, and operational fixed is permitted.

(6) Wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographical center (latitude and longitude).

(7) Assignable frequencies occur in increments of 6.25 kHz from 217.0625 MHz to 219.99375 MHz.

(8) Licensees may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification.

(b) *1427–1432 MHz band.* (1) Frequencies in the 1427–1432 MHz band may be assigned to applicants that establish eligibility in the Public Safety Pool or the Industrial/Business Pool.

(2) All operations in the 1427–1429.5 MHz band are secondary to the Wireless Medical Telemetry Service except in the locations specified in paragraph (b)(4) of this section. At the locations specified in paragraph (b)(4) of this section, all operations are secondary to the Wireless Medical Telemetry Service in the 1429–1431.5 MHz band.

(3) All operations in the 1429.5–1432 MHz band are primary in status except in the locations specified in paragraph (b)(4) of this section. At the locations specified in paragraph (b)(4) of this section, all operations are primary in status in the 1427–1429 MHz and 1431.5–1432 MHz bands.

(4) *Locations:* (i) Pittsburgh, Pennsylvania—Counties of Westmoreland, Washington, Beaver, Allegheny and Butler;

(ii) Washington, DC metropolitan area—Counties of Montgomery, Prince George's, Charles, Arlington, Prince William, Fauquier, Loudon, and Fairfax; Cities of Alexandria, Falls Church, Fairfax, and District of Columbia;

(iii) Richmond/Norfolk, Virginia—Counties of Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Isle of Wight, James City, New Kent, Powhatan, Prince George, Southhampton, Surrey, Sussex, and York; Cities of Chesapeake, Colonial Heights, Franklin, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg;

(iv) Austin/Georgetown, Texas—Counties of Williamson and Travis;

(v) Battle Creek, Michigan—County of Calhoun;

(vi) Detroit, Michigan—Counties of Oakland, Wayne, Washtenaw, Macomb and Livingston;

(vii) Spokane, Washington—Counties of Spokane, WA and Kootenai, ID.

(5) All operations in the 1429.5–1432 MHz band authorized prior to April 12, 2002 are on a secondary basis.

(6) For secondary operations only fixed stations are permitted. At the locations specified in (b)(4) of this section, secondary operations are performed in the 1429–1431.5 MHz band. For all other locations, secondary operations are performed in the 1427–1429.5 MHz band. The maximum power is 1 watt EIRP.

(7) For primary operations base, mobile, operational fixed and temporary fixed operations are permitted.

(i) At the locations specified in (b)(4) of this section, primary operations are performed in the 1427–1429 MHz and 1431.5–1432 MHz bands. The maximum EIRP limitations are as follows:

Operation	Frequency range (MHz)			
	1427–1428 MHz	1428–1428.5	1428.5–1429	1431.5–1432
Fixed	100 watts	10 watts	1 watt	1 watt.
Mobile	1 watt	1 watt	25 milliwatts	25 milliwatts.
Temporary fixed	1 watt	1 watt	1 watt	1 watt.

(ii) For all other locations, primary operations are performed in the 1429.5–1432 MHz band. The maximum EIRP limitations are as follows:

Operation	Frequency range (MHz)			
	1429.5–1430	1430–1430.5	1430.5–1431.5	1431.5–1432
Fixed	1 watt	1 watt	10 watts	100 watts.
Mobile	25 milliwatts	1 watt	1 watt	1 watt.
Temporary fixed	1 watt	1 watt	1 watt	1 watt.

(8) Wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographical center (latitude and longitude).

(9) Assignable frequencies occur in increments of 12.5 kHz from 1427.0125 MHz to 1431.9875 MHz.

(10) Licensees, however, may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification.

(11) For any operation in the 1427–1432 MHz band, the predicted or measured field strength—in the WMTS primary band—at the location of any registered WMTS healthcare facility shall not exceed 150 uV/m. For the locations specified in (b)(4) of this section, WMTS is primary in the 1429–1431.5 MHz band. For all other locations, WMTS is primary in the 1427–1429.5 MHz band.

(c) *Authorized uses.* (1) Use of these bands is limited to telemetering purposes.

(2) Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the vehicle itself, but will not be authorized solely to perform this function.

(3) Airborne use is prohibited.

33. Part 95 of title 47 of the Code of Federal Regulations, is amended to read as follows:

PART 95—PERSONAL RADIO SERVICES

The authority citation for part 95 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

34. Section 95.630 is revised to read as follows:

§ 95.630 WMTS Transmitter frequencies.

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz

1395–1400 MHz
1427–1432 MHz

35. Section 95.1113 is amended by adding paragraphs (b)(5) and (b)(6) to read as follows:

§ 95.1113 Frequency coordinator.

* * * * *

(b) * * *

(5) Notify licensees—who are operating in accordance with § 90.259(b)—of the need to comply with the field strength limit of § 90.259(b)(11) prior to initial activation of WMTS equipment in the 1427–1432 MHz band.

(6) Notify licensees—who are operating in 1392–1395 MHz band in accordance with subpart I of part 27—of the need to comply with the field strength limit of § 27.804 prior to initial activation of WMTS equipment in the 1395–1400 MHz band.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02–6; FCC 02–175]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operation of the program, not been disbursed. In taking this action, the Commission balances the statutory requirements of providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and predictable.

DATES: Effective June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu or Kathy Tofigh, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in CC Docket No. 02–6 released on June 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we adopt a framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operation of the program, not been disbursed. In taking this action today, we balance the statutory requirements in section 254 of providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and predictable. This, in turn, will allow contributions to universal service to remain predictable for carriers and, ultimately, will inure to the benefit of their customers. We are committed to ensuring that eligible schools and libraries have access to sufficient universal service support consistent with the statute and therefore adopt a rule to ensure that unused schools and libraries funds are carried forward for disbursement in subsequent funding years. At the same time, we find that the public interest is best served by our action to stabilize contributions to universal service for the immediate future, while we consider fundamental reform to the way in which universal service contributions are assessed on contributors and recovered from consumers. As we explained in the *Contribution FNPRM*, 67 FR 11268, March 13, 2002, numerous changes in the marketplace and the operation of the current assessment system have contributed to broad fluctuations in the contribution base of the universal service support mechanisms since our adoption of the current assessment methodology. These fluctuations require us to consider reform to ensure stability of the universal service fund, which should help ensure predictability in that fund. We conclude that our actions today strike an appropriate balance by helping to minimize and stabilize the contribution factor for the immediate future, while maintaining an appropriate level of support for all universal service support mechanisms, including the schools and libraries program.

2. Consistent with the congressional mandate in section 254 that carriers contribute to the ''specific [and] predictable'' universal service support mechanisms, the Commission has endeavored to ensure that universal service contribution obligations remain predictable so that carriers anticipate their payments appropriately. Over the past several years, however, we have witnessed increasing upward pressure on contributions caused by a variety of events, including declining interstate revenues coupled with increased demand for universal service support. For example, consistent with section 254(e) of the Act, the Commission recently took steps to replace implicit subsidies in interstate access charges with explicit universal service support. Implementation of these statutory requirements coupled with changes in the telecommunications marketplace have led to broad fluctuations in the contribution base and rising contribution obligations. For these reasons, we recently sought comment on whether and how to change the existing contribution methodology.

3. While we are examining whether more fundamental reform of the basis for assessing universal service contributions is warranted, we believe it is important at this time to stabilize universal service contributions and maintain predictability for the universal service support mechanisms for the immediate future. This, in turn, will allow contributions to remain predictable for carriers, and, ultimately, benefit consumers. We therefore conclude that, in order to maintain fund predictability for the immediate future, unused funds from the schools and libraries support mechanism shall, in accordance with the public interest, be applied to stabilize or reduce the amount of contributions to the universal service fund for no more than the next three quarters, which should provide us sufficient time to complete our review of the contribution methodology and implement any changes adopted in that proceeding. Specifically, we shall apply unused funds to reduce the contribution factors for the third and fourth quarters of 2002, and first quarter 2003, if necessary. We intend to complete our examination of the issues in the contribution methodology proceeding and implement appropriate rules no later than first quarter 2003. We will endeavor, however, to complete the proceeding at an earlier date. In that event, such unused funds from the schools and libraries support mechanism would be carried forward for use by eligible schools and libraries in subsequent funding years. Consistent with the requirement that carriers contribute to a specific and predictable

universal service support mechanism, we expect any changes to the contribution methodology that are ultimately adopted to address these concerns regarding the current contribution assessment system.

4. We take this action today with careful consideration of the effect of our decision on the schools and libraries support mechanism. For the last five years, the schools and libraries support mechanism has provided discounts that have enabled millions of school children and library patrons to obtain access to modern telecommunications and information services. In fact, as of May 2002, schools and libraries have received over $8.25 billion in funding commitments. Although the successes of this program are impressive, we have been unable to fulfill the demands from all of the Nation's schools and libraries. For example, in order to fully fund current demand for Funding Year 5, we would have to more than double the existing $2.25 billion funding cap on the schools and libraries mechanism.

5. In light of this high demand for discounts, we believe that, at the close of this period for the Commission to consider the reforms that should be implemented to address carriers' contribution obligations, it is appropriate to carry forward unused funds to increase disbursements to schools and libraries program in subsequent funding years. Specifically, we direct that, effective no later than second quarter 2003, any unused funds from the schools and libraries support mechanism in any given year shall, consistent with the public interest, be carried forward for disbursement in subsequent funding years of the schools and libraries support mechanism. Such action would ensure that the funds that are unused by schools and libraries from prior years, through normal operation of the program, are available to schools and libraries in future years. We intend to develop specific rules implementing this policy not later than second quarter 2003 in order to maximize the availability of these funds for schools and libraries. We also will continue to explore procedural and programmatic changes to the schools and libraries support mechanism that may help reduce the amount of funds that are not disbursed. These actions together will help us to most effectively implement the goals of section 254(h) by providing for discounts as close as possible to the level of the annual $2.25 billion cap.

II. Discussion

6. After consideration of the two proposals relating to the treatment of unused funds collected for the schools and libraries mechanism, we conclude that unused funds from the schools and libraries support mechanism shall, consistent with the public interest, be applied to stabilize the universal service contribution factor for a period not to exceed the next three quarters, beginning with third quarter 2002, while the Commission considers reform of the contribution system. We direct the Wireline Competition Bureau and USAC to apply such unused funds to stabilize or reduce universal service contributions in accordance with the public interest for the third and fourth quarters of 2002, and first quarter 2003, in a manner consistent with the Commission's prior treatment of unused funds from Funding Year 1. Thereafter, we find that any unused funds from the schools and libraries support mechanism shall be carried forward to increase disbursements to schools and libraries in subsequent years. We find that such action is consistent with section 254 and the public interest by ensuring that contributions to universal service remain predictable, without jeopardizing the sufficiency of any of the universal service support mechanisms. Accordingly, we amend § 54.507 of our rules.

7. We find that this framework will benefit contributors, and ultimately their customers, by stabilizing the contribution factor in the short term, while also maintaining an appropriate level of support for all of the universal service support mechanisms, including the schools and libraries support mechanism. When considering issues relating to funding for the schools and libraries support mechanism, we must also consider the funding requirements of the other universal service programs and their cumulative impact on contributors and consumers. We conclude that the framework adopted today reflects a careful balance between providing sufficient support for all the universal service support mechanisms and keeping contributions at a predictable level for the immediate future, while we consider the need for reform of our contribution assessment methodology.

8. Over the last four years, overall demand on the universal service fund has grown considerably, in large part as a result of implementation of the statute's requirements to ensure that support is explicit and sufficient. In 1997, about $1.9 billion was disbursed from the universal service fund. We estimate that approximately $5.5 billion will be disbursed from the universal service fund in 2002. At the same time, the universal service revenue base has become smaller, and interstate revenues have declined for interexchange carriers. Several factors may be responsible for the diminishing revenue base, including the migration of traditional long distance services to new technologies, bundled wireless service packages, and price competition due to Bell entry into the long distance marketplace. Accordingly, the contribution factor and therefore carrier contribution obligations have increased, and carriers have generally passed through much of these increases to consumers. In light of these changes in the market and their impact on carrier contributions and consumers, we recently sought comment on whether and how to modify the current contribution assessment methodology. We recognized there that these changes in the marketplace, coupled with our current contribution methodology, have caused broad fluctuations in the contribution base. This, in turn, raises the issue of stability and predictability of the universal service fund. Thus, until we complete our assessment of the current contribution methodology, we believe that it is appropriate to stabilize or lower the contributions to universal service. In this way, we will be better able to ensure in the near term that the fund remains predictable for contributors and consumers.

9. Some commenters argue that using unused funds to reduce the contribution factor would not necessarily benefit consumers by reducing the line-items on consumers' bills. While carriers currently have the flexibility to recover from their customers the contributions to universal service, contributors may not shift more than an equitable share of their contributions to any customer or group of customers, and must provide accurate, truthful, and complete information regarding the nature of the charge. We would therefore expect that our efforts to stabilize the contribution factor would be reflected in any charges passed through to consumers. Several large contributors to universal service indicate in their comments to the Commission that a reduction in the contribution factor would be passed on to consumers. Therefore, we find that it is reasonable to conclude that consumers will ultimately benefit from actions that stabilize the steady growth in the contribution factor.

10. In addition, we do not agree with commenters that suggest that our actions in the short term would contravene the intent of the schools and libraries support mechanism. Indeed, as of May 2002, schools and libraries have received over $8.25 billion in funding commitments. Our action to utilize unused funds for a period not longer

than the next three quarters does not alter the $2.25 billion cap in any way, and such funds will continue to be made available annually to schools and libraries in a manner that is consistent with section 254 of the Act.

11. Although we believe our actions strike an appropriate balance today, Commission action in the contribution methodology proceeding will need to address concerns regarding fund predictability. We intend to take action in the contribution methodology proceeding and implement any changes adopted in that proceeding no later than April 1, 2003. Thus, once this window for action closes, we conclude it will serve the public interest to carry forward unused funds from the schools and libraries support mechanism for use by eligible schools and libraries in subsequent funding years.

12. We recognize that the current demand for discounts in Funding Year 5 significantly exceeds the $2.25 billion funding cap. In fact, in order to fully fund current demand for Funding Year 5, we would have to more than double the existing cap on the schools and libraries mechanism. In light of this high demand for discounts and based on the record, we believe that, not later than second quarter of 2003, unused schools and libraries funds should be carried forward to increase disbursements to schools and libraries program in subsequent years.

13. Furthermore, because unused funds remain, as a result of normal program operation and, at least partially, for reasons out of applicants' control, we conclude that it will be appropriate in the future to carry forward unused funds from the schools and libraries mechanism for use in subsequent years. To that end, in conjunction with seeking comment as to the treatment of unused funds in the *Further Notice,* 67 FR 7327, February 19, 2002, we also sought comment on why applicants and providers may fail to fully use committed funds and whether other operational changes could be made to reduce the amount of unused funds. We are considering the record and the types of program changes that may decrease the amount of unused funds from the schools and libraries support program in the future. In addition, we note that USAC recently developed, in coordination with the Commission staff, new procedures for service provider changes that increase the amount of funds disbursed each year and a new Form 500 that allows applicants to reduce or cancel funding commitments so that those funds can be made available to applicants during the same funding year. This action, in combination with our decision to carry forward unused funds in the schools and libraries support mechanism in the future, will help us to ensure that schools and libraries make maximum use of the funding available under $2.25 billion annual cap.

III. Effective Date of the Rules

14. We revise § 54.507(a) of the Commission's rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize or reduce the amount of such contributions to the universal service fund for no more than the next three quarters, beginning third quarter 2002. We conclude that the amendments to our rules adopted herein shall be effective June 20, 2002. The final rules must take effect prior to 30 days after publication in the **Federal Register** in order for the Wireline Competition Bureau to announce the contribution factor for third quarter 2002. Such action will serve the public interest because the final rules allow for stabilization or reductions in the contribution factor. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

15. This Report and Order does not contain any new or modified information collection(s) subject to the PRA of 1995, Public Law 104–13.

B. Final Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making and Order (*Further Notice*). The Commission sought written public comment on the proposals in the *Further Notice,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the First Report and Order

17. The Commission recently initiated a review of our rules governing the schools and libraries universal service support mechanism. Among other things, the Commission sought comment on whether it should amend its rules regarding the treatment of unused funds from the schools and libraries mechanism. In this Order, we revise § 54.507(a) of the Commission's rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize or reduce the amount of contributions to the universal service fund for no more than the next three quarters, beginning with the third quarter 2002. Thereafter, unused funds from the schools and libraries mechanism shall be carried forward for use in subsequent funding years of the schools and libraries program. Our actions today strike an appropriate balance by helping to minimize and stabilize the contribution factor for the immediate future, while maintaining support for the schools and libraries program.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

18. There were no comments filed that specifically addressed the rules and policies presented in the IRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

20. Nationwide, as of 1992, there were approximately 275,801 small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be

75,955 or fewer. Many such small government jurisdictions contain and administer programs and funds for schools and libraries. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs) and vendors of internal connections.

a. Schools and Libraries

21. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined as small entities elementary and secondary schools and libraries having $6 million or less in annual receipts. In funding year 2 (July 1, 1999 to June 20, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules adopted in this Order, under current operation of the program.

b. Telecommunications Service Providers

22. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

23. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to our most recent data report, 1,335 carriers classified themselves as incumbent local exchange carriers. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of the 1,335 incumbent carriers, 13 entities are price cap carriers that are not subject to these rules. Consequently, we estimate that fewer than 1,322 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected by the decisions adopted in this Order.

24. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Trends Report, 204 companies reported that they were engaged in the provision of interexchange services. As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 204 small entity IXCs that may be affected by the decisions adopted in this Order.

25. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to our most recent data, there are 349 CAPs. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 349 small entity CAPs that that may be affected by the decisions adopted in this Order.

26. *Cellular and Wireless Telephony.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications or paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the decisions adopted in this Order.

27. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees. According to the most recent Trends Report, 477 providers classified themselves as paging services, wireless data carriers or other mobile service providers. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this

time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 477 wireless service providers that that may be affected by the decisions adopted in this Order.

c. Internet Service Providers

28. Under the new NAICS codes, SBA has developed a small business size standard for ''On-line Information Services,'' NAICS Code 514191. According to SBA regulations, a small business under this category is one having annual receipts of $21 million or less. According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of $9,999,999 or less, and an additional 111 firms with annual receipts of $10,000,000 or more. Thus, the number of On-line Information Services firms that are small under the SBA's $21 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

d. Vendors of Internal Connections

29. The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of these kinds of small entities are the definitions under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment.'' According to the SBA's regulations, manufacturers of RTB or other communications equipment must have 750 or fewer employees in order to qualify as a small business. The most recent available Census Bureau data indicates that there are 1,187 companies with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment. Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. There are no additional reporting or other new compliance requirements relating directly to the decisions in this Order. Additional reporting or compliance requirements relating to the implementation of the carryover of unused funds from the schools and libraries mechanism will be addressed at the time such implementation procedures are adopted.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others: ''(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

32. In each funding year of the schools and libraries mechanism, a portion of the $2.25 billion available under the program cap has gone unused, largely because some applicants do not fully use the funds committed to them in the same funding year. In this Order, we revise section 54.507(a) of the Commission's rules to provide that unused funds from the schools and libraries support mechanism may be applied to stabilize or reduce the amount of such contributions by carriers to the universal service fund for no more than the next three quarters, beginning with third quarter 2002. We believe that applying unused funds from the schools and libraries mechanism to stabilize or reduce contributions has the same impact on both small and large entities. In addition, we believe that the action that we take today will be beneficial for both large and small entities that contribute to the universal service fund by stabilizing or reducing contribution requirements. Furthermore, we believe that the carryover of unused funds from the schools and libraries mechanism will be beneficial to both small and large entities by providing additional funds that may be committed to schools and libraries pursuant to the schools and libraries support mechanism. There are no reporting or other compliance requirements resulting from our action, and no possible exemptions that might assist small entities.

33. *Report to Congress:* The Commission will send a copy of the First Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the First Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the First Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

34. Pursuant to the authority contained in sections 1–4, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 254, 303(r), this First Report and Order in CC Docket No. 02–6 is adopted.

35. Pursuant to section 553(d) of Administrative Procedure Act, 5 U.S.C. 553(d), that this order is effective June 20, 2002.

36. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Change

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart F—Universal Service Support for Schools and Libraries

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

2. Section 54.507 is amended by revising paragraph (a) to read as follows:

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual funding cap on federal universal service support for schools and libraries

shall be $2.25 billion per funding year. All funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand. All funds collected that are unused shall be applied to stabilize universal service contributions in accordance with the public interest and consistent with § 54.709(b) for no more than three quarters, beginning with third quarter 2002. Beginning no later than second quarter 2003, all funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

* * * * *

[FR Doc. 02–15498 Filed 6–19–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 119
Thursday, June 20, 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 330

[Docket No. 02–011–1]

Redelivery of Cargo for Inspection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to the inspection of cargo entering the United States to provide that inspectors from the Animal and Plant Health Inspection Service (APHIS) may require that cargo be returned to the port of first arrival or, if convenient, another location as specified by APHIS for inspection when necessary. All cargo is subject to inspection at the port of first arrival by an APHIS inspector and is not supposed to be removed from that port before the inspector releases it; however, for a variety of reasons, cargo is sometimes moved from the port of first arrival prior to inspection by APHIS. In these situations, APHIS inspectors must request that the U.S. Customs Service act on their behalf and order the cargo returned to the port for inspection. Amending the regulations would allow APHIS inspectors to deal directly with owners, shippers, brokers, and their agents and would increase the efficiency of both APHIS and the Customs Service by simplifying the current system.

DATES: We will consider all comments that we receive on or before August 19, 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. 02–011–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–011–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–011–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Pamela Byrne, Senior Staff Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1231; (301) 734–5242.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the regulations in 7 CFR part 330 (referred to below as the regulations) is to prevent the dissemination of plant pests into the United States, or interstate, by regulating the movement of plant pests into or through the United States, or interstate, and the movement of means of conveyance; earth, stone, and quarry products; garbage; and certain other products and articles into or through the United States.

The regulations in § 330.105(a) deal with the inspection of cargo (means of conveyance, articles, and products) arriving from outside the United States at ports of first arrival in the United States. Currently, § 330.105(a) provides that such cargo is subject to inspection by an Animal and Plant Health Inspection Service (APHIS) inspector at the port of first arrival in the United States and that the cargo must not be released by U.S. Customs Service officers for entry or onward movement until released by the APHIS inspector. For a variety of reasons, however, cargo is sometimes moved from the port of first arrival before inspection by the APHIS inspector. In these situations, the APHIS inspector must request that the U.S. Customs Service act on his or her behalf and order that the cargo be returned to the port for inspection.

We are proposing to amend the regulations in § 330.105(a) to provide that an APHIS inspector could require the return of cargo to the port of first arrival or if convenient, another location as specified by APHIS for inspection if the cargo has been moved prior to inspection by APHIS. Amending the regulations in this way would simplify the system by allowing APHIS inspectors to deal directly with owners, shippers, brokers, and their agents, thus increasing the efficiency of both APHIS and the U.S. Customs Service.

Miscellaneous Changes

The definition for *Customs* in § 330.100 contains an outdated reference to the Bureau of Customs, which is now the U.S. Customs Service. We propose to correct this reference in this document. Also, another outdated term, ''Collector of Customs,'' appears in §§ 330.104 and 330.105(a). We are also proposing to remove that term each time it appears.

Section 330.104 also contains references to specific sections of the Customs Service's regulations in title 19 that have been redesignated since § 330.104 was established. We propose to amend § 330.104 to reflect these changes.

Finally, we are proposing to amend the definition of *inspector* for consistency with the definition of that term in other parts of our regulations in title 7.

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.

The changes to the regulations contained in this proposed rule are administrative in nature and are not expected to have an economic effect on any entities, large or small. These changes would simply allow APHIS inspectors to deal directly with owners, shippers, brokers, and their agents to

order the return of cargo that has been moved from the port of first arrival without APHIS inspection. Currently, in such situations, APHIS inspectors must request that the U.S. Customs Service act on their behalf and order the cargo to be returned to the port for inspection. This proposed rule would increase the efficiency of both APHIS and the Customs Service by simplifying the current system.

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 will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 330 as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for part 330 would continue to read as follows:

Authority: 7 U.S.C. 450, 2260, 7711, 7712, 7714, 7718, 7731, 7734, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

§ 330.100 [Amended]

2. Section 330.100 would be amended as follows:

a. In the definition of *Customs,* by removing the words ''Bureau of Customs'' and adding the words ''U.S. Customs Service'' in their place.

b. In the definition of *Inspector,* by adding the words ''Animal and Plant Health Inspection Service,'' before the word ''U.S.'' and by adding a comma after the word ''Agriculture''.

3. In § 330.104, the second and third sentences would be revised to read as follows:

§ 330.104 Ports of entry.

* * * Such ports shall be selected by the Deputy Administrator from ports named in 19 CFR 101.3 as ''ports of entry'' for the purpose of enforcing the customs laws or named in 19 CFR 122.13 as ''international airports,'' or airports at which permission to land aircraft has been granted by the Commissioner of Customs in accordance with 19 CFR 122.14. Except as otherwise provided by administrative instructions, or by permits issued in accordance with this part, the ports of entry shall be those named in 19 CFR 101.3 and 122.13. * * *

4. In § 330.105, paragraph (a) would be amended by adding a new sentence after the second sentence following the paragraph heading to read as follows and, in the last sentence, by removing the words ''the Collector of''.

§ 330.105 Inspection.

(a) *Inspection of foreign arrivals.* * * * If any means of conveyance, product, or article subject to inspection under this section is released before the inspector has had the opportunity to inspect it, the inspector may require the owner, shipper, broker or his or her agent to return the means of conveyance, product, or article to the port of first arrival or, if mutually convenient, another location as specified by APHIS for inspection. * * *

* * * * *

Done in Washington, DC, this 14th day of June 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15585 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AG56

Prompt Disaster Set-Aside Consideration and Primary Loan Servicing Facilitation

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: Farm Service Agency (FSA) is proposing to amend its regulations for the Disaster Set-Aside (DSA) program to provide the disaster set-aside more quickly to those who can benefit most from the program. The proposed changes also will reduce the Government's risk associated with the delay in debt collection by adding security requirements.

DATES: Comments on the proposed rule and the information collection requirements of this rule must be submitted by August 19, 2002, to be assured of consideration.

ADDRESSES: Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, 1250 Maryland Ave., SW., Washington, DC 20024–0523. Comments will be available for public inspection weekdays from 8 a.m. to 4:15 p.m., Eastern Standard Time, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, S.W, Washington, DC 20250–0523, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.fsa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and

certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities because new provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Evaluation

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

Executive Order 12372 requires intergovernmental consultation with State and local officials to coordinate Federal assistance and development projects. In accordance with the notice related to 7 CFR part 3015, subpart V, published June 24, 1983 (48 FR 29115), the programs within this rule are excluded from the scope of this Executive Order.

The Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to OMB.

Title: 7 CFR part 1951–T—Disaster Set-Aside Program.

OMB Control Number: 0560–0164.

Expiration Date: January 31, 2003.

Abstract: The DSA program is designed to assist borrowers in financial distress who operated a farm or ranch in a political subdivision, typically a county, that was declared or designated a disaster area. DSA allows eligible borrowers who are unable to make payments to quickly eliminate their immediate financial stress. Under this program, FSA Farm Loan Program (FLP) borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. The installment set-aside will be the one due immediately after the disaster. FSA will collect information on the borrower's asset values, expenses and income.

Type of Request: Revision and Extension of a Currently Approved Information.

Collection Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.26 hours per DSA request.

Respondents: Farms, businesses and individuals.

Estimated Total Burden Hours: 4,938.

Comments are solicited on the proposed information collection and recordkeeping to assist FSA to: (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhance the quality, utility and clarity of the information to be collected; and (d) 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. Comments regarding this information collection should be sent to David Spillman, Branch Chief, Direct Loan Servicing, Farm Loan Programs, Farm Service Agency, United States Department of Agriculture, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523. Comments regarding paperwork burden 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.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Proposed Rule

The DSA program was first made available to the Agency's FLP borrowers beginning October 21, 1994, because of the heavy flooding in the Midwest and extreme drought in the South. Since that time, approximately 27,500 borrowers have received DSA assistance. The overall popularity of the program can be attributed to the relatively small amount of paperwork required in applying for and processing DSA requests.

A random review of the case files of borrowers who have received a DSA indicates that this program is sometimes being utilized to set-aside payments which are scheduled one to two years from the time of the actual disaster. This rule limits the amount set-aside to the amount that the borrower is unable to pay the Agency from the production and marketing period in which the disaster occurred. Payments to other creditors are not considered. This will ensure that the amount of debt that is set-aside is minimized, and the resulting balloon payment and interest accrual are minimized. In addition, cases have been noted in which income that could have been used to pay the FSA debts was instead released for the purchase of capital items. DSA has also been used on accounts which would seem to have required primary loan servicing. Most of these delinquent accounts are more properly served by rescheduling and reamortizing the existing debt. This allows all future payments to be adjusted to an amount the operation can be expected to pay, instead of simply deferring a delinquent payment and leaving all remaining payments due as scheduled.

The proposed rule also removes references to second set-asides and set-asides due to low commodity prices since there is no longer authority for DSA to be utilized in this manner. This change will clarify the actions the Agency may take during designated disasters.

Since this program is not required by statute, the Agency must ensure that it

does not hinder the statutory primary loan servicing requirements which are codified in 7 CFR part 1951, subpart S. To ensure the future viability of farming operations, save borrower equity and reduce Government losses, FSA proposes to amend eligibility requirements for DSA to require that:

(1) DSA applications must be made prior to the borrower becoming delinquent on the loans;

(2) DSA is not authorized if the borrower has submitted an application for primary loan servicing; and

(3) Only primary loan servicing, will be considered after a borrower becomes 90 days past due.

These changes will ensure that a borrower with serious financial difficulties (already delinquent on loans to the Government) will receive notice of the full benefits of loan restructure as required by section 331D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981d). Timeframes for both the borrower and the Agency have been shortened to ensure that adequate time exists for application submission, processing and completion within these time frames.

The proposed rule enhances consistency with primary loan servicing requirements at 7 CFR 1951.906 and 7 CFR 1951.909(c) by ensuring that borrowers obtaining a disaster set-aside have acted in good faith in complying with agreements made with the Government and are unable to pay the debt for reasons which are beyond their control.

The proposed rule also eliminates the set-aside of cost recoverable items. These costs, such as property taxes, are the borrower's responsibility but have been paid by the Government. Non-payment of such costs is a violation of the terms of the Promissory Note and places the account in nonmonetary default, requiring the account to be serviced in accordance with 7 CFR 1951.907(d). This provision requires the sending of primary loan servicing notices. If the borrower applies for such servicing, however, the borrower will be ineligible for disaster set-aside. The borrower is expected to cure any non-monetary default to be eligible for disaster set-aside.

Additional security requirements to ensure the availability of collateral throughout the term of the loan are also proposed if the borrower is not current at the time of the set-aside. This is consistent with the requirements of 7 CFR 1951.910(b) and, since payments can be set aside for the full term of the loan (which could be up to 40 years on a real estate loan or 15 years on a chattel loan), it is essential that the Government take all measures possible to ensure the continued availability of security during the entire term of the loan.

Currently, 7 CFR 1951.954(a) requires that a cash flow projection be developed for the coming year which shows that all debts and expenses can be paid. This proposed rule specifies documentation needed for development of a cash flow (five years of financial and production history) as part of a complete application under § 1951.953 to insure that the § 1951.954 requirement is met.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Disaster assistance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing.

Accordingly, 7 CFR part 1951 is proposed to be amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart T—Disaster Set-Aside Program

2. Amend § 1951.951 by revising the second sentence to read as follows:

§ 1951.951 Purpose.

* * * The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. * * *

3. Revise § 1951.952 to read as follows:

§ 1951.952 General.

DSA is a program whereby borrowers who are current on all FLP loans, but unable to make the next installment coming due, may be permitted to move the scheduled annual installment for each eligible FLP loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by a natural disaster. DSA will not be used to circumvent the servicing available under subpart S of this part.

4. Revise § 1951.953 to read as follows:

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply.* All FLP borrowers liable for the debt must request DSA within 8 months from the date the natural disaster was designated in accordance with 7 CFR part 1945, subpart A.

(c) *Information needed for a complete application.*

(1) A written request for DSA signed by all parties liable for the debt;

(2) Actual production, income, and expense records for the past five years, including the production and marketing period in which the natural disaster occurred; and

(3) Other information requested by the servicing official when needed to make an eligibility determination.

5. Revise § 1951.954 to read as follows:

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have:

(i) Operated a farm or ranch in a county designated a natural disaster or a contiguous county as provided in 7 CFR part 1945, subpart A, and;

(ii) Been a borrower and operated the farm or ranch at the time of the disaster period.

(2) A borrower cannot have more than one installment set aside on each loan. If all previously approved set-asides are paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and the loan may again be considered for DSA.

(3) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part and the borrower's inability to make the upcoming scheduled FSA payments must be for reasons which are not within the borrower's control.

(4) All non-monetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming; prior lienholder foreclosure; bankruptcy or under court jurisdiction; not properly maintaining chattel and real estate security; not properly accounting for the sale of security; or not carrying out any other agreement made with the Agency.

(5) The borrower must be current on all FLP loans at the time the application for DSA is complete. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(6) The borrower must not become 90 days past due before Exhibit A of FmHA Instruction 1951–T (available in any FSA office) is executed.

(7) As a direct result of the designated natural disaster, the borrower does not

have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster.

(8) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts, including FLP debts. The cash flow projection must be prepared in accordance with 7 CFR § 1924.56. The borrower will provide any documentation required to support the cash flow projection.

(9) After the scheduled installments are set-aside, all FLP and NP farm type loans must be current.

(10) The borrower's FLP loan has not been accelerated.

(11) The borrower does not have a loan servicing application pending under subpart S of this part.

(12) The borrower's FLP loans have not been restructured under subpart S of this part since the natural disaster occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the natural disaster.

(2) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(3) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster occurred.

(4) The amount of set-aside shall be limited to the amount the borrower was unable to pay FSA from the production and marketing period in which the disaster occurred. Borrowers are required to pay any portion of an installment that they are able to pay.

(5) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs Exhibit A of FmHA Instruction 1951–T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items may not be set aside and the account must be serviced in accordance with § 1951.907(d). The amount set aside will accrue interest from the time of the set-aside and will be due with the final installment.

6. Amend § 1951.957 as follows:

a. Revise paragraphs (a), (b)(4), and (b)(7); and

b. Remove paragraph (c).

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* (1) Upon receipt of a complete DSA application, the Agency official will determine if the borrower meets the requirements set forth in § 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A of FmHA Instruction 1951–T (available in any FSA office).

(2) The borrower has up to 30 days to sign Exhibit A of FmHA Instruction 1951–T (available in any FSA office) for each loan installment set-aside approved. The Agency may provide for a longer period of time not to exceed 30 additional days under extenuating circumstances, such as where the Agency's approval is contingent upon the borrower paying a portion of the FLP payments from proceeds that may not be available until after the initial 30 day period.

(b) * * *

(4) If the borrower is not current on all FLP loans when Exhibit A of FmHA Instruction 1951–T (available in any FSA office) is executed, the borrower, and all obligors in the case of an entity, must execute and provide to the Agency a best lien obtainable on all of their assets except:

(i) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(ii) When the property could have significant environmental problems or costs;

(iii) When the Agency cannot obtain a valid lien;

(iv) When the property is the borrower's personal residence and appurtenances and:

(A) They are located on a separate parcel, and

(B) The real estate that serves as collateral for the Agency loan plus crops and chattels are valued at greater than or equal to 150 percent of the unpaid balance due on the loan;

(v) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household goods, or small equipment such as hand tools and lawn mowers; or

* * * * *

(7) Payments applied to the amount set-aside will be applied first to interest and then to principal.

§ 1951.1000 [Removed and Reserved]

7. Remove and reserve § 1951.1000.

Signed in Washington, DC, on May 31, 2002.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 02–15506 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2002–26]

RIN 3069–AB15

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP) to authorize a Federal Home Loan Bank (Bank) to set aside annually an additional amount, up to the greater of $1.5 million or 10 percent of the Bank's annual required AHP contribution, to assist low-or moderate-income, first-time homebuyers under the Bank's homeownership set-aside program. This increased discretionary funding authority would supplement the Banks' current discretionary authority to fund homeownership set-aside programs subject to the $3.0 million or 25 percent allocation cap. Under the Banks' AHP contribution requirement for 2002, this increased funding authority would enable the twelve Banks to provide an additional $24.0 million to assist 2,400 to 4,800 additional low-or moderate-income, first-time homebuyers. This additional set-aside funding authority would complement national housing policy initiatives to broaden first-time homeownership, especially among minority and immigrant households and households living in rural areas and on Native American tribal lands.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before August 19, 2002.

ADDRESSES: Send written comments to: Elaine L. Baker, Secretary to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, Melissa L. Allen, Program Analyst, (202) 408–2524, Program Assistance Division; Sylvia C. Martinez, Policy Development and Analysis Division, (202) 408–2825; Sharon B. Like, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. *See id.* The Finance Board's existing regulation governing the operation of the AHP is codified at 12 CFR part 951.

II. Goal To Broaden Homeownership

It is widely recognized that homeownership contributes to community stability and upward mobility of homeowners. A key goal of national housing policy is to broaden homeownership, especially among minority and immigrant households and households living in rural areas and on Native American tribal lands. Based on 2000 Census data, the homeownership rate is approximately 66.3 percent nationwide.[1] The homeownership rate for all minority groups is 48.6 percent, compared to 72.4 percent for non-minorities. The homeownership rate for immigrant households is 47 percent. According to data of the Department of Housing and Urban Development (HUD), in fiscal year 2001, 45.1 percent of Federal Housing Administration (FHA) loans to first-time homebuyers with incomes at or below 80 percent of area median income were to members of minority groups.

To achieve this goal of broadening homeownership, a number of initiatives for assistance to first-time homebuyers have been proposed or implemented, including: the Self-Help Homeownership Opportunity Program (SHOP); the Section 8 Homeownership Program vouchers; the HOME American Dream Downpayment Fund; and a new FHA hybrid adjustable-rate mortgage for low-or moderate-income homebuyers. HUD and state and local housing authorities also are seeking to assist households in achieving homeownership through Family Self-Sufficiency (FSS) and Individual Development Account (IDA) savings programs. Two of the Banks currently use part or all of their homeownership set-aside funding authority to supplement the savings of households participating in FSS and IDA programs.

The Finance Board believes that, in addition to the Banks' current authority to set aside AHP funds for homeownership assistance, authorizing a Bank to set aside annually up to the greater of $1.5 million or 10 percent of its annual required AHP contribution to assist low- or moderate-income, first-time homebuyers would complement these initiatives to broaden homeownership, especially among minority and immigrant households and households living in rural areas and on tribal lands. An increase in AHP subsidy of 10 percentage points for all twelve Banks would increase the total amount of potential funds available from the twelve Banks for downpayment and closing cost assistance to low- or moderate-income, first-time homebuyers by $24.0 million in 2002.[2] This could assist 2,400 to 4,800 additional low- or moderate-income, first-time homebuyers.

The proposed changes to the AHP regulation are discussed further below under the Analysis of Proposed Rule section. The Finance Board welcomes written comments on all aspects of the proposed rule.

III. Analysis of Proposed Rule

A. Current AHP Set-Aside Program Authority

The current AHP regulation requires each of the twelve Banks to operate a competitive application program in its district for the awarding of AHP grants or subsidized advances to members to assist in the purchase, construction or rehabilitation of housing for very low- and low- or moderate-income households. *See* 12 CFR 951.3(a)(2), 951.5(b), 951.6(b). In addition, the AHP regulation authorizes each Bank, in its discretion, to adopt homeownership set-aside programs for the disbursement of AHP grants to members to assist low- or moderate-income households with the purchase or rehabilitation of owner-occupied housing units. *See* 12 CFR 951.3(a), 951.5(a), 951.6(a). ''Low- or moderate-income households'' are defined generally as households with incomes of 80 percent or less of the median income for the area. *See* 12 CFR 951.1. Specifically, each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $3.0 million or 25 percent of its annual required AHP contribution to provide funds to members participating in homeownership set-aside programs at the Bank. 12 CFR 951.3(a)(1). In addition, in cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. 12 CFR 951.3(a)(1).[3]

The AHP regulation provides that households must use the homeownership set-aside grants to pay for downpayment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied housing unit. *See* 12 CFR 951.5(a)(4). The AHP regulation also provides that households must complete a homebuyer or homeowner counseling program, and must meet such other allocation and eligibility criteria as may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort. *See* 12 CFR 951.5(a)(1), (2)(ii) and (iii). The Banks have used this authority over the years to adopt a variety of different eligibility requirements and priorities under their homeownership set-aside programs. In addition, a housing unit purchased or rehabilitated using homeownership set-aside funds must be subject to a five-year retention agreement requiring that if the unit is sold to an income-ineligible household or refinanced prior to the end of the five-year retention period and is no longer subject to a deed restriction, a *pro rata* share of the subsidy shall be

[1] According to the United States Department of Commerce, U.S. Census Bureau Housing Vacancies and Homeownership Survey, the fourth quarter 2001 national homeownership rate was approximately 67.8 percent.

[2] The total required AHP contribution of the twelve Banks in 2002 is $240 million. *See* 12 U.S.C. 1430(j)(5)(C).

[3] The AHP regulation was amended in October 2001 to increase these maximum allowable annual allocations from the greater of $1.5 million or 15 percent of the annual required AHP contribution. *See* 66 FR 50296 (Oct. 3, 2001).

repaid to the Bank. *See* 12 CFR 951.5(a)(5), 951.13(d)(1).

B. Proposed Amendment

For the reasons discussed above, the Finance Board believes that increasing the Banks' current maximum allowable annual homeownership set-aside amount, with the incremental increase targeted to low- or moderate-income, first-time homebuyers, would assist the national housing policy goal of broadening homeownership, including homeownership among minority and immigrant groups and households living in rural areas and on tribal lands. Accordingly, § 951.3(a)(1)(ii) of the proposed rule would authorize a Bank, after consultation with its Advisory Council, to set aside annually up to the greater of $1.5 million or 10 percent of its annual required AHP contribution to assist low- or moderate-income, first-time homebuyers (first-time homebuyer set-aside program). Proposed § 951.3(a)(1)(ii) also would authorize a Bank, in cases where the amount of funds applied for by members in a given year under the first-time homebuyer set-aside program exceeds the amount available for that year, to set aside up to the greater of $1.5 million or 10 percent of its annual required AHP contribution for the subsequent year to the current year's first-time homebuyer set-aside program. The proposed increased discretionary funding authority would supplement the Banks current discretionary authority to fund homeownership set-aside programs subject to the existing $3.0 million or 25 percent allocation cap. The proposed rule also would make a technical amendment to require that the Consumer Price Index (CPI) adjustments of the maximum dollar limits be made beginning in 2003 instead of 2002.

Under the existing AHP regulation, prior to disbursement of homeownership set-aside funds by a Bank to a member, the Bank must require the member to certify that, among other things, the funds received from the Bank will be provided to a household meeting the eligibility requirements of § 951.5(a)(2). *See* 12 CFR 951.8(b)(2). The proposed rule would amend § 951.5(a)(2)(iii) to include the first-time homebuyer requirement as an eligibility requirement under the first-time homebuyer set-aside program. Therefore, a member would be required to certify that funds to be disbursed to households under the first-time homebuyer set-aside program will be provided to eligible first-time homebuyers.

The proposal entails use of the Banks' existing set-aside program operations, thereby minimizing additional administrative costs on the Banks. The proposal would not affect the Banks' and Advisory Councils' current discretionary authority regarding funding and operation of existing or new set-aside programs under the $3.0 million or 25 percent allocation cap. Thus, the Banks, in consultation with their Advisory Councils, could continue their existing set-aside programs, and would have the flexibility to adopt new set-aside programs based on local needs, subject to the current $3.0 million or 25 percent allocation cap. A determination on whether to use the proposed increased funding authority would be in the discretion of each Bank, after consultation with its Advisory Council. The proposal would require, however, that if a decision is made to use the increased funding authority, such increased funding must be targeted to low- or moderate-income, first-time homebuyers, subject to any additional eligibility criteria adopted by the Bank, in its discretion, for the program. *See* 12 CFR 951.5(a)(2)(iii). A Bank could, of course, choose, in its discretion, to also target some or all of its existing or new set-aside programs operating under the current $3.0 million or 25 percent allocation cap to low- or moderate-income, first-time homebuyers, as some Banks do now. Consistent with the current AHP regulation, the proposed rule does not define the term ''first-time homebuyer,'' leaving such determination to the discretion of each Bank, as set forth in its AHP Implementation Plan.

The Banks' homeownership set-aside programs have proven to be an efficient and effective means for the Banks and their members to provide homeownership opportunities for low- or moderate-income homebuyers, including first-time homebuyers. Homeownership set-aside funds help finance affordable housing in underserved areas and for underserved households, and often are the only way to effectively meet scattered-site, affordable housing needs in rural areas or tribal areas, which have difficulty scoring well under the competitive AHP application program and where rental projects are not feasible. Homeownership set-aside programs also allow a member to use AHP funds to finance housing for individual eligible households on an as-needed basis, even if it is only for one household in the member's market area. These are households that the competitive AHP application program might not otherwise reach.

In addition, homeownership set-aside funds often are the only way to meet the need for homeownership opportunities for low-income and very low-income households, which require larger per-unit subsidies and, therefore, may not score well under the competitive AHP application program. Set-aside funds could be made available, in conjunction with funds offered by other homeownership programs, to assist households purchasing homes under such programs. Many households that meet the eligibility requirements of HUD and FSS and IDA homeownership programs may still have difficulty meeting the financial demands of homeownership. Providing additional set-aside funds as downpayment assistance could help lower housing costs to a level that will improve the chances of successful homeownership for such households. The current AHP regulation requires members to provide homeownership set-aside funds as a grant, in an amount up to a maximum of $10,000 per household, as established by the Bank, with such limit applying to all households. *See* 12 CFR 951.5(a)(3). This $10,000 limit per household may impede the ability of Banks and members to assist eligible households that have lower incomes or live in high cost areas and that may require larger per-unit subsidies in the purchase or rehabilitation of homes. Accordingly, the Finance Board is requesting comment on whether the regulation should be amended to increase the maximum subsidy limit per household and the amount of such limit, or whether the Banks should be provided the authority to determine, in their discretion, whether to adopt a maximum subsidy limit per household and the amount of any such limit.

IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not

have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend part 951, title 12, chapter IX, Code of Federal Regulations, as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Revise § 951.3(a)(1) to read as follows:

§ 951.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions*—(1) *Homeownership set-aside programs*—(i) *Homeownership set-aside programs subject to $3.0 million or 25 percent cap.* Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $3.0 million or 25 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors.

(ii) *Additional first-time homebuyer set-aside program subject to $1.5 million or 10 percent cap.* In addition to the authority provided under paragraph (a)(1)(i) of this section, each Bank, after consultation with its Advisory Council, and pursuant to written policies adopted by the Bank's board of directors, may set aside annually up to the greater of $1.5 million or 10 percent of its annual required AHP contribution to provide funds to members participating in a Bank homeownership set-aside program to assist first-time homebuyers, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year under such a program exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 10 percent of its annual required AHP contribution for the subsequent year to the current year's program pursuant to written policies adopted by the Bank's board of directors.

(iii) *Requirements applicable to all homeownership set-aside programs.* Beginning in 2003 and for subsequent years, the maximum dollar limits set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting its homeownership set-aside program policies.

* * * * *

3. Revise § 951.5(a)(2)(iii) to read as follows:

§ 951.5 Minimum eligibility standards for AHP projects.

(a) * * *

(2) * * *

(iii) Meet the first-time homebuyer requirement, in the case of households receiving funds pursuant to a first-time homebuyer set-aside program established pursuant to § 951.3(a)(1)(ii), and meet such other eligibility criteria that may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort, in the case of households receiving funds pursuant to homeownership set-aside programs established pursuant to § 951.3(a)(1)(i) or (ii);

* * * * *

Dated: June 12, 2002.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 02–15626 Filed 6–19–02; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–59–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A, S–76B and S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Sikorsky Aircraft Corporation Model S–76A, S–76B and S–76C helicopters. The AD would require removing and inspecting each main rotor spindle attachment bolt (bolt) to ensure that the correct bolts are installed. This proposal is prompted by the discovery of improper bolts installed on a helicopter during its production. The actions specified by the proposed AD are intended to detect installation of incorrect bolts, which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–59–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to

the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001-SW–59-AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

This document proposes the adoption of a new AD for Sikorsky Aircraft Corporation Model S–76A, S–76B and S–76C helicopters. The AD would require removing and inspecting each bolt to ensure that the correct bolts are installed. The bolt's complete part number is not visible, so it is necessary to measure each bolt to ensure the proper length bolt is installed. This proposal is prompted by the discovery of improper length bolts installed on a helicopter during its production. The manufacturer conducted subsequent inspections of additional helicopters, as well as structural assessments on spindle/hub attachments. A total of four helicopters were found to have incorrect bolts installed. The actions specified by the proposed AD are intended to detect installation of incorrect bolts, which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–65–52 (321), dated July 24, 2001, which describes procedures for a one-time inspection of each bolt for the correct length during the 1,250 hour time-in-service (TIS) inspection.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require removing and inspecting each bolt to ensure that the correct bolts are installed.

The FAA estimates that 165 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $240 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,000, assuming all 40 bolts (per helicopter) are replaced.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. 2001–SW–59–AD.

Applicability: Model S–76A, S–76B and S–76C helicopters, except those having a serial number of 760501, or 760506 through 760515, certificated in any category.

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

Compliance: Required within 1,250-hour time-in-service or two years, whichever comes first, unless accomplished previously.

To detect installation of an incorrect main rotor spindle attachment bolt (bolt), which could result in reduced hub or bolt fatigue life, separation of the main rotor blade at the spindle attachment, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and measure each bolt to ensure that the length is 1.181 ±.015 inches. There are 10 bolts per rotor spindle and 40 bolts per helicopter that require inspection.

(1) If 1 or 2 bolts are found on any spindle that are longer than 1.196 inches (1.181 inches + .015-inch permissible tolerance), visually inspect the main rotor hub internal threads for distortion and the hole-bottoms for scoring.

(i) If thread distortion or hole-bottom scoring is found, remove the rotor hub from service.

(ii) If no thread distortion or hole-bottom scoring is found, replace all 10 bolts with new airworthy bolts.

(2) If 3 or more bolts that exceed 1.196 inches are found on any spindle, remove and replace the main rotor hub with an airworthy main rotor hub.

(3) If any bolt is found that is shorter than 1.166 inches (1.181 inches – .015 permissible tolerance), replace it with a new airworthy bolt.

(b) Report the results of the inspections of the main rotor hubs whenever the bolts exceed 1.196 inches in length, within 5 calendar days of the inspection, to the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7150; fax: (781) 238–7170. Include the following information in the report:

(1) Serial number of the helicopter.

(2) Quantity of incorrect bolts.

(3) Description of thread distortion or hole-bottom scoring caused by each bolt.

Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

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

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 10, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–15551 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240 and 249

[Release No. 34–46079; File No. S7–21–02]

RIN 3235–AI54

Certification of Disclosure in Companies' Quarterly and Annual Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to require a company's principal executive officer and principal financial officer to certify that, to their knowledge, the information in the company's quarterly and annual reports is true in all important respects and that the reports contain all information about the company of which they are aware that they believe is important to a reasonable investor. In addition, we propose to require a company to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's quarterly and annual reports, as well as current reports on Form 8–K, and also to require periodic review and evaluation of these procedures. We believe that it is important both to the quality of disclosure and investor confidence for a company's principal executive officer and principal financial officer to provide the proposed certification and for companies to maintain procedures that enable the company to satisfy its disclosure obligations under the federal securities laws and that are subject to periodic evaluation by senior management.

DATES: Comments should be received on or before August 19, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–21–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing new Rules 13a–14,[2] 13a–15,[3] 15d–14[4] and 15d–15[5] under the Securities Exchange Act of 1934 (''Exchange Act'')[6] and amendments to Forms 10–Q,[7] 10–QSB,[8] 10–K[9] and 10–KSB[10] under the Exchange Act and to Rule 302 of Regulation S–T.[11]

I. Introduction

Our system of federal securities regulation is based on full and fair disclosure. Congress, in enacting the federal securities laws, embraced full disclosure as the best way to permit markets to allocate capital. For this system to function most effectively, investors must have access to disclosure that is clear, accurate and timely.

The Exchange Act requires companies to make information publicly available to investors on a continuing basis to aid in their investment and voting decisions.[12] In addition, we permit seasoned issuers (that is, companies that have been subject to the reporting requirements of the Exchange Act for an extended period of time) to incorporate information from their Exchange Act reports into their registration statements filed under the Securities Act of 1933.[13] Therefore, investors purchasing securities from these companies in public offerings also rely on the companies' Exchange Act disclosure.

Investors depend on companies' quarterly and annual reports to present a clear picture in all important respects of the company's business and financial condition. Investors trust and rely upon a company's management to ensure that these reports are accurate. Unless this belief is well-founded, we risk an erosion of investor confidence in our securities markets.

Our existing antifraud and disclosure rules are designed to elicit full and fair corporate disclosure. Questions have arisen as to whether senior corporate officials devote sufficient attention to the preparation of their companies' quarterly and annual reports and to the internal procedures that generate the data from which they are prepared. We are concerned that investor confidence has suffered because of a real or perceived absence of such participation. We believe that it is important both to the quality of disclosure and investor confidence for senior executives to provide assurance that they have reviewed and evaluated the information contained in their companies' quarterly and annual reports. We therefore propose to require a company's principal executive officer and principal financial officer each to certify that, to his or her knowledge, the company's quarterly and annual reports are true in all important respects and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor.[14]

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make availabale publicly.

[2] 17 CFR 240.13a–14.

[3] 17 CFR 240.13a–15.

[4] 17 CFR 240.15d–14.

[5] 17 CFR 240.15d–15.

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 249.308a.

[8] 17 CFR 249.308b.

[9] 17 CFR 249.310.

[10] 17 CFR 249.310b.

[11] 17 CFR 232.302.

[12] See Release No. 33–8089 (Apr. 12, 2002) [67 FR 19896] at n. 11. The Exchange Act reporting system contemplates an ongoing disclosure system for the purpose of ''keep[ing] reasonably current the information and documents required to be included or filed with the application or registration statement filed pursuant to Section 12.''

[13] 15 U.S.C. § 77a *et seq.*

[14] See proposed Rules 13a–14 and 15d–14. Our proposal is consistent with President Bush's objective to make corporate leaders more accountable to the investing public by requiring a company's senior executives to certify to their security holders that all of the information about

Continued

Companies also must have internal communications and other procedures to ensure that important information flows to the appropriate collection and disclosure points on a timely basis. Given the growing size, complexity and sophistication of corporate organizations and operations and the increasing importance of timely information, we believe that it is necessary and appropriate, in furthering our investor protection mission, to propose requiring companies to maintain these procedures and to periodically evaluate them. We also believe that management should supervise these periodic evaluations and that the company's principal executive officer, principal financial officer and members of the company's board of directors should review the evaluations.[15]

II. Proposed Rules

A. Certification of Disclosure in Quarterly and Annual Reports

1. Reasons for Proposal

Investors require accurate and materially complete information to make informed investment and voting decisions and to ensure that capital is allocated efficiently to business enterprises. While our corporate disclosure system is the best in the world, it can be better. Where it is practicable, existing disclosure practices should be improved to better suit the needs of investors and to ensure the integrity and fairness of the securities markets. We believe that a company's senior management should be intimately involved in these practices and that investors would benefit from seeing evidence of that involvement.

In 1977, the ''Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission,''[16] which led to the establishment of the integrated disclosure system, first advanced the idea of requiring senior executives to review the Exchange Act reports filed on behalf of the company they manage.[17] This recommendation was based on the Advisory Committee's finding that the disclosures made in Exchange Act reports tended to be of a lesser quality than the disclosures made in Securities Act filings.

In 1980, the Commission amended Form 10–K to require that this report be signed on behalf of a company by the company's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors.[18] While many commenters objected to the proposal to require directors to sign the Form 10–K, most commenters either did not address or did not object to the proposal to require executive officers to sign. The Commission adopted the proposal, including the director signature requirement, because it expected corporate officers and directors to pay more attention to the disclosures made in their companies' Form 10–K reports and to participate more fully in the preparation of these reports if they had to sign them.[19]

In our 1998 release proposing reform of the Securities Act offering process,[20] we proposed revisions to the signature sections of all registration statements and periodic reports filed under the Exchange Act to mandate that the persons required to sign those documents certify that they had read them and that they knew of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[21] The proposals also would have expanded the number of corporate officials required to sign Forms 10–Q and 10–QSB,[22] and other Commission filings,[23] to include the principal executive officer or officers of the company and a majority of the board of directors of the company.[24] We received several comments on these proposals. While some commenters supported the proposed certification requirement,[25] a larger number opposed it, primarily as it related to directors.[26] In addition, many commenters opposed an expansion of the signature requirements for Exchange Act reports.[27] Generally, these commenters asserted that the requirements would impose unreasonable administrative burdens[28] and expose corporate officers to increased liability.[29]

We believe that all members of a company's senior management, including members of the company's board of directors, should accept and acknowledge an active role in the disclosure that their company makes in its quarterly and annual reports and reinforce their accountability for the accuracy and completeness of this disclosure. We believe that any senior corporate official who considers his or her personal involvement in determining the disclosure to be presented in quarterly or annual reports to be an ''administrative burden,'' rather than an important and paramount duty, seriously misapprehends his or her responsibility to security holders.[30] Existing antifraud law, as well as the disclosure rules governing documents

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the company known to them that a reasonable investor would consider important in making a decision to purchase or sell a security of the company has been disclosed, completely, fairly and in an understandable format. See Remarks of President George W. Bush at the Malcolm Baldrige National Quality Award Ceremony, March 7, 2002, available at *http://www.whitehouse.gov/ news/* releases/2002/03/20020307–3.html.

[15] See proposed Rules 13a–15 and 15d–15.

[16] See *Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission* (Nov. 3, 1977) (the ''Advisory Committee Report'').

[17] The Advisory Committee also suggested that the Commission require senior management to address and submit a report to the audit committee of the board of directors describing the procedures employed to ensure compliance with disclosure and accounting standards and requirements. See the Advisory Committee Report, Appendix B at pp. 50–54.

[18] See Release No. 34–17114 (Sept. 2, 1980) [45 FR 63630].

[19] *Id.* at 27.

[20] See Release No. 33–7606A (Nov. 13, 1998) [63 FR 67174]. In that release, we solicited comment on whether we should expand the existing signature requirements as well as require certification of Exchange Act reports. Comments received on that release are available through our Public Reference Room under File No. S7–30–98.

[21] *Id.* at Section XI.C.1.

[22] Id. Currently, a quarterly report on Form 10–Q or 10–QSB must be signed on the registrant's behalf by a duly authorized officer of a registrant and the principal financial officer or the chief accounting officer of the registrant. See General Instruction G to Form 10–Q and General Instruction F.2 to Form 10–QSB.

[23] These filings would have included Forms 8–A, 10, 10–SB, 20–F and 40–F. See Release No. 33–7606A at Section XI.C.1.

[24] *Id.*

[25] See, for example, the Letter dated June 30, 1999 from the North American Securities Administrators Association, the Letter dated June 29, 1999 from the Pennsylvania Securities Commission and the Letter dated June 30, 1999 from the American Federation of Labor and Congress of Industrial Organizations.

[26] See, for example, the Letter dated June 30, 1999 from the American Corporate Counsel Association, the Letter dated July 2, 1999 from the Financial Executives Institute and the Letter dated June 28, 1999 from the Ford Motor Company.

[27] See, for example, the Letter dated May 24, 1999 from Credit Suisse First Boston, the Letter dated June 30, 1999 from the John Hancock Mutual Life Insurance Company and the Letter dated June 30, 1999 from the Mortgage Bankers Association of America.

[28] See, for example, the Letter dated September 28, 1999 from the American Bar Association and the Letter dated June 30, 1999 from Charles Schwab & Co., Inc.

[29] See, for example, the Letter dated March 16, 1999 from the Association of Publicly Traded Companies and the National Venture Capital Association, the Letter dated April 7, 1999 from Diamond Home Services, Inc. and the Letter dated June 29, 1999 from Wells Fargo & Company.

[30] We note, as the Advisory Committee did, that improved Exchange Act report disclosure may improve disclosure for Securities Act purposes, since seasoned issuers generally incorporate their Exchange Act reports into their Securities Act registration statements. Consequently, investors in general stand to benefit from greater involvement by members of the company's board of directors and senior executives in the preparation of these reports.

filed with or submitted to the Commission, already place responsibility for the accuracy and completeness of disclosure, and liability for failure to satisfy disclosure requirements, on corporate management and directors.[31]

We believe that expressly requiring a company's principal executive officer and principal financial officer to certify that they have conducted this kind of review of the company's periodic reports would cause these officials to review more carefully the disclosure in their companies' quarterly and annual reports and to participate more extensively in the preparation of these reports. We expect that the quality and transparency of this disclosure would improve as a result of this type of mandated review. As discussed below, we do not believe that the proposed certification would create any untoward risk of increased individual liability for the certifying officers. Finally, unlike the 1998 proposals, we do not propose to require additional corporate officials to sign a company's quarterly and annual reports. We do, however, propose to require a company's principal executive officer to certify the company's quarterly reports.[32]

2. Description of Proposal

We propose to add an explicit certification requirement in connection with the filing of quarterly and annual reports pursuant to the Exchange Act.[33] Under our proposal, a company's principal executive officer and principal financial officer each would have to certify in an annual report that:

- He or she has read the report;
- To his or her knowledge, the information in the report is true in all important respects as of the end of the period covered by the report; and
- The report contains all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the period covered by the report.[34]

The proposed certification also would contain a statement explaining that information would be ''important to a reasonable investor'' if:

- There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and
- The report would be misleading to a reasonable investor if the information was omitted from the report.

The certification in a quarterly report would be similar, but would take account of the narrower disclosure required in these reports. Because quarterly report disclosure requirements include financial statements and management's discussion and analysis of financial condition and results of operation, the certification clearly addresses areas that we believe are important to investors.

We intend the proposed certification to reflect the current disclosure standards for ''material'' information.[35] We believe that the certification faithfully follows the standard of ''materiality'' as set out in the leading cases on the subject, *TSC Industries, Inc.* v. *Northway, Inc.*[36] and *Basic, Inc.* v. *Levinson*,[37] namely that information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision.[38] To fulfill the materiality requirement, there must be a substantial likelihood that a fact ''would have been viewed by the reasonable investor as having significantly altered the ''total mix'' of information made available.''[39] In addition, the certification follows the general materiality standard contained in Exchange Act Rule 12b–20.[40] The certification would, however, speak in terms of the officers' knowledge and belief. A principal executive officer or principal financial officer providing a false certification potentially could be subject to Commission action for violating Section 13(a) of the Exchange Act[41] and to both Commission and private actions for violating Section 10(b) of the Exchange Act[42] and Exchange Act Rule 10b–5.[43]

We do not believe that the proposed certification requirement would change the underlying liability standard as to materiality or create an unacceptable risk of increased liability for a company's principal executive officer and principal financial officer. These senior officers already are responsible as signatories for their company's disclosure under the Exchange Act liability provisions[44] and can be liable for material misstatements or omissions under general antifraud standards[45] and under our authority to seek redress against those who cause or aid or abet securities law violations.[46] The proposed certification requirement would reinforce the responsibility of these corporate officers to security holders for the content of companies' quarterly and annual reports.[47] Similarly, the proposed rule is not intended to affect other existing bases of liability for principal executive officers and principal financial officers or to increase, decrease or otherwise alter the potential liability of other corporate officers and directors, whether or not signatories, who are not required to provide the proposed certification.

In addition, as noted above, by its terms, the proposed certification is subjective in nature, in that it is limited

[31] See, for example, *Howard* v. *Everex Systems, Inc.,* 228 F.3d 1057 (9th Cir. 2000); *SEC* v. *Kalvex, Inc.,* 425 F.Supp. 310 (SDNY 1975).

[32] While we propose to require the principal executive officer to sign the certification included in a quarterly report, we do not propose to require the principal executive officer to otherwise sign the report. Similarly, if a company's chief accounting officer signs the company's quarterly reports, the principal financial officer only would have to certify, but not otherwise sign, the reports.

[33] The proposal relates to Exchange Act Forms 10–Q, 10–QSB, 10–K and 10–KSB.

[34] As permitted under our rules, a registrant may satisfy its disclosure obligations under Part III of Forms 10–K and 10–KSB by incorporating the required information by reference from its definitive proxy or information statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the annual report. See General Instruction G(3) to Form 10–K and General Instruction E(3) to Form 10–KSB. For purposes of this provision, the certification in the annual report on Form 10–K or 10–KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed.

[35] In other words, we do not intend for the proposed certification to establish a standard of materiality that does not already exist under current law.

[36] 426 U.S. 438 (1976).

[37] 485 U.S. 224 (1988).

[38] *TSC Industries, Inc.* v. *Northway, Inc.*, at 449. See *Basic, Inc.* v. *Levinson*, at 231 (materiality with respect to contingent or speculative events will depend on a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of company activity).

[39] *Id.*

[40] 17 CFR 240.12b–20. This rule states that ''[i]n addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.''

[41] 15 U.S.C. 78m(a).

[42] 15 U.S.C. 78j(b).

[43] 17 CFR 240.10b–5. See also *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U.S. 1083 (1991).

[44] See Sections 13(a) and 18 of the Exchange Act [15 U.S.C. 78m(a) and 78r].

[45] See, for example, *Howard* v. *Everex Systems, Inc.*, 228 F.3d 1057 (9th Cir. 2000) (a corporate officer who signs a Commission filing containing representations ''makes'' the statement in the filing and can be liable as a primary violator of Section 10(b) of the Exchange Act).

[46] See Sections 20, 21, 21C and 21D of the Exchange Act [15 U.S.C. 78t, 78u, 78u–3 and 78u–4].

[47] To further emphasize the importance of the proposed certification, a principal executive officer or principal financial officer would not be permitted to have the certification signed on their behalf pursuant to a power of attorney or other form of confirming authority. The certifications also would be subject to the signature requirements of our rules. See the proposed amendment to Rule 302(a) and (b) of Regulation S–T [17 CFR 232.302(a) and (b)].

to the knowledge of the principal executive officer and the principal financial officer and to their belief as to whether the information would be important to a reasonable investor. The principal executive officer or principal financial officer would not, as a result of the proposed certification requirement, have to separately inquire as to information not known to him or her by virtue of his or her certification of the contents of the company's periodic reports.[48] In summary, our proposal is consistent with an appropriate level of liability where a principal executive officer or principal financial officer fails to review his or her company's quarterly or annual reports or certifies the accuracy and completeness of these reports when, based on his or her knowledge and belief, the certification is false. We believe that these corporate officers should be involved in the approval process for these reports and that they should not approve them without first reviewing them thoroughly and thinking critically about the disclosure that they should contain. Similarly, while these corporate officers would not have to undertake a separate inquiry as to information not known to them, their critical review of a report would necessarily include other inquiries where appropriate, including, without limitation, regarding disclosures they do not understand or the materiality of information known to them.

While the proposed certification would be in addition to, and thus not alter, the current signature requirements for quarterly and annual reports, it would require a company's principal executive officer to sign the certification included in the company's quarterly reports on Form 10–Q or 10–QSB. Our current rules do not expressly require a company's principal executive officer to sign a quarterly report.[49] The proposed certification is intended to ensure that both the principal executive officer and principal financial officer read and sign the report. Thus, under our proposal, the principal executive officer would have to sign a certification each time the company files a quarterly report.[50] We believe that this proposed change is warranted in view of this officer's leadership role in the company and the importance of the information contained in the report.

Questions regarding the objectives of the proposed certification requirement:

- Would the proposed certification cause the principal executive officer and principal financial officer to be more involved in the preparation of quarterly and annual reports? Given that the principal executive officer and principal financial officer already are responsible for a company's disclosure pursuant to the Exchange Act, would the proposed certification have the desired effect?
- Would the proposed certification improve the quality of quarterly and annual reports? Are there other ways that we can improve the quality of these reports in lieu of, or in addition to, the proposed certification requirement?
- Would the proposed certification contribute to investor confidence in the accuracy and completeness of the information contained in quarterly and annual reports?

Questions regarding the form of the proposed certification:

- Is it necessary to have both the principal executive officer and the principal financial officer certify the quarterly and annual reports? Should additional or different corporate officers be required to make the proposed certification? Should all of the signatories to quarterly and annual reports be required to make the proposed certification?
- Should the same corporate officials that currently must sign a company's annual reports be required to sign the company's quarterly reports? If not, should at least a company's principal executive officer be required to sign the company's quarterly reports? Is it incongruous to require a company's principal executive officer and principal financial officer to certify, but not also require them to sign, the company's quarterly reports?
- Should the proposed certification in an annual report be considered to cover the information required by Part III of Forms 10–K and 10–KSB that is typically incorporated by reference from a proxy or information statement as and when filed?[51]
- Should the proposed certification requirement extend to amendments to quarterly and annual reports? Currently, an amendment to a quarterly and annual report need only be signed on behalf of a company by a duly authorized representative of the company.[52] Should we require the same individuals that must sign the reports to also sign any related amendments? Alternatively, should we specify the persons required to sign amendments to quarterly and annual reports?
- Should the proposed certification requirement extend to other documents and reports filed pursuant to the Exchange Act, such as registration statements on Forms 10 and 10–SB,[53] current reports on Form 8–K[54] and the portions of proxy and information statements not incorporated by reference into annual reports?
- Does the form of the proposed language of the certification result in a standard for disclosure that is comparable to that enunciated in *TSC Industries, Inc.* v. *Northway, Inc.* and *Basic, Inc.* v. *Levinson?* Is that standard of disclosure appropriate? What alternative formulation, if any, would be more appropriate?

Questions regarding the potential liability consequences of the proposed certification requirement:

- Should we specifically provide in the proposed rule that the certification is not intended to extend the concept of ''materiality'' beyond that imposed by Exchange Act Rules 10b–5 and 12b–20?
- As proposed, a false certification could give rise to Commission action under Sections 13(a) or 15(d). Is this appropriate?
- As proposed, a false certification could give rise to a cause of action under Exchange Act Rule 10b–5. Should there be circumstances where a false certification should not give rise to Rule 10b–5 liability? Should we specifically provide an exemption from Rule 10b–5 liability? If so, under what circumstances or conditions?

B. Internal Controls and Procedures

1. Reasons for Proposal

In carrying out their responsibilities to provide accurate and complete information to security holders, it is necessary for companies to ensure that their internal communications and other procedures operate so that important information flows to the appropriate collection and disclosure points in a timely manner. In order for a company's management to be in a position to evaluate whether the company's periodic and current reports provide

[48] This is not meant to change the current duty of inquiry by corporate officers and directors in connection with the discharge of their duties. See, for example, *In re W.R. Grace & Co.*, Release No. 34–39157 (Sept. 30, 1997); *In re Cooper Companies, Inc.*, Release No. 34–35082 (Dec. 12, 1994); *SEC* v. *Starr Broadcasting Group, Inc.*, Release No. 34–8667 (Feb. 7, 1979).

[49] Forms 10–Q and 10–QSB currently require the report to be signed on a registrant's behalf by a duly authorized representative of the registrant and by the principal financial officer or the principal accounting officer of the registrant. See General Instruction G of Form 10–Q and General Instruction F.2 of Form 10–QSB. The registrant may or may not choose to have its principal executive officer sign as its ''duly authorized representative.''

[50] We do not believe that this would change the officer's potential liability with respect to the quarterly report.

[51] See note 34 above.

[52] Exchange Act Rule 12b–15 [17 CFR 240.12b–15].

[53] 17 CFR 249.210 and 249.210b.

[54] 17 CFR 249.308.

appropriate disclosure of the company's business and financial performance and condition, the company must have sufficient procedures to bring potentially material information to the attention of management and others responsible for disclosure.

Currently, reporting companies are required to establish and maintain systems of internal procedures and controls with respect to their financial information.[55] Our proposal has a complementary focus; it is intended to ensure that a company maintains commensurate procedures for gathering, analyzing and disclosing all information that is required to be included in its periodic and current reports.

2. Description of Proposal

We propose to require every company subject to the reporting requirements of Section 13(a) or Section 15(d)[56] of the Exchange Act to:

- Maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose, within the time periods specified in our rules and forms, the information, including non-financial information, required to be disclosed in its periodic and current reports filed pursuant to the Exchange Act; and
- Before the filing of its annual report on Form 10–K or 10–KSB,
  - Conduct an evaluation of the effectiveness of the design and operation of these procedures under the supervision of company management;[57] and
  - Ensure that those conducting the evaluation communicate the results of the evaluation to the company's principal executive officer and principal financial officer and board of directors.

As previously discussed, these procedures are intended to cover a broader range of information than are covered by a company's internal procedures and controls for the processing and disclosure of financial information. For example, the procedures would ensure timely collection and evaluation of information potentially subject to disclosure under the requirements of Regulation S–K or S–B.[58] The procedures also should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the company's businesses.[59] They also would cover information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20. We believe that most companies already maintain internal systems, either formal or informal, for gathering this information to satisfy their Exchange Act reporting obligations, typically in conjunction with their internal financial procedures and controls. The proposed rule would enhance investor confidence that these systems are adequate and are regularly monitored and evaluated to ensure that shortcomings are corrected. The proposed rule also would help to ensure that a company's systems grow and evolve with its business and are capable of producing quarterly, annual and current reports that are accurate and reliable.[60]

We are not proposing to require any particular procedures for conducting this evaluation. Instead, we would rely on each company to develop a process that is consistent with its business and internal management and supervisory practices. We do recommend, however, that a company create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis. It seems logical that such a committee would report to senior management, including the principal executive officer and the principal financial officer. Officers and employees of the company who have an interest in and the expertise to serve on the committee could include:

- The principal accounting officer or the controller;
- The general counsel or other senior legal official with responsibility for disclosure matters who reports to the general counsel;
- The principal risk management officer;
- The chief investor relations officer (or an officer with equivalent responsibilities); and
- Such other officers or employees, including individuals associated with company's business units, as the company deems appropriate.

Questions regarding the proposed internal procedures and controls:

- How do companies currently ensure that required information is reported in an accurate and timely manner? What is the role of senior management in this process?
- To what extent do companies already have committees of senior management or other procedures in place to identify and consider disclosure issues?
- Should the proposed rule require a company to establish a formal committee to identify and consider disclosure issues? If yes, should the proposed rule specify the composition of the committee? Would it be preferable for companies to establish committees that are comparable in terms of their composition?
- To what extent do companies already have committees of senior management or other procedures in place to identify and consider performance-related issues?
- Should the proposed rule set out specific procedures that companies should follow in conducting the annual evaluation of the effectiveness of the design and operation of a company's internal communications and reporting system? If so, what type of procedures are appropriate?
- What other mechanisms would ensure adequate procedures for collecting, processing and disclosing information on a timely basis?
- Should the annual evaluation contemplated by the proposed rule be replaced or accompanied by a duty of inquiry on the part of a company's principal executive officer and principal financial officer?

C. Certification as to Review of Evaluation of Reporting Procedures in Annual Reports

In the case of an annual report on Form 10-K or 10-KSB, in addition to the statements described above, a company's principal executive officer and principal financial officer would have to certify that they have reviewed the results of their company's evaluation of the procedures maintained by the company to collect, process and disclose the information required in the periodic and current reports filed by the company.[61] The proposed certification would ensure that a company's senior executives give appropriate attention to the company's means for communicating important information within the organization and for ensuring that its procedures for transmission of this information as part of the

[55] See Section 13(b)(2) of the Exchange Act [15 U.S.C. 78m(b)(2)] and Rules 13b2–1 and 13b2–2 [17 CFR 240.13b2–1 and 240.13b2–2].

[56] 15 U.S.C. 78m(a) and 78o(d).

[57] The annual evaluation should identify, at a minimum, any material weakness in the company's procedures, any other deficiency that would significantly adversely affect the company's ability to collect, process or disclose required information on a timely basis and any material changes in these procedures, including any corrective actions, that the company has taken or is taking with regard to the identified weaknesses or deficiencies.

[58] 17 CFR 229.10 *et seq.* or 17 CFR 228.10 *et seq.*

[59] For example, for some businesses, an assessment and evaluation of operational and regulatory risks may be necessary.

[60] Accordingly, a company that failed to maintain adequate procedures, review them and otherwise comply with the rule could be subject to Commission action for violating Section 13(a) of the Exchange Act even where the failure did not lead to flawed disclosure.

[61] See proposed Rules 13a-14(c) and 15d-14(c).

company's reporting process are both reliable and timely. For example, these procedures may identify categories of information that are relevant to the disclosure required about a company's principal business activities and provide timeframes for the internal dissemination of this information so that it reaches the appropriate decision-makers.

Although we propose to require only the principal executive officer and principal financial officer to certify that they have reviewed the results of their company's evaluation of its internal procedures, we believe that it would be beneficial if the company's board of directors also participates in the review of this evaluation. Not only will the company benefit from the different perspectives and experience of the directors, this participation should aid individual directors in fulfilling their fiduciary responsibilities to the company.

Question regarding certification of review of evaluation of procedures:

- Would the proposed certification cause the principal executive officer and principal financial officer to be more involved in the oversight of a company's internal reporting system?
- Should the certification be expanded to include a statement regarding the substance or results of the evaluation of a company's internal procedures?
- Should we require directors to also certify that they have reviewed the evaluation of procedures? Rather than the full board, should a company's audit committee be required to certify that it has reviewed the results of the evaluation of the company's system of internal procedures and controls with respect to the financial information included in a company's periodic and current reports?
- The Corporate Accountability and Listing Standards Committee appointed by the New York Stock Exchange to review its current listing standard has recommended a certification requirement for the chief executive officer of listed companies.[62] Consistent with this recommendation, should we require a company to certify that it has established procedures for verifying the accuracy and completeness of the information provided to investors and that those procedures have been carried out?

D. Application to Small Entities and Foreign Registrants

The proposed rules generally do not distinguish between large and small companies. Because of the importance of the certification requirement, we believe that it would be appropriate to apply the proposed rules to all companies that file Exchange Act reports. Although we don't believe that the proposed rules would impose a significant burden on small companies, we nevertheless request comment on whether we should exclude a company considered to be a ''small business issuer'' under our rules[63] from the proposed rules or make other accommodations for companies based on their size.

The proposed rules would not apply to foreign private issuers subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.[64] Form 20–F,[65] the disclosure document used by foreign private issuers for annual reporting obligations under the Exchange Act, does not impose signature requirements similar to those required on Form 10–K.[66] Form 20–F need only be signed on behalf of the company by any authorized officer (which generally would include the principal executive officer or principal financial officer). Unlike Form 10–K, it does not have to be signed by the company's principal executive officer or officers, principal financial officer, controller or principal accounting officer and a majority of the board of directors. Furthermore, foreign private issuers are not required to file quarterly reports on Form 10–Q or Form 10–QSB.[67]

In addition, mandatory requirements regarding internal procedures raise several issues, since those requirements may be inconsistent with the laws or practices of the foreign private issuers' home jurisdiction and stock exchange requirements. For these reasons, applying the proposed rules to foreign private issuers would raise additional issues that do not exist for domestic companies. Therefore, we do not propose to apply the certification and procedural requirements to foreign private issuers at this time. Nonetheless, we are interested in soliciting comment on whether we should apply the proposed rules to foreign registrants.

Questions regarding the scope of the proposed rules:

- Should we exclude small entities from the proposed rules?
- If so, should we limit the exclusion to ''small business issuers'' as defined under our rules, or is some other threshold more appropriate?
- Should we subject foreign private issuers to proposed Rules 13a–14 and 15d–14?
- Should we require Form 20–F (whether used as a registration statement or an annual report under the Exchange Act) to be signed by a company's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors?
- Should we subject foreign private issuers to proposed Rules 13a–15 and 15d–15? Would requiring foreign private issuers to maintain procedures as contemplated by the proposed rules conflict or unduly interfere with the legal obligations or internal operations of foreign companies?
- What impact would the proposed rules have on the willingness of foreign companies to raise capital in the public U.S. capital markets, to list on U.S. markets and to register their securities under the Securities Act or the Exchange Act?

III. General Request for Comment

We are proposing these rules to improve the quality and reliability of the disclosure contained in companies' periodic and current reports filed pursuant to the Exchange Act. We solicit comment, both specific and general, upon each aspect of the proposed rules. If you would like to submit written comments on the proposed rules, to suggest changes or to

[62] Under this recommendation, the chief executive officer of each listed company would certify each year that the company has established procedures for verifying the accuracy and completeness of the information provided to investors; that those procedures have been carried out; and that, based on his or her assessment of the adequacy of those procedures and of the diligence of those carrying them out, he or she has no reasonable cause to believe that the information provided to investors is not accurate and complete in all material respects. The chief executive officer would further be required to certify that he or she has reviewed with the board those procedures and the company's compliance with them. See *Report of the NYSE Corporate Accountability and Listing Standards Committee* (June 6, 2002), at 23, available at http://www.nyse.com/abouthome.html?query=/about/report.html.

[63] For purposes of the Exchange Act, a ''small business issuer'' is a U.S. or Canadian issuer that is not an investment company with revenues and a public ''float'' (the aggregate market value of the issuer's outstanding common equity held by non-affiliates) of less than $25 million. See Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[64] The definition of a ''foreign private issuer'' is set forth in Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[65] 17 CFR 249.220f.

[66] See General Instruction D to Form 20–F.

[67] Instead, a foreign private issuer is required to file, on Form 6–K [17 CFR 249.306], copies of all information that the issuer makes or is required to make public under the laws of its jurisdiction of incorporation, files or is required to file under the rules of any stock exchange and which is made public by the exchange, or otherwise distributes or is required to distribute to its security holders. See Exchange Act Rule 13a–16 [17 CFR 240,13a–16].

submit comments on other matters that might affect the proposed rules, we encourage you to do so.

We also solicit comment on the following general aspects of the proposed rules:

- What is the current level of principal executive officer and principal financial officer participation in the preparation of periodic and current reports?
- What is the current level of principal executive officer and principal financial officer participation in the review and evaluation of the company's internal information collection and reporting procedures?
- What level of participation would ensure adequate disclosure to investors?
- Would the proposed certification requirement be useful to investors, other users of corporate disclosure and readers of corporate financial statements? If not, how can we improve proposed certification to achieve that goal?
- In addition to the requirements we propose, are there particular aspects of a company's preparation and filing of its periodic and current reports that the proposed rules should specifically require companies to address? If so, what are they?
- Is additional disclosure or regulation necessary or appropriate concerning the role of the principal executive officer and the principal financial officer in preparing Exchange Act reports?
- Are there aspects of the proposed rules that we should eliminate? Are there aspects that we should supplement? We solicit comment on the desirability of adopting some, but not all, sections of the proposed rules.

In addition, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposed rules.

IV. Paperwork Reduction Act

The proposed new rules and amendments to existing rules and forms contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[68] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[69] The titles for these collections of information are ''Form 10–K,'' ''Form 10–KSB,'' ''Form 10–Q'' and ''Form 10–QSB.'' An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business.

A. Summary of Proposed Rules

Proposed Rules 13a–14 and 15d–14,[70] if adopted, would require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. This certification requirement would become part of the ''collection of information'' required by Forms 10–Q, 10–QSB, 10–K and 10–KSB because a company's principal executive officer and principal financial officer would have to review the reports in order to provide the proposed certification.

Proposed Rules 13a–15 and 15d–15,[71] if adopted, would require a company to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required to be in the company's periodic and current reports, and to periodically review and evaluate these procedures. While we believe that companies generally maintain these types of procedures already, the annual evaluation and certification of these procedures involves new requirements. These procedures would become part of the ''collection of information'' required by Forms 10–Q, 10–QSB, 10–K and 10–KSB because a company would have to conduct an evaluation of its internal reporting procedures and the company's principal executive officer and principal financial officer would have to certify that they have reviewed the results of the evaluation.

Compliance with the proposed rules would be mandatory. Under our rules for the retention of manual signatures, companies would have to maintain the certification statements for five years.[72] The information required by the proposed rules would not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of Section 13 of the Exchange Act apply to entities that have a class of securities registered under Section 12 of the Exchange Act.[73] The reporting requirements of Section 13 also apply, via Section 15(d) of the Exchange Act, to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of Section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.[74]

Proposed Rule 13a–14 would require a company's and to make certain representations about the contents of those reports in the certification that must be included in the quarterly and annual reports. The compliance burden associated with proposed Rules 13a–14 and 15d–14 would be the reporting burden associated with having a company's principal executive officer and principal financial officer read and think critically about each quarterly and annual report to be filed by the company so that these individuals could make the required certification. We estimate that the proposed certification requirement would result in an increase of five burden hours [75] per company in connection with preparing each quarterly report on Form 10–Q or 10–QSB and the annual report on Form 10–K or 10–KSB.

Proposed Rule 13a–15 would require a company to maintain sufficient

[68] 44 U.S.C. 3501 *et seq.*

[69] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[70] References to proposed Rule 13a–14 in this section also refer to proposed Rule 15d–14.

[71] References to proposed Rule 13a–15 in this section also refer to proposed Rule 15d–15.

[72] See the proposed amendment to Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[73] 15 U.S.C. 78*l*.

[74] This estimate is based on the total number of companies that filed annual reports on Form 10–K (9,384) or Form 10–KSB (3,789) during the 2001 fiscal year, which are required of all companies with a class of securities registered under Section 12 of the Exchange Act and all companies subject to Section 15(d) of the Exchange Act.

[75] This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing quarterly and annual reports with the Commission.

procedures to collect, process and disclose the information required in its periodic and current reports filed with the Commission. We expect that companies already maintain procedures, whether formal or informal, to comply with their Exchange Act disclosure obligations and for their own internal purposes. We do not believe that the proposed evaluation requirement would result in any change in either the reporting or cost burden associated with preparing quarterly reports on Form 10–Q or 10–QSB and annual reports on Form 10–K or 10–KSB.

Based on a burden hour estimate of 20 hours per respondent per year,[76] we estimate that, in the aggregate, all respondents will incur 263,460 burden hours[77] to comply with the proposed rules. The total burden hours of complying with Form 10–Q and Form 10–QSB, revised to include the burden hours expected from the proposed rules, is estimated to be 3,162,715 hours for Form 10–Q, an increase of 133,730 hours[78] from the current annual burden of 3,028,985 hours, and 1,302,998 hours for Form 10–QSB, an increase of 58,040 hours[79] from the current annual burden of 1,244,958 hours. The total burden hours of complying with Form 10–K and Form 10–KSB, revised to include the burden hours expected from the proposed rules, is estimated to be 12,356,382 hours for Form 10–K, an increase of 46,920 hours[80] from the current annual burden of 12,309,462 hours, and 3,443,254 hours for Form 10–KSB, an increase of 18,945 hours[81] from the current annual burden of 3,424,309 hours.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed amendments to our existing information collections are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed amendments; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed amendments on those who respond, including through the use of automated collection techniques or other forms of information technology.[82]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609, with reference to File No. S7–21–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–21–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Costs And Benefits

We propose to require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. In addition, we propose to require a company to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's periodic and current reports, and to periodically review and evaluate these procedures. These proposals would help ensure that information about a company's business and financial condition is adequately reviewed by the company's senior executives, thereby enhancing investor confidence in the quality of the company's disclosures.

A. Benefits

We believe that investor confidence in corporate disclosure has suffered because of a belief that senior corporate officials may not devote sufficient attention to the preparation of their companies' quarterly and annual reports and the internal procedures that generate the data from which they are prepared. Requiring a company's principal executive officer and principal financial officer to certify the contents of these reports should help reinforce for these officers the importance of these reports and reinvigorate their participation in the preparation of these reports. The proposed rule also should refocus these officers on assessing whether the reports accurately reflect the company's business and financial condition as of the date of the report.

In addition, the proposed rules should help to ensure that companies maintain sufficient internal procedures to provide reasonable assurance that they can collect, process and disclose the information that is required in periodic and current reports required under the Exchange Act. To the extent that companies do not maintain adequate procedures, the proposed rules should lead to the development, or enhancement and modernization, of these procedures. The proposed annual evaluation of these procedures should ensure that companies devote adequate resources and attention to the maintenance of their reporting systems. Additionally, the required evaluation should help to identify potential weaknesses and deficiencies in advance of a system breakdown, thereby ensuring the continuous, orderly and timely flow of information within the company and, ultimately, to investors and the marketplace.

The proposed rules also would require companies' principal executive officers to provide a certification in connection with quarterly reports. In view of the fact that principal executive officers may not always be directly involved in the preparation of these reports, any duly authorized representative of the company may sign. The proposed certification requirement should lead to greater involvement of principal executive officers in the preparation of these reports.

By emphasizing the importance of the role of senior management in the reporting process, the proposed rules should help to bolster investor confidence in the quality of the disclosure in companies' Exchange Act reports. This, in turn, should help to bolster investor confidence in the

[76] Three quarterly reports and one annual report × five hours each = 20 hours.

[77] 13,173 companies × 20 hours = 263,460 hours.

[78] 26,746 quarterly reports × five hours = 133,730 hours.

[79] 11,608 quarterly reports × five hours = 58,040 hours.

[80] 9,384 annual reports × five hours = 46,920 hours.

[81] 3,789 annual reports × five hours = 18,945 hours.

[82] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

securities markets. These benefits are difficult to quantify.

B. Costs

While the proposed amendments may lead to some additional costs for companies, we believe that these costs should be minimal. The proposed certification requirement would require a company's principal executive officer and principal financial officer to read the company's quarterly and annual reports and to make the required certification. We assume that these corporate officers already read the company's annual report, so this should impose no additional burden. To the extent that a corporate officer would need to spend additional time thinking critically about the overall context of his or her company's disclosure, the company would incur costs. For purposes of the PRA,[83] we estimate that the paperwork burden would be approximately 263,500 hours.

The required certification of quarterly and annual reports by the principal executive officer and the principal financial officer creates a new legal obligation for these individuals, but does not change the standard of legal liability. We believe that the potential, incremental cost of litigation arising from signing a certification is justified by the benefit to security holders of knowing that the principal executive officer has been involved in the preparation of this report.

We believe that most reporting companies already maintain internal procedures for identifying and processing the information needed to satisfy their disclosure obligations under the Exchange Act. The proposed rule does not dictate that companies follow any particular procedure. Some companies may need to institute appropriate procedures. Other companies may need to enhance existing informal or ad hoc procedures. These incremental costs are difficult to quantify. We do not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal reporting procedures, and we seek comments and supporting data on these costs.

The proposed annual evaluation of the internal reporting procedures would result in costs for companies. Many companies may already regularly monitor and evaluate their procedures. Because the size and scope of these internal systems is likely to vary among companies, it is difficult to provide an accurate cost estimate. For purposes of the PRA,[84] we estimate that the paperwork burden would be approximately 263,500 hours. Assuming a cost of $200.00 per hour, we believe that the total cost would be approximately $4,000 per year for each company.[85] Thus, we believe that the aggregate cost of the proposed rules would be approximately $52,700,000 each year.[86]

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[87] It involves proposed rules under the Exchange Act that would require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. In addition, the proposed rules would require a company to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's periodic and current reports, and also to require periodic review and evaluation of these procedures.

A. Reasons for, and Objectives of, Proposed Rules

The purpose of the proposed rules is to improve the quality of corporate disclosure and to promote investor confidence in the quality of the disclosure contained in quarterly and annual reports. By improving the quality of disclosure, the proposed rules would enhance investor confidence in the fairness and integrity of the securities markets.

B. Legal Basis

We are proposing the rules under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Proposed Rules

The proposed rules would affect small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act[88] defines the term ''small business,'' other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[89] We estimate that there are approximately 2,500 companies subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act that are not investment companies and that have assets of $5 million or less.[90]

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules would require companies to include a certification in their quarterly and annual reports, signed by the company's principal executive officer and principal financial officer, stating that, to their knowledge, the information contained in the report is true in all important respects and that they believe the reports contain all information about the company of which they are aware that is important to a reasonable investor. In addition, the proposed rules would require companies, including ''small businesses,'' to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in periodic and current reports filed with the Commission, and to periodically review and evaluate these procedures. Consequently, the proposed rules would increase the costs associated with compliance with companies' Exchange Act reporting obligations.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed rules, except as follows. Our rules require that designated corporate officials sign quarterly and annual reports.[91] The proposed rules would

[83] See Section IV above.

[84] See Section IV above.

[85] 20 hours × $200 per hour = $4,000.

[86] 263,460 hours × $200 = $52,692,000. See note 77 above.

[87] 5 U.S.C. § 603.

[88] 17 CFR 240.0–10(a).

[89] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[90] This estimate is based on filings with the Commission.

[91] Annual reports must be signed by a registrant and on a registrant's behalf by its principal

Continued

add a certification by a company's principal executive officer and principal financial officer to these signature requirements. While the proposed certification involves an additional signature requirement,[92] we believe that any potential duplication is warranted as the proposed certification should cause these officials to review more carefully the disclosure in their companies' quarterly and annual reports and to participate more extensively in the preparation of these reports. We expect that the quality and transparency of this disclosure would improve as a result of this type of mandated review.

Section 13(b)(2)(B) of the Exchange Act[93] requires companies that are subject to the reporting requirements of Section 13(a) or 15(d) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions and information are recorded as necessary to permit the preparation of the company's financial statements. Proposed Rules 13a–15 and 15d–15 are intended to address the company's procedures for collecting and processing the non-financial information that is required to be disclosed in periodic and current reports files pursuant to the Exchange Act.

F. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rules. The proposed rules are intended to help ensure that information about a company's business and financial condition is adequately reviewed by the company's senior executives, thereby enhancing investor confidence in the quality of the company's disclosures. We solicit comment as to whether small business issuers should be excluded from the proposed rules.

The proposed certification requirement should result in minimal cost for companies. It is possible that a failure to comply with this requirement could be harmful to small entities because it may lead investors to conclude that an entity has inadequate management and reporting controls and, consequently, presents an unacceptable investment risk. The proposed certification requirement involves a design standard in that the form and content of the certification is dictated by the proposed rules and could be comparable for all companies, including small, as well as large, entities.

The annual evaluation of information collection and reporting procedures contemplated by the proposed rules involves a performance standard. The proposed rules do not mandate how companies should conduct this evaluation. This flexibility will enable small and large entities to develop approaches for the evaluation that are appropriate to their individual circumstances.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed rules, the nature of the impact, how to quantify the number of small businesses that would be affected and how to quantify the impact of the proposed rules. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[94] we must advise the Office of Management and Budget as to whether the proposed rules constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Where a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rules on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act[95] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rules are intended to enhance investor confidence in the quality of the information available to them in quarterly and annual reports filed pursuant to the Exchange Act. We do not believe that the proposed rules would impose any burden on competition. Companies would incur some costs in complying with the proposed rules. These costs would include conducting an annual evaluation of the company's procedures to collect, process and disclose, on a timely basis, the information required in periodic and current reports filed by the company pursuant to the Exchange Act. We request comment on whether the proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[96] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public

executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors. See General Instruction D(2)(a) of Form 10–K and General Instruction C.2 of Form 10–KSB. Quarterly reports must be signed on a registrant's behalf by a duly authorized representative of the registrant and by the principal financial officer or the principal accounting officer of the registrant. See General Instruction G of Form 10–Q and General Instruction F.2 of Form 10–QSB.

[92] Except in the case of a certification of a quarterly report by a company's principal executive officer. Currently, a quarterly report on Form 10–Q or 10–QSB need not be signed by a registrant's principal executive officer. See General Instruction G to Form 10–Q and General Instruction F.2 to Form 10–QSB.

[93] 15 U.S.C. 78m(b)(2)(B).

[94] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[95] 15 U.S.C. 78w(a)(2).

[96] 15 U.S.C. 78c(f).

interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed rules are intended to enhance investor confidence in the quality of the information available to them in quarterly and annual reports filed pursuant to the Exchange Act. We believe that by requiring a company's principal executive officer and principal financial officer to certify that, to their knowledge, the information contained in these reports is true in all important respects and that they believe the reports contain all information about the company of which they are aware that is important to a reasonable investor, investor confidence in the securities markets will be enhanced, thereby leading to a more efficient market.

We do not believe that the proposed rules would impose any burden on competition. Companies would incur some costs in complying with the proposed rules. These costs would include conducting an annual evaluation of the company's procedures to collect, process and disclose, on a timely basis, the information required in periodic and current reports filed by the company pursuant to the Exchange Act. We request comment on whether the proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Statutory Authority

The rules and amendments contained in this release are being proposed under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act.

Text of Proposed Rules and Amendments

List of Subjects in 17 CFR Parts 232, 240 and 249

Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 232—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. By amending § 232.302 by revising paragraphs (a) and (b) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission (including, without limitation, signatories within the certifications required by §§ 240.13a–14 and 240.15d–14 of this chapter) must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with § 232.104.

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the certifications required by §§ 240.13a–14 and 240.15d–14 of this chapter) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

3. By adding § 240.13a–14 to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

(a) Each annual and quarterly report filed pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must include the certification described in paragraph (b) of this section. Each principal executive officer and principal financial officer of the issuer at the time of filing of the report each must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must contain the following provisions:

(1) A statement of the officer certifying that he or she has read the [specify the report in which the certification is included];

(2) A statement of the officer certifying that to his or her knowledge, the information in the report is true in all important respects as of the last day of the period covered by the report;

(3)(i) In annual reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the last day of the period covered by the report; or

(ii) In quarterly reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor, in light of the subjects required to be addressed in the report, as of the last day of the period covered by the report; and

(4) A statement that, for purposes of the certification required by paragraph (a) of this section, information is ''important to a reasonable investor'' if:

(i) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(ii) The report would be misleading to a reasonable investor if the information was omitted from the report.

(c) The certification included in each annual report filed pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) also must contain a statement that each officer signing this certification has reviewed the results of the evaluation of the issuer's internal reporting procedures undertaken pursuant to § 240.13a–15(b) and (c).

5. By adding § 240.13a–15 to read as follows:

§ 240.13a–15 Issuer's internal procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) must maintain sufficient procedures to provide reasonable assurances that the issuer is able to collect, process and disclose, within the time periods specified in the Commission's rules and forms, the information required to be disclosed in the periodic and current reports filed by it under the Act.

(b) Within the 12-month period immediately preceding the filing of each

annual report pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)), an evaluation must be carried out under the supervision of the issuer's management of the effectiveness of the design and operation of the procedures of the issuer maintained in accordance with paragraph (a) of this section. Without limiting the subjects that the evaluation must cover, at a minimum the evaluation must identify any material weakness in the procedures, any other deficiency that would significantly adversely affect the issuer's ability to collect, process or disclose on a timely basis required information and any material changes in these internal procedures and controls, including any corrective actions that have been or are being taken with regard to identified weaknesses and deficiencies.

(c) Before the filing of the annual report, each principal executive officer and principal financial officer of the issuer and the board of directors of the issuer must review the results of the evaluation described in paragraph (b) of this section.

6. By adding § 240.15d–14 to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

(a) Each annual and quarterly report filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must include the certification described in paragraph (b) of this section. Each principal executive officer and principal financial officer of the issuer at the time of filing of the report each must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must contain the following provisions:

(1) A statement of the officer certifying that he or she has read the [specify the report in which the certification is included];

(2) A statement of the officer certifying that to his or her knowledge, the information in the report is true in all important respects as of the last day of the period covered by the report;

(3)(i) In annual reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the last day of the period covered by the report; or

(ii) In quarterly reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor, in light of the subjects required to be addressed in the report, as of the last day of the period covered by the report; and

(4) A statement that, for purposes of the certification required by paragraph (a) of this section, information is ''important to a reasonable investor'' if:

(i) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(ii) The report would be misleading to a reasonable investor if the information was omitted from the report.

(c) The certification included in each annual report filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) also must contain a statement that each officer signing this certification has reviewed the results of the evaluation of the issuer's internal reporting procedures undertaken pursuant to § 240.15d–15(b) and (c).

7. By adding § 240.15d–15 to read as follows:

§ 240.15d–15 Issuer's internal procedures related to preparation of required reports.

(a) Every issuer that is required to file reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must maintain sufficient procedures to provide reasonable assurances that the issuer is able to collect, process and disclose, within the time periods specified in the Commission's rules and forms, the information required to be disclosed in the periodic and current reports filed by it under the Act.

(b) Within the 12-month period immediately preceding the filing of each annual report pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)), an evaluation must be carried out under the supervision of the issuer's management of the effectiveness of the design and operation of the procedures of the issuer maintained in accordance with paragraph (a) of this section. Without limiting the subjects that the evaluation must cover, at a minimum the evaluation must identify any material weakness in the procedures, any other deficiency that would significantly adversely affect the issuer's ability to collect, process or disclose on a timely basis required information and any material changes in these internal procedures and controls, including any corrective actions that have been or are being taken with regard to identified weaknesses and deficiencies.

(c) Before the filing of the annual report, each principal executive officer and principal financial officer of the issuer and the board of directors of the issuer must review the results of the evaluation described in paragraph (b) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

9. By amending Form 10–Q (referenced in § 249.308a) by revising General Instruction G and by adding a Certifications section after the Signatures section to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

General Instructions

* * * * *

G. Signature and Filing of Report

If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits must be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, must be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) Copies not manually signed must bear typed or printed signatures. In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the registrant, one signature is acceptable provided that the registrant clearly indicates the dual responsibilities of the signatory. In addition, each principal executive officer and principal financial officer of the registrant must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have read this quarterly report on Form 10–Q of [identify registrant];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report]; and

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor, in light of the subjects required to be addressed in this report, as of [specify last date of the period covered by the report].

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information is omitted from the report.

Date: _____

_____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14.

10. By amending Form 10–QSB (referenced in § 249.308b) by revising General Instruction F and by adding a Certifications section after the Signatures section to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–QSB

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), file three ''complete'' copies and five ''additional'' copies of the report with the Commission and file at least one complete copy with each exchange on which any class of securities of the small business issuer is registered. A ''complete'' copy includes financial statements, exhibits and all other papers and documents. An ''additional'' copy excludes exhibits.

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange; other copies should have typed or printed signatures. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the small business issuer, one signature is acceptable provided that the issuer clearly indicates the dual responsibilities of the signatory. Each principal executive officer and principal financial officer of the small business issuer must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have read this quarterly report on Form 10–QSB of [identify small business issuer];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report]; and

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor, in light of the subjects required to be addressed in this report, as of [specify last date of the period covered by the report].

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14.

11. By amending Form 10–K (referenced in § 249.310) by revising General Instruction D.(2)(a) and by adding a Certifications section after the Signatures section and before the reference to ''Supplemental information to be furnished with reports filed pursuant to Section 15(d) of the Act by registrant which have not registered securities pursuant to Section 12 of the Act'' to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) * * *

(2)(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its principal financial officer (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report must be signed by the majority of the board of directors of any corporate general partner who signs the report.

* * * * *

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Signatures

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have read this annual report on Form 10–K of [identify registrant];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report];

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor as of [specify last date of the period covered by the report]; and

4. I have reviewed the results of the evaluation of the procedures maintained by the company to collect, process and disclose, in a timely manner, the information required to be disclosed in the company's quarterly and annual reports.

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering

the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

_____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14.

* * * * *

12. By amending Form 10–KSB (referenced in § 249.310b) by revising General Instruction C.2. and by adding a Certifications section after the Signatures section and before the reference to ''Supplemental information to be furnished with reports filed pursuant to Section 15(d) of the Act by registrant which have not registered securities pursuant to Section 12 of the Act'' to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

General Instructions

* * * * *

C. Signature and Filing of Report

1. * * *

2. Who must sign. The small business issuer, its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its principal financial officer (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions. If the small business issuer is a limited partnership, then the general partner and a majority of its board of directors if a corporation must sign the report. Any person who occupies more than one of the specified positions must indicate each capacity in which he or she signs the report. See Rule 12b–11 concerning manual signatures under powers of attorney.

* * * * *

Signatures

* * * * *

Certifications *

I, [identify the certifying individual], certify that:

1. I have read this annual report on Form 10–KSB of [identify small business issuer];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report];

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor as of [specify last date of the period covered by the report]; and

4. I have reviewed the results of the evaluation of the procedures maintained by the company to collect, process and disclose, in a timely manner, the information required to be disclosed in the company's quarterly and annual report.

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

_____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14.

* * * * *

Dated: June 14, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15571 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 01P–0120]

RIN 0910–ZA20

Medical Devices; Needle-Bearing Devices; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing this document to invite interested persons to submit information to assist the agency in determining what additional actions, if any, the agency should take to protect healthcare workers from needlestick injuries from medical devices. FDA is taking this action because it is concerned about the significant health risk posed by needlestick and other percutaneous injuries. The agency is also responding to a petition.

DATES: Submit written comments or information by September 18, 2002.

ADDRESSES: Submit written comments or information 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: Timothy A. Ulatowski, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION: Blood and other potentially infectious materials have long been recognized as a potential threat to the health of employees who are exposed to these materials by percutaneous contact (penetration of the skin). Injuries from contaminated needles and other sharps have been associated with the increased risk of disease from infectious agents. The primary agents of concern are the human immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV). (Ref. 1)

I. Previous FDA Actions

FDA has taken several actions to address the risk of sharps injuries to healthcare workers and others from devices and continues to monitor this issue.

- On April 16, 1992, FDA issued a safety alert warning of the risk of needlestick injuries from the use of hypodermic needles as a connection between two pieces of intravenous (IV) equipment. The safety alert urged that needleless systems or recessed needle systems be used in place of hypodermic needles to access IV lines. The agency noted that hypodermic needles should only be used in situations where there is a need to penetrate the skin. FDA also outlined various device characteristics that have the potential to reduce the risk of needlestick injuries.
- In March 1995, FDA issued a guidance document entitled ''Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices With Sharps Injury Prevention

Features.'' This guidance was intended to: (1) Make it easier to prepare and submit 510(k) applications for devices incorporating a sharps injury prevention feature so as to encourage the development of more of those types of devices, (2) promote consistency in the content of 510(k)s in order to facilitate review by FDA, and (3) guide FDA review staff in conducting and documenting the review of 510(k)s for devices with sharps injury prevention features.

- On August 9, 1996, FDA issued a guidance document entitled ''MDR Guidance Documents and Exemption-No. 3-Needlesticks and Blood Exposure-E1996003.'' This guidance document outlined FDA's policy for determining when an event involving needlesticks and blood exposure is reportable as a serious injury and when it is reportable as a malfunction.
- On March 2, 2001, FDA issued a guidance document entitled ''Premarket Approval Applications (PMA) for Sharps Needle Destruction.'' This document provides guidance to manufacturers on the types of issues and areas of concern that need to be addressed when submitting a PMA for sharps needle destruction devices intended for use in healthcare facilities.
- FDA has cosponsored several national meetings on needlestick prevention issues.
- FDA has worked with consensus standards development groups on needleless injectors.
- FDA has cleared several hundred devices with needlestick prevention features.
- In February 1999, FDA, in conjunction with the National Institute for Occupational Safety and Health (NIOSH), the Centers for Disease Control and Prevention (CDC), and the Occupational Safety and Health Administration (OSHA), issued a joint safety advisory about glass capillary tubes.

II. FDA Cooperation With OSHA

FDA also has been working together with OSHA to reduce the risk of sharps injuries to healthcare workers and others. FDA regulates medical devices, including those containing sharps under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the act). OSHA maintains authority to regulate workplace controls for the protection of employees (Refs. 2 and 3).

In the **Federal Register** of December 6, 1991 (56 FR 64004), OSHA issued its Bloodborne Pathogens (BBP) Standard (29 CFR 1910.1030). The standard reflects OSHA's determination that a combination of engineering and work practice controls, personal protective equipment, training, medical surveillance, hepatitis B vaccination, signs and labels, and other requirements would minimize the risk of disease transmission. FDA provided extensive input and comment to OSHA during the development of the standard.

On November 6, 2000, President Clinton signed the Needlestick Safety and Prevention Act (Public Law 106–430). This statute required OSHA to revise several aspects of the BBP standard within 6 months. In the **Federal Register** of January 18, 2001 (66 FR 5318), OSHA published a final rule amending the BBP standard. The final rule went into effect on April 18, 2001. Again, FDA provided input and comment to OSHA during the development of the amended BBP standard.

The amended BBP standard added new requirements to the annual review and update of a covered employer's exposure control plan. Specifically, under these new requirements, each covered employer must document the extent to which it uses, or has considered using, products that will minimize workplace exposure to needlesticks and other percutaneous injuries. The annual update and review of each covered employer's plan must also reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens and document consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure. Each employer subject to the rule is also required to solicit input from nonmanagerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls. The employer must document the solicitation in the exposure control plan.

III. HRG/SEIU Petition

On March 6, 2001, FDA received and then filed a petition that had been submitted jointly by Public Citizen's Health Research Group (HRG), a consumer advocacy group, and the Service Employees International Union (SEIU). The petition requested that FDA take certain actions to further reduce the risk of needlestick injuries to healthcare workers. On September 5, 2001, FDA issued a response to this petition. In its response, FDA stated that it did not have sufficient information to take the actions requested by the petitioners, but that FDA would publish this advance notice of proposed rulemaking inviting interested persons to submit additional data and information to assist FDA in determining a proper course of action. The HRG/SEIU petition and FDA's response are available from the Dockets Management Branch (see **ADDRESSES**). In requesting the petition and response, refer to docket number 01P–0120.

In the following paragraphs, FDA summarizes the actions requested by HRG and SEIU and invites interested persons to submit additional data and information to support these actions or any other action that the commenter may consider appropriate.

A. Banning

The HRG/SEIU petition requested that FDA ban the following:

1. IV catheters, blood collection devices (needles and tube holders) and blood collection needle sets (''butterfly syringes'') that do not meet the criteria identified in FDA's April 16, 1992, safety alert. This safety alert says that needle-bearing devices should have a fixed safety feature that meets all of the following criteria:

(1) It provides a barrier between the hands and needles after use;

(2) It allows or requires the worker's hands to remain behind the needle at all times;

(3) It is an integral part of the device, and not an accessory; and

(4) It is in effect before disassembly, if any, and remains in effect after disposal.

The safety alert also suggests that the device should be simple and easy to use requiring little training.

2. Glass capillary tubes; and

3. IV infusion equipment that does not use needleless technology or recessed needles.

The petitioners stated that they identified these particular devices as devices that should be banned because they meet at least two of the following three criteria:

(1) Their use creates a high risk of exposure to bloodborne pathogens,

(2) Their use is common in healthcare today, and

(3) There is currently available FDA-cleared technology to minimize exposure.

The legal standard to be applied by FDA in deciding whether it is appropriate to ban a device is set out in section 516 of the act (21 U.S.C. 360f). In short, this section states that FDA may ban a device if it finds that the device presents a ''substantial deception or an unreasonable and substantial risk of illness or injury.'' The regulations implementing section 516 state that, in determining whether the risk of illness

or injury is substantial, FDA will need to consider whether the risk posed by continuing marketing of the device is important, material, or significant in relation to the benefit to the public health from continued marketing (21 CFR 895.21(a)(1)).

In its petition response, FDA stated that it did not have sufficient information to conclude that there is a legal basis for banning the devices identified in the petition. In support of their petition, the petitioners refer to occupational exposure data obtained from the Epinet database coordinated by the University of Virginia (Ref. 1). The Epinet data show that 52 hospitals with a total average daily census of 9,681 patients reported 3,180 sharp object injuries in 1998. Syringes accounted for 33 percent of these injuries; needles on IV lines, 2 percent; butterfly needles, 8 percent; vacuum tube blood collection needles, 6 percent; IV catheter stylets and glass capillary tubes, less than 1 percent.

The petition also cited similar data from the Centers for Disease Control and Prevention (CDC). The CDC reported that, for the period from June 1995 to July 1999, there were 4,951 sharp object injuries reported to its surveillance system. Of these reported injuries, 29 percent involved hypodermic needles, 13 percent butterfly needles, 6 percent IV catheter stylets, and 4 percent blood drawing needles. The petition also stated that 8 percent of exposures with hollow bore needles were categorized as IV line-related.

Although the petition addressed the number of injuries related to generic types of devices, it did not show: (1) Which specific devices were used; (2) how many devices of that type were used during the relevant time period; (3) what the design characteristics of those devices were or (4) whether the devices met any or all of the design criteria listed. In the absence of such information about specific devices, FDA was unable to conclude that any particular device presented a ''substantial deception or an unreasonable and substantial risk of illness or injury.'' FDA invites interested persons to submit data and information that would provide insight on the basis for banning one or more of these devices.

B. Performance Standard

The petition requested that FDA issue performance standards based on the five design criteria identified in the FDA safety alert (listed in section III.A of this document) following the procedures set forth in 21 CFR part 861. The petition listed the criteria but did not discuss how FDA could apply these criteria to specific devices in the context of a mandatory performance standard; or how such a standard would provide reasonable assurance of the safety and effectiveness of these devices.

In its response, FDA stated that it did not have sufficient information to develop a standard to address the risk of needlestick injury. FDA believes that these criteria are a good starting point to develop a standard, but FDA needs additional information to determine how best to apply these criteria to specific devices in the context of a standard.

FDA invites interested persons to submit any information or data addressing the appropriateness of developing a performance standard, based on these criteria or others. FDA is also prepared to enter into discussions with any organization that wishes to develop a voluntary consensus standard for one or more of these devices that FDA may adopt or recognize in some form.

C. Labeling

Finally, the petition requested that FDA require that the labeling for ''conventional syringes'' state: ''TO PREVENT POSSIBLE EXPOSURE TO HIV AND HEPATITIS, DO NOT USE FOR STANDARD BLOOD DRAWS.'' The petitioners stated that current labeling for syringes does not contain adequate warning of the hazards that the device presents.

In its response, FDA stated that the information in this statement is well known to healthcare professionals who use these types of devices and, therefore, under 21 CFR 801.109(c), FDA would not ordinarily require such a statement in the labeling. FDA invites interested persons to comment on whether the proposed labeling statement or any other labeling requirement is necessary to provide reasonable assurance of the safety and effectiveness of these devices.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this document by September 19, 2002. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Public Citizen, Health Research Group and the Service Employees International Union (Docket No. 01P–0120) and FDA's response dated September 5, 2001.

2. Letter from Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, to Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, dated December 18, 1998.

3. Letter from Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, to Dr. Michael A. Friedman, Deputy Commissioner for Operations, Food and Drug Administration, dated February 8, 1999.

Dated: January 31, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15493 Filed 6–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[REG–106871–00 and REG–209813–96]

RIN 1545–BA83 and RIN 1545–AU15

Reporting for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rulemaking and withdrawal of previous notice of proposed rulemaking.

SUMMARY: This document contains the withdrawal of proposed regulations (REG–209813–96), published on August 13, 1998 in the **Federal Register** (63 FR 43354). This document also contains new proposed regulations that define widely held fixed investment trusts, clarify the reporting obligations of the trustees of these trusts and the middlemen connected with these trusts, and provide for the communication of necessary tax information to beneficial owners of trust interests.

DATES: Written or electronic comments and requests for a public hearing must be received by September 18, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–106871–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–106871–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Faith Colson, (202) 622–3060 or Viva Hammer, (202) 622–0869; concerning submission of comments, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1540.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains reproposed amendments to the Income Tax Regulations (26 CFR part 1) under section 671. These reproposed amendments are to be issued under the authority of section 7805.

On August 13, 1998, the IRS and Treasury published in the **Federal Register** (63 FR 43354) a notice of proposed rulemaking (REG–209813–96, 1998–2 C.B. 259) under sections 671, 6049 and 6109. A public hearing was held on November 5, 1998. No oral comments were made at the public hearing. Written comments were received.

After consideration of the written comments received, the IRS and Treasury believe that it is appropriate to repropose these regulations. Accordingly, the provisions of the proposed regulations published in August of 1998, are withdrawn, and these reproposed regulations are now being issued.

A fixed investment trust is an arrangement classified as a trust under § 301.7701–4(c). Beneficial interests in these trusts are divided into unit interests. The IRS treats these trusts as grantor trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code (Code) and the owners of the beneficial interests, or units, as grantors. See Rev. Rul. 84–10 (1984–1 C.B. 155); Rev. Rul. 61–175 (1961–2 C.B. 128). Interests in these trusts are often held in the street name of a middleman, who holds such interests on behalf of the beneficial owners. Thus, trustees ordinarily do not know the identity of the beneficial owners and are not in a position to communicate information directly to them. These reproposed regulations provide tax information reporting rules that specifically require the sharing of tax information among trustees, middlemen, and the beneficial owners of domestic fixed investment trusts in which any interest is held by a middleman.

Although the reproposed regulations retain the scope and framework provided under the 1998 proposed regulations, the reproposed regulations allow more flexibility regarding the format and frequency in which trust information is communicated from trustees to middlemen. In addition, the reproposed regulations simplify the rules contained in the 1998 proposed regulations for the reporting of a sale or disposition of a trust asset.

Explanation of Provisions

I. Scope and General Framework of Reporting Rules

These reproposed regulations apply to all widely held fixed investment trusts. In the 1998 proposed regulations, a *widely held fixed investment trust* (WHFIT) was defined as a fixed investment trust in which any interest is held by a middleman. The term *middleman* included but was not limited to, a custodian of a person's account, a nominee, and a broker holding an interest for a customer in street name. In the preamble to the 1998 proposed regulations, comments were requested on the application and scope of these definitions. No comments were received and those definitions are retained in these reproposed regulations except that the definition of a WHFIT is modified to clarify that a trust must be classified as a United States person under section 7701(a)(30)(E) to be a WHFIT.

A notice of proposed rulemaking (REG–108553–00), published in the **Federal Register** (65 FR 60822) on October 12, 2000, specified safe harbors under which certain investment trusts would be classified as United States persons under section 7701(a)(30)(E). Commentators responding to those proposed regulations noted that certain fixed investment trusts would be outside those safe harbors and would accordingly be treated as foreign trusts. As a result of those trusts being treated as foreign trusts, United States investors in those trusts would be subject to the reporting rules under section 6048. The commentators suggested that United States investors in those trusts should not be subject to reporting under section 6048 and to the corresponding penalties in section 6677 for failure to comply with the section 6048 reporting requirements. Final regulations (TD 8962) under 7701 were published in the **Federal Register** (66 FR 41778) on August 9, 2001. The preamble to those final regulations states that because a guidance project concerning reporting requirements for all widely held fixed investment trusts was under consideration, those final regulations would not specifically address the section 6048 reporting issue raised by the commentators. The IRS and Treasury continue to study how to facilitate the application of the section 6048 rules to foreign fixed investment trusts and request practical suggestions on this issue, including how Forms 3520 and 3520A can be adapted for use with foreign fixed investment trusts.

The information reporting framework in the 1998 proposed regulations was similar to that for regular interests in a real estate mortgage investment conduit (REMIC). See § 1.6049–7. Under this framework, the responsibility for information reporting lies primarily with the person in the ownership chain who holds an interest for a beneficial owner and is, therefore, in the best position to communicate with, and provide trust tax information to, the beneficial owner. Thus, a brokerage firm that holds an interest in a WHFIT for an individual as a middleman is to report WHFIT tax information with respect to that individual to the IRS on Forms 1099 and furnish WHFIT tax information to the individual. Similarly, if an interest in a WHFIT is held directly by an individual and not through a middleman, the trustee is to report to the IRS and provide WHFIT tax information directly to the individual. One commentator suggested a different framework: one similar to the rules in

§ 1.6031(b)–1T and § 1.6031(c)–1T regarding partnership interests held by nominees. Under § 1.6031(b)–1T and § 1.6031(c)–1T, nominees are required to provide information regarding the identity of a partner to the partnership. The partnership must then provide necessary tax information directly to the partner. Given that this suggestion was merely an alternative to that commentator's preferred solution of simplifying the reporting requirements provided by the 1998 proposed regulations, and that no other commentators raised concerns about the framework, the reproposed regulations retain the REMIC framework.

II. Trustee's Requirement to Calculate and Provide WHFIT Information

A. General Rules

Under the 1998 proposed regulations and the reproposed regulations, a trustee is no longer required to file a Form 1041, with an attached statement, for a WHFIT. See § 1.671–4(a). Instead, a trustee must provide trust tax information to requesting persons (middlemen and others). In addition, if a beneficial owner that is not an exempt recipient, holds an interest in a WHFIT directly with the trust, and not through a middleman, the trustee must also file a Form 1099 with respect to that owner and furnish trust tax information to that owner.

Consistent with the taxation of grantor trusts, the 1998 proposed regulations required trustees to provide trust tax information in a manner that was sufficient for requesting persons to determine the exact items of income, deduction, and credit of the WHFIT that were attributable to a unit interest holder. In addition, the 1998 proposed regulations required trustees to calculate and provide WHFIT information on a quarterly basis. In drafting the 1998 proposed regulations, the IRS and Treasury believed that quarterly reporting was necessary for requesting persons to have sufficient information to determine the trust items that were attributable to a unit interest holder who held a unit interest for less than an entire calendar year or a unit interest holder not using a calendar year as the holder's taxable year.

Several commentators, in describing current tax reporting practices, indicated that trustees do not provide trust tax information in a manner that would enable a requesting person to determine the exact amounts of trust items that are attributable to a unit interest holder. With respect to the requirement of quarterly reporting in the 1998 proposed regulations, several commentators responded that many trustees only provide tax reporting information on a calendar year basis. These commentators contended that quarterly reporting unnecessarily increased a trustee's reporting burden fourfold. These commentators argued that WHFIT tax information only needs to be calculated and provided on a calendar year basis for trustees and middlemen to fulfill Form 1099 reporting requirements. Other commentators responded that some WHFITs provide information on a monthly basis.

In response to these comments, the reproposed regulations remove the quarterly reporting requirement contained in the 1998 proposed regulations. Under the reproposed regulations, trustees may choose either a calendar month, calendar quarter, or a full or half calendar year reporting period provided that the information supplied by the trustee under the chosen reporting period enables the WHFIT items attributable to a particular unit interest holder to be determined with reasonable accuracy, regardless of the holder's taxable year or the period of time that the unit interest holder held its interest.

The reproposed regulations provide that once a reporting period has been chosen by a trustee, the trustee must use that reporting period throughout the trust's existence. It is expected that requesting persons (in particular, middlemen) will develop a method for processing information from a WHFIT that takes into account the reporting period chosen by the trustee. The consistency requirement was included in the reproposed regulations in response to concerns that requesting persons would be required to change their processing systems if the trustee changes the WHFIT's reporting period. The IRS and Treasury invite comments on the necessity of the consistency requirement and on whether an alternative approach would be more effective in facilitating the processing of information by requesting persons.

Because requesting persons may be required to process WHFIT tax information provided by many different trustees, the reproposed regulations also require trustees to provide trust tax information in a manner that is consistent with industry practice. Thus, a requesting person using current industry practice must be able to process the WHFIT tax information provided by the trustee.

The reproposed regulations require that the information provided by the trustee be presented in a manner such that a requesting person is able to separately state any WHFIT item that, if taken into account separately by a beneficial owner, could result in an income tax liability for the beneficial owner different from that which would result if the beneficial owner did not take the item into account separately. Examples of the types of information that are to be provided under this provision include: (i) Items of tax preference subject to the alternative minimum tax imposed by section 55; (ii) investment interest and investment income and expense necessary to compute limitations under section 163(d); (iii) income from oil and gas subject to depletion under sections 613 and 613A; (iv) most depreciation and depletion expenses; and (v) intangible drilling and development costs (see section 263(c)). This provision is not intended to require asset-by-asset reporting.

B. Method of Accounting

A beneficial owner of a unit interest must report WHFIT items consistent with the owner's method of accounting. See, for example, Rev. Rul. 84–10. For administrative convenience and with the intent of being consistent with industry practice, under the 1998 proposed regulations, a WHFIT was to calculate and provide WHFIT tax information using the cash receipts and disbursements method of accounting. Several commentators confirmed that the majority of WHFITs currently use the cash receipts and disbursements method of accounting. Under the reproposed regulations, WHFIT tax information must be calculated and provided using the cash receipts and disbursements method of accounting except where another method is required by the Code or regulations with respect to a specific trust item. Accordingly, a WHFIT must provide information necessary for unit interest holders to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A, which require the inclusion of accrued amounts with respect to original issue discount (OID), and section 860B(b), which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

The reproposed regulations also provide that if a WHFIT is marketed to accrual method taxpayers and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method, trust tax information must be calculated and provided using the accrual method of accounting.

C. Information To Be Provided by All WHFITs

The information to be provided by the trustee under the reproposed and 1998 proposed regulations is similar. The tax reporting information the trustee is to calculate and provide under the reproposed regulations includes:

1. All Items of Income, Deduction, and Credit

Under both the reproposed and the 1998 proposed regulations, the trustee must provide information with respect to all items of income (including OID), deduction (including affected expenses (as defined in § 1.67–2T(i)(1))), and credit of the WHFIT. In furnishing information regarding the items of income, the trustee must provide the gross amount of trust income generated by trust assets. Thus, if a WHFIT receives a payment net of an expense or expenses, the payment must be grossed up to reflect the deducted expense so that the WHFIT's income and expenses can be properly reported by unit interest holders. The trustee must also have, and make available, information regarding the WHFIT's expenses, including affected expenses.

2. Information To Enable Unit Interest Holders To Determine Gain or Loss on the Sale or Disposition of a WHFIT Asset

The reproposed regulations simplify, but do not eliminate, reporting by the trustee with respect to the sale or disposition of a WHFIT asset.

The reporting rules in the 1998 proposed regulations were designed to provide a unit interest holder with sufficient information to calculate the unit interest holder's approximate gain or loss on the sale or disposition of an asset by the WHFIT. To that end, trustees were required to provide information regarding the amount of the gross proceeds from the sale or disposition of a WHFIT asset, the date of sale or disposition of the asset, and the percentage of the asset that has been sold or disposed of. In addition, trustees were required to provide a schedule showing the portion (expressed as a percentage) of the total fair market value of all the assets held by the WHFIT that the asset sold or disposed of represented as of the last day of each quarter that the asset was held by the WHFIT. The 1998 proposed regulations also required that this information be provided on an asset-by-asset approach.

Commentators stated that, for various reasons, it would be impossible, or, at the very least, extremely costly and burdensome for trustees to comply with the reporting rules contained in the 1998 proposed regulations. These commentators urged the IRS and Treasury to adopt reporting rules that require trustees and middlemen to only provide information regarding the amount of gross proceeds that are distributed to a unit interest holder.

These commentators noted that many trustees and middlemen currently only provide information regarding the amount of gross proceeds that are distributed. Commentators also noted, however, that as a result of this reporting, many beneficial owners treat the distribution of gross proceeds by the WHFIT as a return of the beneficial owner's investment. Therefore, any gain, loss, discount, or premium that should be recognized by a beneficial owner as a result of the sale or disposition of a trust asset is deferred until the beneficial owner either exhausts its basis in its unit interest or sells or redeems its unit interest. Commentators nevertheless contended that the resulting tax deferral did not justify the reporting obligations imposed by the 1998 proposed regulations. As support, commentators contended that to maintain their status as trusts under § 301.7701–4(c), WHFITs sell or dispose of their assets only infrequently.

In response to these comments, the reproposed regulations provide that the information to be reported with respect to an asset sale or disposition depends on whether the WHFIT's asset sales or dispositions for the calendar year exceed a de minimis amount. If trust sales proceeds for a given calendar year equal or are less than 5% of the fair market value of the assets of the trust as of January 1 of that year, a trust meets the de minimis test for the calendar year. The reproposed regulations define trust sales proceeds as the gross proceeds received by a WHFIT with respect to a sale or disposition of an asset by the WHFIT. If a trust meets the de minimis test, the trustee need only provide information that enables requesting persons to calculate the amount of trust sales proceeds that are attributable to a unit interest holder.

If asset sales and dispositions exceed the de minimis amount, the trustee must provide, with respect to each sale or disposition: (i) The date of the sale; (ii) information regarding trust sale proceeds; (iii) information that will enable a unit interest holder to allocate with reasonable accuracy a portion of its basis in its unit interest to the sale or disposition; and (iv) information that will enable a unit interest holder to allocate with reasonable accuracy a portion of its market discount or premium, if any, to the sale or disposition.

Commentators on the 1998 proposed regulations indicated that, in providing information regarding gross proceeds, trustees and middlemen only provide unit interest holders with information regarding the amount of gross proceeds that have been distributed to them, not the amount that is attributable to each unit interest holder. Under these reproposed regulations, trustees and middlemen, when providing gross proceeds information, must provide information regarding the amount of gross proceeds that are attributable to the holder.

3. Information With Respect to Redemptions and Sales of Unit Interests

Specific guidelines for the reporting of the redemption of a unit interest from a WHFIT and for the reporting of a sale of a unit interest on a secondary market were not provided under the 1998 proposed regulations. In response to the comments received with respect to the 1998 proposed regulations, the reproposed regulations now provide guidance on the reporting of these transactions.

4. Other Information

The reproposed regulations require the trustee to provide any other information necessary for a unit interest holder that is a beneficial owner of a unit interest to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671. Several commentators objected to the inclusion of a similar requirement in the 1998 proposed regulations. The IRS and Treasury note that WHFITs are used to hold a wide variety of assets. This provision is intended to clarify that trustees must accommodate beneficial owners' needs for appropriate information with respect to the assets held by the WHFIT. This provision is also intended to clarify that the information provided by the trustee must accommodate the different tax attributes of the beneficial owners of the WHFIT. This provision, however, is not intended to require asset-by-asset reporting.

D. Additional Information To Be Provided by the Trustee of a Widely Held Mortgage Trust

Commentators on the 1998 proposed regulations identified specific concerns regarding the tax information reporting obligations of the trustee of a WHFIT that primarily holds mortgages as its assets. The IRS and Treasury believe

that changes in the reproposed regulations that apply to all WHFITs address some of these concerns. In response to other concerns raised by the commentators, the reproposed regulations provide certain rules tailored specifically to widely held mortgage trusts (WHMTs). The reproposed regulations define a WHMT as a WHFIT, substantially all the assets of which, measured by value, are mortgages, amounts received on mortgages, and reasonably required reserve funds.

1. Receipt of Scheduled and Unscheduled Principal Payments

Commentators requested clarification regarding the reporting of the trust's receipts of scheduled and unscheduled principal payments on the mortgages held by the WHMT. Under the reproposed regulations, trustees must calculate and provide information regarding these principal receipts, and, as with all information provided by the trustee, it must be done in a manner that enables a requesting person to determine with reasonable accuracy the principal receipts attributable to a unit interest holder. Scheduled and unscheduled principal receipts are aggregated with the WHMT's proceeds from sales and dispositions of mortgages and reported as trust sales proceeds to the IRS on Form 1099. Unless a trustee reports under the safe harbor for certain WHMTs, scheduled and unscheduled principal receipts and trust sales proceeds are reported separately to beneficial owners.

2. Sales and Dispositions of Mortgages

Commentators requested that the IRS and Treasury clarify that certain transactions that regularly occur during the administration of a WHMT do not trigger the reporting rules for sales and dispositions provided under the 1998 proposed regulations. These transactions involve the sale of a mortgage by a WHMT to the guarantor, sponsor, or previous owner for an amount equal to its unpaid principal balance plus accrued but unpaid interest. Commentators maintained that the costs involved in reporting these transactions as sales or dispositions under the 1998 proposed regulations outweighed the benefit of reporting the required information to unit interest holders. The IRS and Treasury believe that the de minimis test in the reproposed regulations alleviates the reporting burden concerns expressed by the commentators responding to the 1998 proposed regulations. Therefore, in general, the reproposed regulations provide no special WHMT rules for reporting these transactions and, under the reproposed regulations, these transactions are reported the same as any other sale or disposition engaged in by a WHFIT.

The reproposed regulations do, however, adjust the de minimis test for WHMTs. In response to concerns regarding provisions in the 1998 proposed regulations that require a trustee of a WHMT to assign a fair market value to mortgages held by a WHMT, the reproposed regulations provide that the trustee is to use the aggregate outstanding principal balance of the WHMT's mortgages for purposes of applying the de minimis test. Scheduled and unscheduled principal receipts are not included in the amount of trust sales proceeds for purposes of determining whether a WHMT has met the de minimis test.

3. Reporting Information With Respect to Market Discount

The 1998 proposed regulations required, with respect to a WHFIT that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), that trustees and middlemen provide information to enable beneficial owners to comply with market discount rules and where applicable, section 1272(a)(6) (as amended by section 1004 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 766, 911) (1997)).

Several commentators questioned the application of this reporting requirement in the 1998 proposed regulations. These commentators asserted that, in the absence of additional guidance under section 1272(a)(6)(C)(iii), it was unclear which WHFITs held a pool of debt instruments subject to that section and accordingly were required to report market discount information and information consistent with section 1272(a)(6)(C)(iii) to comply with the 1998 proposed regulations. These commentators requested that this reporting requirement be deferred until substantive guidance is provided regarding the application of section 1272(a)(6)(C)(iii).

In response to this comment, the IRS and Treasury note that, under section 1276(a)(3), beneficial owners of a unit interest are required to include in gross income, as ordinary income, the partial payment of a debt instrument to the extent that such payment does not exceed the accrued market discount on the debt instrument. The IRS and Treasury also note that unit interest holders in a WHMT consistently receive partial payments on the mortgages held by the WHMT and that, absent information being provided by the trustee, unit interest holders in a WHMT do not have the information necessary to calculate their accrued market discount under section 1276(a)(3) and, therefore, cannot properly report the tax consequences of their ownership of the unit interest. For this reason, the reproposed regulations require trustees and middlemen of all WHMTs to provide information to enable unit interest holders to calculate market discount by any reasonable manner that is consistent with section 1276(a)(3). Pending the issuance of guidance under section 1272(a)(6)(C)(iii), a trustee may, but is not required, by these reproposed regulations, to provide market discount and OID information that is calculated consistent with the application of section 1272(a)(6)(C)(iii). The reproposed regulations only provide reporting rules. Substantive rules regarding OID and market discount are provided in subtitle A, chapter 1, subchapter P, part V of the Code and the regulations thereunder.

Commentators also contended that substantive guidance was lacking regarding the methodology to be used by unit interest holders in accruing market discount under section 1276(a)(3). The commentators contended that the requirement to provide market discount information should be deferred until guidance regarding methodology is issued.

Section 1803(a)(13)(A) of the Tax Reform Act of 1986 (TRA 1986) Public Law 99–514 (100 Stat. 2085) amended section 1276 to include sections 1276(a)(3) and (b)(3). Section 1276(b)(3) provides that the computation of the accrual of market discount with respect to partial principal payments is to be provided by Treasury regulations. To date, no regulations have been issued under section 1276(b)(3). The IRS and Treasury note, however, that although no regulations have been issued under section 1276(b)(3), the conference report accompanying the amendment to section 1276 provides that until such time as the Treasury Department issues such regulations, the conferees intend that market discount be accrued as provided in the conference report. See H.R. Rep. No. 841, 99th Cong., 2nd Sess., at II–842 (1986). Accordingly, the IRS and Treasury believe that there is sufficient guidance regarding the methodology for accruing market discount under section 1276(a)(3) to impose as a current requirement that trustees provide market discount information that enables a unit interest holder to determine the portion of the holder's market discount that has accrued during the reporting period by any manner reasonably consistent with section 1276(a)(3). In addition, the

reproposed regulations include a safe harbor for certain WHMTs for providing market discount information that is considered to be reasonably consistent with section 1276(a)(3). The safe harbor requires the use of the prepayment assumption used in pricing the original issue of unit interests.

4. Reporting Information With Respect to Amortizable Bond Premium

The 1998 proposed regulations imposed no reporting requirements on trustees and middlemen with respect to amortizable bond premium. Some owners of unit interests that acquire their interests at a premium may have amortizable bond premium within the meaning of section 171. In response to comments received with respect to the 1998 proposed regulations, as well as in connection with other matters, the IRS and Treasury note that not all owners of unit interests may receive sufficient information to reasonably determine the amount of any amortizable bond premium on mortgages held by a WHMT. For this reason, the reproposed regulations include a general requirement that trustees and middlemen of all WHMTs provide information to enable unit interest holders to determine the amount of the unit interest holder's amortizable bond premium, if any, in any manner that is reasonably consistent with section 171. The IRS and Treasury are continuing to study and request comments on an appropriate safe harbor for reporting premium information for unit interest holders that buy their interests at a premium.

D. Safe Harbor Factors

Several commentators reported that many trustees currently provide tax information to middlemen through the use of ''factors.'' These trustees assume that middlemen maintain a record of certain trust information with respect to the unit interest holders for whom the middlemen hold an interest. Trustees provide these middlemen with data, called factors, which are ratios. Trustees assume that middlemen will use these factors to extrapolate by multiplication necessary trust tax information with respect to their unit interest holders from the information that middlemen already have in their records. The factors provided by a trustee depend on the type of assets held by the WHFIT and the tax items to be determined. Some trustees provide factors on a calendar year basis and some provide factors on a monthly basis. As an example, the comments received with respect to the 1998 proposed regulations indicated that the trustees of many WHFITs assume that middlemen receive and maintain a record of the amount of cash distributed to (or credited to the account of) a unit interest holder from the WHFIT during the calendar year. These trustees provide middlemen with factors that when multiplied by the amount of cash from the WHFIT distributed by a middleman to (or credited to the account of) a unit interest holder during the calendar year, enable a middleman to determine the amount of trust income and the amount of trust expenses that are attributable to the unit interest holder for the calendar year.

The reproposed regulations provide as safe harbors, examples of methods for calculating certain factors that the IRS and Treasury believe will enable requesting persons to determine, with reasonable accuracy, the trust items attributable to a unit interest holder. Section 1.671–5(g) of the reproposed regulations provides safe harbor methods for calculating factors that provide information with respect to sales and dispositions of trust assets, trust income, trust expenses, OID, and market discount for certain WHMTs. The reproposed regulations condition the application of the safe harbors on the WHMT meeting certain requirements. The IRS and Treasury request comments on how the safe harbors provided in proposed § 1.671–5(g) can be modified and extended to WHMTs not meeting the requirements in the reproposed regulations.

Section 1.671–5(f) of the reproposed regulations provides safe harbor methods for calculating certain factors that provide similar information for WHFITs other than WHMTs. The IRS and Treasury request comments regarding the applicability of the safe harbors in proposed § 1.671–5(f) to WHFITs that hold assets other than stock and debt instruments and whether different safe harbors are needed for those WHFITs.

The IRS and Treasury also request comments on how the safe harbors provided in § 1.671–5(f) and (g) of the reproposed regulations can be modified to better conform to industry practice while providing the IRS and beneficial owners with necessary WHFIT tax information. In addition, the IRS and Treasury request comments from requesting persons on their ability to process WHFIT tax information that is provided to them in the form of factors.

E. Time and Manner for Providing WHFIT Information

1. Trustee May Identify a Trust Representative and Publish Trust Information on the Internet

Under both the 1998 proposed regulations and the reproposed regulations, the trustee must identify the name, address, and telephone number of a representative or official of the WHFIT who will provide the trust information required to be provided by the trustee. In addition to the list of places described in the 1998 proposed regulations where the trustee may publish this information, the reproposed regulations also permit the trust representative to be identified in the trust's prospectus or on the trustee's Internet site. When providing this information under the reproposed regulations, the trustee must also identify the reporting period that the trustee will use to calculate and provide trust information. Further, the reproposed regulations permit the trust information described in § 1.671–5(c) of the reproposed regulations to be furnished to requesting persons on the trustee's Internet site or on another Internet site designated by the trustee.

2. Extension of Time for Furnishing Trust Information for Certain WHFITs

With respect to most WHFITs, the reproposed regulations retain the requirement of the 1998 proposed regulations that WHFIT information be provided on or before the later of the 30th day after the close of the reporting period for which the information is requested, or, the 14th day after the receipt of the request to provide information. Under the reproposed regulations, if substantially all of the assets of the WHFIT are unit interests in another WHFIT or regular interests in a REMIC, the reproposed regulations allow the trustee until on or before the later of the 44th day after the close of the reporting period for which the information is requested, or, the 28th day after the receipt of the request to provide trust information.

III. Rules for Providing Trust Information to the IRS and to Beneficial Owners

A. In General

Under the 1998 proposed regulations and the reproposed regulations, a middleman is required to file Forms 1099 with the Internal Revenue Service and to furnish a tax information statement to the beneficial owner of a unit interest. If a beneficial owner holds an interest directly with a trustee, the trustee is required to file Forms 1099

with the Internal Revenue Service and to furnish the statement to the beneficial owner. A Form 1099 and a statement are not required for a beneficial owner that is an exempt recipient.

The reproposed regulations provide rules for determining the information to be provided on the Forms 1099 required to be filed with the Internal Revenue Service with respect to a beneficial owner and for determining the information to be provided on the tax information statement required to be furnished to the owner. First, the information provided on the Forms 1099 and the tax information statement must be consistent with the information required to be provided by the trustee under § 1.671–5(c) of the reproposed regulations. Second, the information provided must reflect with reasonable accuracy the trust items that are attributable to the beneficial owner. Third, the statement must separately state any trust item that if taken into account separately by the beneficial owner, could result in an income tax liability for that owner different from that which would result if the owner did not take the item into account separately.

In addition, the reproposed regulations require that the information provided on the Forms 1099 and the tax information statement be determined as provided in § 1.671–5(f) or (g), as appropriate, if the trustee has provided information in accordance with the safe harbors described in those paragraphs. One commentator requested that trustees and middlemen be permitted to provide factors to beneficial owners. Under this approach, a beneficial owner would have the burden of understanding and applying the factors to determine the amounts of income, deductions, and credits of the WHFIT that are attributable to the owner. The reproposed regulations provide that middlemen, and trustees, where appropriate, must provide the IRS and beneficial owners with the amounts of income, deduction, and credit of a WHFIT that are attributable to a beneficial owner. It is not permissible for middlemen and trustees to merely provide factors to a beneficial owner.

B. Reporting With Respect to Foreign Unit Interest Holders

The 1998 proposed regulations did not address reporting with respect to unit interest holders that are not United States persons. In response to comments received with respect to the 1998 proposed regulations, the reproposed regulations clarify that payments made from a WHFIT to a unit interest holder that is not a United States person are to be withheld and reported in accordance with Subtitle A, Chapter 3 of the Code and the regulations thereunder.

IV. Clarification of the Relationship Between These Reporting Rules and Other Reporting Rules

The preamble to the 1998 proposed regulations noted that appropriate adjustments to other information reporting rules may be necessary to make them compatible with those proposed regulations. One such provision is § 1.6049–5(a)(6), which was cited by one commentator as an example of a provision allowing the amount of interest to be reported to the IRS to be based on the interest paid as stated on the investor's certificate, rather than the interest on the notes or obligations underlying the certificate. To be consistent with the taxation of a grantor trust, the reproposed regulations revise § 1.6049–5(a)(6) to clarify that the income to be reported with respect to WHFITs is the gross amount of income earned by trust assets.

In addition, comments received with respect to the 1998 proposed regulations requested clarification of the relationship between the reporting rules in the proposed regulations and the reporting rules in subpart B, part III, subchapter A, chapter 61 of the Code (Information Returns Concerning Transactions with Other Persons) (subpart B). In response, the reproposed regulations provide that if reporting is required under the reproposed regulations and subpart B, the reproposed regulations will control. The reproposed regulations also provide that the rules of subpart B are incorporated into the reproposed regulations to the extent that those rules are not inconsistent with the reporting rules in the reproposed regulations.

Proposed Effective Date

These regulations are proposed to be applicable beginning January 1, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations generally clarify existing reporting obligations and are expected, for the most part, to have a minimal impact on industry practice. Thus, the regulations will not result in a significant economic impact on any entity subject to the regulations. Further, the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities will not be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.671–4 is amended by revising paragraph (a) to read as follows:

§ 1.671–4 Method of reporting.

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraph (b) of this section and § 1.671–5, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' but are shown on a separate statement to be attached to that form. Section 1.671–5 provides special reporting rules for widely held fixed investment trusts. Section 301.7701–4(e)(2) of this chapter provides guidance on how the reporting rules in this paragraph (a) apply to an environmental remediation trust.

* * * * *

3. Section 1.671–5 is added to read as follows:

§ 1.671–5 Reporting for widely held fixed investment trusts.

(a) *Table of contents.* This table of contents lists the major paragraph headings for this section.

(a) Table of contents.
(b) Definitions.
(c) Trustee's obligation to furnish information.
(1) In general.
(i) Calculation and presentation.
(ii) Reporting period.
(iii) Accounting method.
(iv) Gross income requirement.
(2) Information to be provided for all trusts.
(i) Trust identification.
(ii) Items of income, deduction and credit.
(iii) Asset sales and dispositions.
(iv) Information on redemptions and sales of WHFIT unit interests.
(v) Other information.
(3) Additional information to be provided for a WHMT.
(i) Market discount information.
(ii) Premium information.
(iii) Principal payment information.
(4) Identifying the trust reporting period and the representative who will provide information.
(5) Time and manner of providing information.
(i) Time.
(ii) Manner.
(6) Requesting information from a WHFIT.
(i) Requesting persons.
(ii) Manner of requesting information.
(iii) Period of time during which requesting person may request WHFIT information.
(7) Trustee's requirement to retain records.
(d) Form 1099 requirement for trustees and middlemen.
(1) Obligation to file Form 1099 with the Internal Revenue Service.
(i) In general.
(ii) Forms 1099 not required for exempt recipients.
(iii) Reporting with respect to foreign persons.
(2) Information to be reported.
(i) Determining amounts to be provided on Forms 1099.
(ii) Information to be provided on Forms 1099.
(3) Time and manner of filing Forms 1099.
(e) Requirement of furnishing the statement to a unit interest holder.
(1) In general.
(i) General rule for determining information for statement.
(ii) Required use of safe harbor information.
(iii) Requirement to separately state relevant WHFIT items.
(2) Information required to be provided on written statement with respect to all WHFITs.
(i) WHFIT information.
(ii) Identification of the person furnishing the statement.
(iii) Items of income, deduction and credit.
(iv) Asset sales and dispositions.
(v) Information on the redemption or sale of a unit interest.
(vi) Other information.
(vii) Required statement.
(3) Additional information to be provided on written statement with respect to WHMTs.
(i) Information regarding market discount and premium.
(ii) Information regarding principal payments.
(4) Due date and other requirements with respect to statement required to be furnished to the unit interest holder.
(f) Safe harbors for providing information for WHFITs other than WHMTs.
(1) Safe harbors for trustee reporting of WHFIT information.
(i) In general.
(ii) Safe harbor for reporting WHFIT income and expenses.
(iii) Safe harbor for reporting OID.
(iv) Safe harbor for reporting information with respect to sales of WHFIT assets.
(v) Safe harbor for reporting redemptions and sales of unit interests on a secondary market.
(2) Use of information provided by trustees under safe harbors.
(i) Use of information provided in accordance with the safe harbor for reporting WHFIT income and expense.
(ii) Use of safe harbor for reporting OID.
(iii) Use of safe harbor for reporting information with respect to sales or dispositions.
(3) Example of use of safe harbors.
(i) Facts.
(ii) Trustee reporting.
(iii) Broker's use of information provided by Trustee.
(g) Safe Harbor for certain WHMTs.
(1) Safe harbors for trustee reporting of trust information.
(i) In general.
(ii) Requirements for use of safe harbors.
(iii) Safe harbor for reporting WHMT income, expenses, principal receipts, and sales and dispositions of mortgages.
(iv) Safe harbor for reporting OID information.
(v) Safe Harbor for reporting market discount information.
(vi) Safe harbor for reporting premium information.
(2) Use of information provided by a trustee under the safe harbor.
(i) Use of information provided in accordance with the safe harbor for reporting WHMT income, expenses, receipt of principal payments, and sales and dispositions of mortgages.
(ii) Use of OID factor to determine the OID attributable to a unit interest holder.
(iii) Requirement to provide market discount information.
(iv) Requirement to provide premium information.
(3) Example of safe harbor.
(i) Facts.
(ii) Trustee reporting.
(iii) Broker's use of the information provided by trustee.
(h) Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers.
(1) In general.
(2) Time and manner of providing information.
(3) Clearing organization.
(i) Reserved.
(j) Exempt recipients.
(1) Requirement that exempt recipient include accurate trust information in computing taxable income.
(2) Exempt recipients defined.
(i) Persons described in paragraph 1.6049–4(c)(1)(ii) of this chapter.
(ii) Middlemen.
(iii) Real estate mortgage investment conduit.
(iv) A WHFIT.
(v) Certain trusts and estates.
(k) Coordination with information reporting rules under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Information Returns Concerning Transactions With Other Persons).
(l) Backup withholding requirements.
(m) Penalties for failure to comply.
(n) Effective date.

(b) *Definitions.* Solely for purposes of this § 1.671–5:

(1) An *asset* includes any real or personal, tangible or intangible property held by the trust, including an interest in a contract.

(2) An *affected expense* is an expense described in § 1.67–2T(i)(1).

(3) The *cash held for distribution* is the amount of cash that would be payable to unit interest holders if the

amount of a distribution were required to be determined as of the date in question.

(4) A *distribution paid on redemption of a unit interest* is the portion of a redemption price that represents the cash held for distribution with respect to the redeemed unit interest.

(5) An *exempt recipient* is any person described in paragraph (j)(2) of this section.

(6) The *gross proceeds paid on redemption of a unit interest* is the portion of the redemption price that represents payment for the assets held by the trust (other than cash held for distribution) with respect to the redeemed unit interest.

(7) A *middleman* is any person who, at any time during the calendar year, holds an interest in an arrangement classified as a trust under § 301.7701–4(c) of this chapter, on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee, including the joint owner of an account or instrument except if the joint owners are husband and wife; and

(iii) A broker (as defined in section 6045(c)(1) and § 1.6045–1(a)(1)) holding an interest for a customer in street name.

(8) A *mortgage* is an obligation that is principally secured by an interest in real property within the meaning of § 1.860G–2(a).

(9) The *redemption price* is the total amount paid to a unit interest holder upon redemption of a unit interest.

(10) A *reporting period* is the period chosen under paragraph (c)(1)(ii) of this section by the trustee for providing trust information to requesting persons.

(11) A *requesting person* is a person specified in paragraph (c)(6)(i) of this section who is entitled under this § 1.671–5 to request the trust information specified in paragraphs (c)(2) and (3) of this section.

(12) The *start-up date* is the date on which substantially all of the assets and the contracts for the purchase of assets have been deposited with the trustee of the widely held fixed investment trust.

(13) *Trust sale proceeds* are the gross proceeds (see § 1.6045–1(d)(5)) received by a trust with respect to the sale or disposition of an asset held by a trust.

(14) A *unit interest holder* is any person who holds a direct or indirect interest, including a beneficial interest, in a widely held fixed investment trust at any time during the calendar year.

(15) A *widely held fixed investment trust* (WHFIT) is an arrangement classified as a trust under § 301.7701–4(c) of this chapter in which any interest in the trust is held by a middleman; provided the trust is a United States person under section 7701(a)(30)(E), and the unit interest holders of the trust are treated as owners under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code.

(16) *A widely held mortgage trust* (WHMT) is a WHFIT, substantially all the assets of which, measured by value, are mortgages, amounts received on mortgages, and reasonably required reserve funds. A WHFIT does not fail to meet this definition merely because it holds, during a brief initial funding period, both cash and short-term contracts for the purchase of mortgages.

(c) *Trustee's obligation to furnish information*—(1) *In general.* Upon request, a trustee of a WHFIT must provide to any requesting person, for the reporting period requested, the information described in paragraph (c)(2) of this section and, in the case of a WHMT, the information described in paragraph (c)(3) of this section. The information provided by the trustee must be determined in accordance with the following rules.

(i) *Calculation and presentation.* WHFIT information must be provided in any manner that—

(A) Enables a requesting person to determine with reasonable accuracy the WHFIT items described in paragraphs (c)(2) and (3) of this section that are attributable to a unit interest holder for the taxable year of that unit interest holder;

(B) Conforms, generally, with industry practice for the reporting of the WHFIT items described in paragraphs (c)(2) and (3) of this section for the type of asset or assets held by the WHFIT; and

(C) Enables a requesting person to separately state any WHFIT item that, if taken into account separately by a beneficial owner of a unit interest, would result in an income tax liability different from that which would result if the owner did not take the item into account separately.

(ii) *Reporting period*—(A) *General rule.* Provided a trustee uses the same reporting period throughout the trust's existence and the information provided by the trustee meets the requirements of paragraph (c)(1)(i) of this section, WHFIT information may be determined and provided on the basis of a calendar month, calendar quarter, or half or full calendar year.

(B) *Reporting period for original issue discount and market discount.* Notwithstanding paragraph (c)(1)(ii)(A) of this section, a trustee must determine the information required to be provided with respect to original issue discount (OID), market discount, and premium using a semi-annual, or shorter, reporting period.

(iii) *Accounting method*—(A) *General rule.* WHFIT information must be calculated and provided using the cash receipts and disbursements method of accounting except where another method is required by the Internal Revenue Code or regulations with respect to a specific trust item. Accordingly, a trustee must provide information necessary for unit interest holders to comply with the rules of subtitle A, chapter 1, subchapter P, part V, subpart A which require the inclusion of accrued amounts with respect to OID, and section 860B(b) which requires the inclusion of accrued amounts with respect to a REMIC regular interest.

(B) *Exception for WHFITs marketed predominantly to taxpayers on the accrual method.* If the trustee or the trust's sponsor has knowledge that a WHFIT is marketed primarily to accrual method unit interest holders and the WHFIT holds assets for which the timing of the recognition of income is materially affected by the use of the accrual method of accounting, the WHFIT must prepare and report trust information using the accrual method of accounting.

(iv) *Gross income requirement.* The amount of trust income reported by the trustee must be the amount of gross income generated by the WHFIT's assets. Thus, in the case of a WHFIT that receives a payment net of an expense or expenses, the payment must be grossed up to reflect the deducted expense or expenses. See paragraph (c)(2)(iii) of this section regarding reporting with respect to sales and dispositions.

(2) *Information to be provided by all trusts.* With respect to all WHFIT's—

(i) *Trust identification.* The trustee must provide information identifying the WHFIT, including—

(A) The name of the WHFIT;

(B) The name and address of the trustee;

(C) The employer identification number of the WHFIT; and

(D) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number, or other identifying number of the WHFIT.

(ii) *Items of income, deduction, and credit.* The trustee must provide information detailing—

(A) All items of gross income;
(B) All items of deduction; and
(C) All items of credit.

(iii) *Asset sales and dispositions*—(A) *The de minimis test.* The information to be reported under this paragraph (c)(2)(iii) with respect to asset sales and dispositions depends on whether the WHFIT meets a de minimis test with respect to sales and dispositions for the calendar year.

(*1*) *De minimis test.* A WHFIT meets the de minimis test if trust sales proceeds for the calendar year equal or are less than five percent of the aggregate fair market value of all assets held by the trust as of January 1st of that year, or the start-up date, if the trust was not in existence on January 1st.

(*2*) *Effect of clean-up call.* If a WHFIT fails to meet the de minimis test in this paragraph (c)(2)(iii) solely as the result of a clean-up call (the redemption of all unit interests in termination of the WHFIT when the administrative costs of the trust outweigh the benefits of maintaining the trust), the WHFIT will be treated as having met the de minimis test in this paragraph (c)(2)(iii).

(B) *Information required to be provided for WHFITs meeting the de minimis test.* If a WHFIT meets the de minimis test of this paragraph (c)(2)(iii) for a calendar year, the trustee must provide the date of each sale or disposition and information regarding the trust sale proceeds received by the trust with respect to the sale or disposition. The trustee must also provide requesting persons with a statement that the WHFIT met the de minimis test of this paragraph (c)(2)(iii) for the calendar year.

(C) *Additional information required to be provided for WHFITs not meeting the de minimis test.* If a WHFIT does not meet the de minimis test of this paragraph (c)(2)(iii) for a calendar year, the trustee must provide with respect to each sale or disposition of WHFIT assets—

(*1*) The date of each sale or disposition;

(*2*) Information regarding the trust sale proceeds received by the WHFIT with respect to the sale or disposition;

(*3*) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the holder's basis in the unit interest to the sale or disposition; and

(*4*) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the unit interest holder's market discount or premium, if any, to the sale or disposition.

(D) *Application of this paragraph to a WHMT*—In the case of a WHMT, the trust meets the de minimis test in this paragraph (c)(2)(iii) if trust sales proceeds for the calendar year equal or are less than five percent of the aggregate outstanding principal balance of all mortgages held by the WHMT as of January 1st of that year, or the start-up date, if the trust was not in existence on January 1st. For purposes of applying the de minimis test in this paragraph (c)(2)(iii), scheduled and unscheduled principal payments are not included in the amount of trust sales proceeds.

(iv) *Information on redemptions and sales of WHFIT unit interests*—(A) *Redemptions.* For each date on which the redemption price of a unit interest is determined, the trustee must provide information to enable a requesting person to determine—

(*1*) The redemption price per unit interest on that date;

(*2*) The gross proceeds paid on redemption of a unit interest on that date; and

(*3*) The income that should be attributed to a unit interest for the portion of the reporting period that a redeeming unit interest holder held the unit interest.

(B) *Sale of a unit interest*—If a secondary market for the unit interests of the WHFIT is established, the trustee must provide for each day of the reporting period, information to enable a requesting person to determine the undistributed WHFIT income, per unit interest, held by the WHFIT as of the date of sale.

(v) *Other information.* The trustee must provide any other information necessary for a unit interest holder that is the beneficial owner of a unit interest to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671 for the requested reporting period or any other reporting period.

(3) *Additional information to be provided for a WHMT.* In addition to meeting the requirements of paragraph (c)(2) of this section, the trustee must provide—

(i) *Market discount information.* Information that enables a unit interest holder to determine, in any manner that is reasonably consistent with section 1276(a)(3), the portion of the unit interest holder's market discount, if any, that has accrued during the reporting period.

(ii) *Premium information.* Information that enables a unit interest holder to determine, in any manner that is reasonably consistent with section 171, the amount of the unit interest holder's amortizable bond premium, if any, for the reporting period.

(iii) *Principal payment information.* Information regarding principal payments, both scheduled and unscheduled, received by the WHMT on mortgages held by the WHMT.

(4) *Identifying the trust reporting period and the representative who will provide information*—The trustee must identify a representative of the WHFIT who will provide the information specified in this paragraph (c) and the reporting period which will be used by the trustee. The name, address, and telephone number of the representative and the reporting period must be—

(i) Printed in a publication generally read by, and available to, requesting persons;

(ii) Stated in the trust's prospectus; or

(iii) Posted on the trustee's internet site.

(5) *Time and manner of providing information*—(i) *Time*—(A) *In general.* Except as provided in paragraph (c)(5)(i)(B) of this section, a trustee must provide the information specified in this paragraph (c) to requesting persons on or before the later of—

(*1*) The 30th day after the close of the reporting period or periods for which the information was requested; or

(*2*) The day that is 14 days after the receipt of the request.

(B) *Trusts holding interests in REMICs or other WHFITs.* If substantially all the assets of a WHFIT are unit interests in other WHFITs, REMIC regular interests, or both, a trustee must provide the information specified in this paragraph (c) on or before the later of—

(*1*) The 44th day after the close of the reporting period or periods for which the information was requested; or

(*2*) The day that is 28 days after the receipt of the request.

(ii) *Manner.* The information specified in this paragraph (c) must be provided—

(A) By written statement sent by first class mail to the address provided by the requesting person;

(B) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying the requesting person in writing of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear;

(C) By causing it to be posted on an internet site and by notifying requesting persons in writing of the internet site on which it will appear; or

(D) By any other method agreed to by the trustee and requesting persons.

(6) *Requesting information from a WHFIT*—(i) *Requesting persons.* The following persons that hold an interest

in a WHFIT may request the information specified in this paragraph (c) from that WHFIT—

(A) Any middleman;

(B) Any broker who holds a unit interest on its own behalf;

(C) Any other exempt recipient who holds an interest directly and not through a middleman;

(D) Any noncalendar-year unit interest holder who holds a WHFIT interest directly and not through a middleman; and

(E) A representative or agent for a person specified in this paragraph (c)(6).

(ii) *Manner of requesting information.* In requesting WHFIT information, a requesting person must specify the WHFIT and the reporting period or periods for which information is requested.

(iii) *Period of time during which a requesting person may request WHFIT information.* During the WHFIT's existence and for three years following the date of the WHFIT's termination, a requesting person may request information for any of the WHFIT's reporting periods.

(7) *Trustee's requirement to retain records.* During the existence of the WHFIT and for at least five years following the date of termination, the trustee must maintain in its records a copy of the information provided to requesting persons for each reporting period and such supplemental data as may be necessary to establish that the information provided to requesting persons is correct and meets the requirements of this paragraph (c).

(d) *Form 1099 requirement for trustees and middlemen*—(1) *Obligation to file Form 1099 with the Internal Revenue Service*—(i) *In general.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section—

(A) Every trustee must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any unit interest holder who holds an interest in the WHFIT directly and not through a middleman; and

(B) Every middleman must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (d)(2) of this section with respect to any unit interest holder on whose behalf or account the middleman holds an interest in the WHFIT or acts in a capacity of an intermediary.

(ii) *Forms 1099 not required for exempt recipients.* A Form 1099 is not required with respect to a unit interest holder that is an exempt recipient. If the trustee or middleman backup withholds under section 3406 on payments made to an exempt recipient (because, for example, the exempt recipient has failed to furnish a Form W–9 on request), then the trustee or middleman is required to file a Form 1099 under this paragraph, unless the trustee or middleman refunds the amount withheld in accordance with § 31.6413(a)-3 of this chapter. Paragraph (j) of this section describes unit interest holders that may be treated as exempt recipients.

(iii) *Reporting with respect to foreign persons.* Payments made by a WHFIT to a unit interest holder that is not a United States person must be reported as provided under subtitle A, chapter 3 of the Internal Revenue Code (sections 1441 through 1464) and the regulations thereunder and are not reported under this paragraph (d).

(2) *Information to be reported*—(i) *Determining amounts to be provided on Forms 1099*—(A) *In General.* The information provided for a calendar year by a trustee or middleman to the Internal Revenue Service on the appropriate Forms 1099 must be consistent with the information provided by the trustee under paragraph (c) of this section and must reflect with reasonable accuracy the WHFIT items that are attributable to a unit interest holder.

(B) *Use of safe harbor information.* If the trustee, in providing WHFIT information, uses the safe harbors in paragraph (f)(1) or (g)(1) of this section, then the trustee or middleman must calculate the information to be provided to the Internal Revenue Service on the Forms 1099 in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(ii) *Information to be provided on Form 1099.* The trustee or middleman must include on the appropriate Forms 1099—

(A) *Taxpayer information.* The name, address, and taxpayer identification number of the unit interest holder.

(B) *Information regarding the person filing the Form 1099.* The name, address, taxpayer identification number, and telephone number of the person required to file the Form 1099.

(C) *Gross income.* The amount of gross income (including OID) of the WHFIT attributable to the unit interest holder for the calendar year.

(D) *Trust sale proceeds.* The trust sale proceeds that are attributable to the unit interest holder for the calendar year. With respect to a unit interest holder in a WHMT, the amount reported under this paragraph (d)(2)(ii)(D) includes the principal receipts that are attributable to that unit interest holder for the calendar year.

(E) *Gross proceeds paid on unit interest redemptions—(1) In general.* The gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year, if any.

(2) In-kind redemption. If a unit interest holder redeems a unit interest solely for a pro-rata share of the assets of the WHFIT plus the undistributed cash income, the value of the assets received by the unit interest holder as a result of the redemption is not reported to the IRS as gross proceeds paid on redemption of a unit interest. The gross income attributable to the redeemed unit interest for the calendar year must be reported under paragraph (d)(2)(ii)(C) of this section.

(F) *Gross proceeds paid on the sale of a unit interest on a secondary market.* The gross proceeds paid to a unit interest holder for the sale of a unit interest or interests on a secondary market established for the WHFIT for the calendar year, if any.

(G) *Other information.* Any other information required by the Forms 1099.

(3) *Time and manner of filing Forms 1099.* The Forms 1099 required to be filed under this paragraph (d) must be filed on or before February 28th (March 31, if filed electronically) of the year following the year for which the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see § 1.6081–1, the instructions for the Forms 1099, and applicable revenue procedures (see § 601.601(d)(2) of this chapter). For magnetic media filing requirements, see § 301.6011–2 of this chapter. Trust sale proceeds, gross proceeds paid on unit interest redemption, and gross proceeds paid on the sale of a unit interest are to be reported on the same type of Form 1099 as that required for reporting gross proceeds under section 6045.

(e) *Requirement of furnishing a statement to the unit interest holder*—(1) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (d) of this section with respect to a unit interest holder must furnish to that unit interest holder (the person whose identifying number is required to be shown on the form) a written statement showing both the information described in paragraph (e)(2) of this section, and, in the case of a WHMT, the information described in paragraph (e)(3) of this section. The information provided must be in accordance with the following rules—

(i) *General rule for determining information for statement.* The information provided on the written

statement furnished to the unit interest holder for the calendar year by the trustee or middleman must be consistent with the information provided by the trustee under paragraph (c) of this section and the information provided on the Forms 1099 filed with the IRS under paragraph (d) of this section. The information provided must reflect with reasonable accuracy the WHFIT items that are attributable to the unit interest holder.

(ii) *Required use of safe harbor information.* If the trustee, in providing WHFIT information, has used the safe harbors in paragraph (f)(1) or (g)(1) of this section, the trustee or middleman must calculate the information to be provided on the written statement furnished to the unit interest holder in accordance with paragraph (f)(2) or (g)(2) of this section, as appropriate.

(iii) *Requirement to separately state relevant WHFIT items.* The trustee or middleman must separately state any items that if taken into account separately by that unit interest holder would result in an income tax liability different from that which would result if the item was not taken into account separately.

(2) *Information required to be provided on written statement with respect to all WHFITs.* For the calendar year, the written statement furnished to the unit interest holder must meet the following requirements—

(i) *WHFIT information.* The written statement must identify the WHFIT. The written statement must include the information required to be provided by the trustee under paragraph (c)(2)(i)(A) of this section, regarding the name of the WHFIT, and paragraph (c)(2)(i)(D) of this section, regarding the identifying number of the WHFIT.

(ii) *Identification of the person furnishing the statement.* The written statement must provide the name, address, and taxpayer identification number of the person required to furnish the statement.

(iii) *Items of income, deduction, and credit.* The written statement must detail all items of income (including OID), deduction, and credit that are attributable to the unit interest holder.

(iv) *Asset sales and dispositions*—(A) *Information to be reported with respect to a WHFIT meeting the de minimis test.* If the WHFIT has met the de minimis test of paragraph (c)(2)(iii) of this section, the written statement need only provide information detailing the trust sale proceeds that are attributable to the unit interest holder.

(B) *Information to be reported with respect to trust not meeting the de minimis test.* If the trust has not met the de minimis test of paragraph (c)(2)(iii) of this section, the written statement must provide with respect to each sale or disposition of a WHFIT asset—

(*1*) The date of sale or disposition;

(*2*) Information regarding the trust sale proceeds that are attributable to the unit interest holder;

(*3*) Information that will enable the unit interest holder to allocate with reasonable accuracy a portion of the holder's basis in the holder's unit interest to the sale or disposition; and

(*4*) Information that will enable a unit interest holder to allocate with reasonable accuracy a portion of the unit interest holder's market discount or amortizable bond premium, if any, to the sale or disposition.

(v) *Information on the redemption or sale of a unit interest*—The written statement must provide the unit interest holder with information regarding the gross proceeds paid on redemption for each unit interest redeemed during the calendar year and the gross proceeds paid on the sale of a unit interest for each unit interest sold during the calendar year.

(vi) *Other information.* The written statement must include any other information necessary the unit interest holder to report, with reasonable accuracy, the items of income, deduction, and credit attributable to the portion of the trust treated as owned by the unit interest holder under section 671 for the current calendar year, or any other year.

(vii) *Required statement.* The written statement must inform the unit interest holder that the items of income, deduction, and credit, and any other information shown on the statement, must be taken into account in computing the taxable income and credits of the unit interest holder on the income tax return of the unit interest holder.

(3) *Additional information to be provided on written statement with respect to WHMTs.* For the calendar year, in addition to meeting the requirements of paragraph (e)(2) of this section, the written statement furnished to the unit interest holder of a WHMT must also meet the following requirements—

(i) *Information regarding market discount and premium.* The written statement must include the information regarding market discount and premium that is required to be provided by the trustee under paragraphs (c)(3)(i) and (ii) of this section.

(ii) *Information regarding principal payments.* The written statement must include information regarding the principal payments, scheduled and unscheduled, received by the WHMT that are attributable to the unit interest holder.

(4) *Due date and other requirements with respect to the statement required to be furnished to the unit interest holder.* The statement required to be furnished to the unit interest holder under this paragraph (e) for a calendar year must be furnished to the holder before March 16 of the year following the year for which the statement is being furnished. The person sending the statement must maintain in its records a copy of the statement furnished to the unit interest holder and supplemental data as may be required to establish the correctness of the statement for a period of 5 years from the due date for furnishing such statement.

(f) *Safe harbors for providing information for WHFITs other than WHMTs*—(1) *Safe harbors for trustee reporting of WHFIT information*—(i) *In general.* Except in the case of a WHMT, a trustee of a WHFIT that reports an item under a safe harbor in this paragraph (f)(1), is deemed to provide and calculate that WHFIT item in accordance with the rules of paragraph (c)(1)(i) of this section. Any item reported under a safe harbor in this paragraph (f)(1) must include a statement giving notice to that effect when providing information to a requesting person.

(ii) *Safe harbor for reporting WHFIT income and expenses.* A trustee satisfies this safe harbor for providing income and expense information by first determining the total amount of WHFIT distributions (both actual and deemed) for the calendar year and then expressing each income or expense item as a fraction of the total amount of WHFIT distributions. These fractions (hereafter called factors) must be accurate to at least four decimal places.

(A) *Step one: Determine the total amount of WHFIT distributions for the calendar year.* The trustee determines the total amount of WHFIT distributions (actual and deemed) for the calendar year. If the calculation of total amount of WHFIT distributions under this paragraph (f)(1)(ii)(A) results in a zero or a negative number, the trustee may not determine income and expense information under the safe harbor in this paragraph. The *total amount of WHFIT distributions* equals the amount of WHFIT funds paid out to the unit interest holders (including amounts paid as of the result of redemptions) for the calendar year—

(*1*) Increased by—

(*i*) All amounts that would have been distributed during the calendar year but

were instead reinvested pursuant to a reinvestment plan; and

(*ii*) All cash held for distribution to unit interest holders as of December 31 of the year for which the trustee is reporting; and

(*2*) Decreased by—

(*i*) All cash distributed during the current year that was included in a year-end cash allocation factor (see paragraph (f)(1)(ii)(C)(1) of this section) of a prior year; and

(*ii*) All gross proceeds paid on redemption of a unit interest for the calendar year.

(*3*) For the purpose of calculating the the amount of WHFIT funds paid out to unit interest holders and the for the purpose of calculating all gross proceeds paid on redemption of a unit interest for the calendar year, pro-rata in-kind redemptions made during the calendar year are disregarded.

(B) *Step two: Determine factors that express the ratios of WHFIT income and expenses to the total amount of WHFIT distributions.* The trustee determines factors that express the ratios of WHFIT income and expenses to the total amount of WHFIT distributions as follows—

(*1*) *Income factors.* For each type of income earned by a WHFIT for the calendar year, the trustee determines the ratio of—

(*i*) The gross amount of that type of income; divided by

(*ii*) The total amount of WHFIT distributions for the calendar year.

(*2*) *Expense factors.* For each type of expense paid by a WHFIT during the calendar year, the trustee determines the ratio of—

(*i*) The gross amount of that type of expense; divided by

(*ii*) The total amount of WHFIT distributions for the calendar year.

(C) *Step three: Determine adjustments for reconciling the total amount of WHFIT distributions (determined under step one) with amounts actually paid to unit interest holders.* Paragraph (f)(1)(ii)(B) of this section (step two) requires an item of income or expense to be expressed as a ratio of that item to the total amount of WHFIT distributions (as determined under step one). A unit interest holder's share of the total amount of WHFIT distributions may differ from the amount actually paid to that unit interest holder. A trustee, therefore, must provide information that will be used to compute a unit interest holder's share of the total amount of WHFIT distributions based on the amount actually paid to the unit interest holder. A trustee satisfies this requirement by providing a current year-end cash allocation factor and a prior year cash allocation factor.

(*1*) The *current year-end cash allocation factor* is—

(*i*) The amount of cash held for distribution to unit interest holders by the WHFIT as of December 31 of the year for which the trustee is reporting; divided by

(*ii*) The number of unit interests outstanding as of December 31.

(*2*) The *prior year cash allocation factor* is—

(*i*) The amount of the distribution during the current calendar year that was included in determining a year-end cash allocation factor for a prior year; divided by

(*ii*) The number of unit interests outstanding on the date of the distribution.

(D) *Requirement that trustee furnish additional information to requesting persons.* In the case where the safe harbor factors provided by the trustee under this paragraph (f)(1)(ii) cannot be used to determine with reasonable accuracy the income and expense attributable to a unit interest holder, upon request of the person responsible for filing the Form 1099 under paragraph (d) of this section, the trustee must provide to the person additional information to enable the income and expense attributable to the unit interest holder to be determined with reasonable accuracy. See paragraph (f)(2)(i)(A)(*3*)(*ii*) of this section.

(iii) *Safe harbor for reporting OID.* With respect to information regarding OID, the trustee may satisfy paragraph (c)(1)(i) of this section by providing, for each reporting period, any day of which is in that calendar year, the aggregate daily accrual of OID per $1,000 of original principal amount.

(iv) *Safe harbor for reporting information with respect to sales of WHFIT assets*—(A) *Safe harbor for a WHFIT meeting the de minimis test.* If a WHFIT meets the de minimis test of paragraph (c)(2)(iii) of this section regarding sales and dispositions of WHFIT assets, the trustee satisfies this safe harbor for WHFITs meeting the de minimis test by providing a list of dates (from earliest to latest) on which WHFIT assets were sold or disposed of during the calendar year and by including for each date identified, the total amount of trust sale proceeds per unit interest received by the WHFIT for all sales or dispositions of WHFIT assets on that date.

(B) *Safe harbor for WHFIT not meeting the de minimis test*— If a WHFIT does not meet the de minimis test under paragraph (c)(2)(iii) of this section regarding sales and dispositions of trust assets, the trustee satisfies this safe harbor for WHFITs not meeting the de minimis test by providing—

(*1*) A list of dates (from earliest to latest) on which sales or dispositions of WHFIT assets occurred during the calendar year and by providing for each date identified—

(*i*) The trust sales proceeds received by the trust, per unit interest, with respect to the sales and dispositions, on that date;

(*ii*) The portion of all assets (expressed as a percentage) held by the WHFIT that the assets sold or disposed of on that date represented.

(*2*) Determination of the portion of all assets held by the WHFIT that the assets sold or disposed of represented—

(*i*) If a WHFIT terminates within twenty four months of the start-up date of the WHFIT, the portion of the total fair market value of all assets held by the WHFIT that the assets sold or disposed of represented shall be based on the fair market value of the WHFIT's assets as of the start-up date; or

(*ii*) If a WHFIT terminates more than twenty four months after the start-up date of the WHFIT, the portion of the total fair market value of all assets held by the WHFIT that the assets sold or disposed of represented shall be based on the fair market value of the WHFIT's assets as of the date of the sale or disposition.

(v) *Safe harbor for reporting redemptions and sales of unit interests on a secondary market*—(A) *Redemptions.* For each date on which the redemption price of a unit interest is determined, the trustee must provide—

(*1*) The gross proceeds paid on redemption on a unit interest on that date; and

(*2*) The distribution paid on redemption of a unit interest on that date.

(B) *Sale of a unit interest on a secondary market.* For each day of the calendar year, the trustee must provide the amount of a distribution a unit interest holder would be entitled to with respect to a unit interest had the amount of a distribution been determined on that date.

(2) *Use of information provided by trustees under safe harbors.* If a trustee reports a WHFIT item in accordance with a safe harbor described in paragraph (f)(1) of this section, then the information provided with respect to that item on the Forms 1099 required under paragraph (d) of this section and on the statement required to be furnished under paragraph (e) of this section must be determined as provided in this paragraph (f)(2).

(i) *Use of information provided in accordance with the safe harbor for reporting WHFIT income and expense.* If a trustee determines WHFIT income and expenses under paragraph (f)(1)(ii) of this section, then the trustee or middleman must determine the amount of each type of income and expense attributable to a unit interest holder as follows—

(A) *Step one: Determine the total amount of WHFIT distributions attributable to the unit interest holder.* To determine the total amount of WHFIT distributions attributable to a unit interest holder, the amount paid to the unit interest holder during the calendar year (including amounts paid as the result of redemptions) is—

(*1*) Increased by—

(*i*) All amounts that would have been distributed during the calendar year to the unit interest holder but were reinvested pursuant to a reinvestment plan (unless another person (for example, the custodian of the reinvestment plan) is responsible for reporting these amounts under paragraph (d) of this section);

(*ii*) An amount equal to the current year-end cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(*1*) of this section) multiplied by the number of unit interests held by the unit interest holder as of December 31; and

(*iii*) The amount of a distribution the unit interest holder would be entitled to had the amount of a distribution been determined on the date the unit interest holder sold a unit interest or interests on a secondary market established for the WHFIT. See paragraph (f)(1)(v)(B) of this section.

(*2*) Decreased by—

(*i*) An amount equal to the prior year cash allocation factor (provided by the trustee in accordance with paragraph (f)(1)(ii)(C)(*2*) of this section) multiplied by the number of unit interests held by the unit interest holder on the date of the distribution;

(*ii*) An amount equal to all gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year; and

(*iii*) The amount of any distribution received by a unit interest holder during the calendar year with respect to a unit interest acquired on the secondary market established for the WHFIT that is attributable to another unit interest holder under paragraph (f)(2)(i)(A)(*1*)(*iii*) of this section.

(*3*) *Rules applicable to this paragraph (f)(2)(i)*—(*i*) *Treatment of in-kind distributions under this paragraph (f)(2)(i).* The value of the assets distributed to a unit interest holder as a result of a pro-rata in-kind redemption are not included in the amount paid to the unit interest holder or the gross proceeds paid on redemption of a unit interest for purposes of this paragraph (f)(2)(i).

(*ii*) *The total amount of distributions attributable to a unit interest holder calculated under this paragraph (f)(2)(i)(A) equals zero or less.* If the total amount of distributions attributable to a unit interest holder, calculated under this paragraph (f)(2)(i)(A), equals zero or less, the middleman or trustee may not report the income and expense attributable to the unit interest holder under this paragraph (f)(2)(i). The middleman or trustee must request additional information from the trustee of the WHFIT to enable the trustee and middleman to determine with reasonable accuracy the items of income and expense that are attributable to the unit interest holder.

(B) *Step two: Apply the factors provided by the trustee to determine the items of income and expense that are attributable to the unit interest holder.* The amount of each type of income (other than OID) and each type of expense attributable to a unit interest holder is determined as follows—

(*1*) *Application of income factors.* For each income factor provided by the trustee for the calendar year, the trustee or middleman multiplies—

(*i*) The income factor; by

(*ii*) The total amount of WHFIT distributions attributable to the unit interest holder for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(*2*) *Application of expense factors.* For each expense factor provided by the trustee for the calendar year, the trustee or middleman multiplies—

(*i*) The expense factor; by

(*ii*) The total amount of WHFIT distributions attributable to the unit interest holder for the calendar year (as determined in paragraph (f)(2)(i)(A) of this section).

(ii) *Use of safe harbor for reporting OID.* With respect to each reporting period any day of which is in the calendar year, the amount of OID that is allocable to each unit interest held by a unit interest holder is determined by multiplying—

(A) The product of the OID factor and the original principal balance of the unit interest divided by 1,000; by

(B) The number of days during the OID reporting period in that calendar year that the unit interest holder held the unit interest.

(iii) *Use of safe harbor for reporting information with respect to sales or dispositions*—(A) *In general*—(*1*) *Information reported on Form 1099.* A trustee or middleman preparing a Form 1099 need provide only the amount of trust sales proceeds (as determined under paragraph (f)(2)(iii)(B) of this section) that are attributable to a unit interest holder for the calendar year. See paragraph (d)(2)(ii)(D) of this section.

(*2*) *Information provided on statement furnished to unit interest holder*—(*i*) *Information for WHFITs meeting the de minimis test.* If a WHFIT meets the de minimis test of paragraph (c)(2)(iii) of this section, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section need provide to the unit interest holder only the amount of trust sale proceeds (as determined under paragraph (f)(2)(iii)(B) of this section) that are attributable to the unit interest holder for the calendar year.

(*ii*) *Information for WHFITs not meeting the de minimis test.* If a WHFIT does not meet the de minimis test in paragraph (c)(2)(iii) of this section, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section must include a list of dates (in order, from earliest to latest) on which sales or dispositions of trust assets occurred during the calendar year and by providing for each date identified—

(*A*) The trust sales proceeds received by the trust with respect to the sales or dispositions of trust assets on that date that are attributable to the unit interest holder; and

(*B*) The information provided by the trustee under paragraph (f)(1)(iv)(B)(*2*) of this section regarding the portion of all assets (expressed as a percentage) held by the WHFIT that the assets sold or disposed of on that date represented.

(B) *Determining the trust sales proceeds that are attributable to the unit interest holder for the calendar year.* To determine the trust sale proceeds attributable to a unit interest holder for the calendar year, the aggregate trust sale proceeds, per unit interest, received by the WHFIT on each date on which trust assets were sold or disposed of is multiplied by the number of unit interests held by the unit interest holder on that date and aggregated for the year.

(3) *Example of use of safe harbors.* The following example illustrates the use of the safe harbor factors in this paragraph (f) to calculate and provide WHFIT information:

Example— (i) *Facts*—(A) *In general*—(*1*) Trust is a WHFIT that holds common stock in ten different corporations and has 100 unit interests outstanding. The agreement governing Trust requires Trust to distribute the cash held by Trust reduced by accrued but unpaid expenses on April 15, July 15,

and October 15 of the 2004 calendar year. The agreement also provides that the unit interests will be redeemed by Trust for an amount equal to the value of the unit interest, as of the close of business, on the day that the unit interest is tendered for redemption. There is no reinvestment plan and there is no secondary market for sales of trust interests.

(*2*) Broker holds ten unit interests in Trust in street name for each of *J* and *S*. *J* and *S* are individual, cash basis taxpayers.

(*3*) As of December 31, 2003, Trust holds $12x for distribution to unit interest holders on the next distribution date and has no accrued but unpaid expenses. Trustee includes the $12x in determining the year-end cash allocation factor for December 31, 2003.

(B) *Trust events occurring during the 2004 calendar year*—(*1*) During 2004, Trust receives $588x in dividend income and $12x in interest income from investment of WHFIT funds pending distribution to unit interest holders, and pays $45x in expenses, all of which are affected expenses.

(*2*) Trust makes all three of its required distributions. On April 15, Trust distributes $135x which includes the $12x included in determining the year-end cash allocation factor for December 31 of the prior year. On July 15, Trust distributes $135x. On October 15, Trust distributes $123x.

(*3*) On December 10, J tenders one of J's unit interests to Trustee for redemption. Trustee determines that the redemption price of a unit interest on December 10 is $116x, of which, $115x represents the gross proceeds paid on redemption of a unit interest and $1x represents a distribution paid on redemption of a unit interest.

(*4*) On December 12, Trustee sells shares of common stock for $115x. The $115x represents less than five percent of the aggregate fair market value of the common stock held by Trust as of January 1. On December 17, Trustee pays $116x to Broker on *J*'s behalf for the redemption of the unit interest. *J* is the only unit interest holder to redeem a unit interest during the calendar year.

(*5*) As of December 31, Trust holds cash of $173x and has incurred $15x in expenses that Trust has not paid.

(C) *Broker's actions during the 2004 calendar year.* During 2004, Broker credits the accounts of both *J* and *S* with their respective shares of the distributions made by Trust. Specifically, Broker credits each account with $13.50× for the April 15 distribution, $13.50× for the July 15 distribution and $12.30× for the October 15 distribution. In addition, Broker credits *J*'s account with $116× for *J*'s redemption of the unit interest. Consequently, as of December 31, Broker has credited $155.30× to *J*'s account and $39.30× to *S*'s account.

(ii) *Trustee reporting*—(A) Trustee is within the safe harbors of this paragraph (f)(1) if Trustee provides the following information to requesting persons—

Factor for dividend income	1.0889
Factor for interest income	.0222
Factor for affected expenses	.0833
Current year-end cash allocation factor	1.5960
Prior year cash allocation factor	.1200
Gross proceeds paid on redemption of a unit interest as of 12/10/04	115
Distribution paid on redemption of a unit interest as of 12/10/04	1
Trust sales proceeds per unit interest for 12/12/04	1.1616

(B) Trustee determines this information as follows—

(*1*) *Step one: Trustee determines the total amount of WHFIT distributions for the calendar year.* The total amount of WHFIT distributions (actual and deemed) for the calendar year for purposes of determining the safe harbor factors is $540x. This amount consists of the amounts paid on each scheduled distribution date during the calendar year ($135x, $135x, and $123x), and the total amount paid to *J* as a result of *J*'s redemption of a unit interest ($116x) ($135x + $135x + $123x + $116x = $509x)—

(*i*) Increased by all cash held for distribution to unit interest holders as of December 31, 2004 ($158x), which is the cash held as of December 31, 2004 ($173x) reduced by the accrued but unpaid expenses as of December 31, 2004 ($15x), and

(*ii*) Decreased by —

(*A*) All amounts distributed during the calendar year but included in the year-end cash allocation factor from a prior year ($12x); and

(*B*) All gross proceeds paid on redemption of a unit interest for the calendar year ($115x).

(*2*) *Step two: Trustee determines factors that express the ratio of WHFIT income (other than OID) and expenses to the total amount of WHFIT distributions.* Trustee determines the factors for each type of income earned by Trust and each type of expense as follows—

(*i*) *Factor for dividend income.* The factor for dividend income is 1.0889 which represents the ratio of—

(*A*) The gross amount of dividends ($588x); divided by

(*B*) The total amount of WHFIT distributions for the calendar year ($540x).

(*ii*) *Factor for interest income.* The factor for interest income is .0222, which represents the ratio of—

(*A*) The gross amount of other income ($12x); divided by

(*B*) The total amount of WHFIT distributions for the calendar year ($540x).

(*iii*) *Expense Factor.* The factor for affected expenses is .0833 which represents the ratio of—

(*A*) The gross amount of affected expenses paid by Trust for the calendar year ($45x); divided by

(*B*) The total amount of WHFIT distributions for the calendar year ($540).

(*3*) *Step three: Trustee determines adjustments for reconciling the total amount of WHFIT distributions with amounts paid to unit interest holders.* To enable requesting persons to determine the total amount of WHFIT distributions that are attributable to a unit interest holder based on amounts actually paid to the unit interest holder, the trustee must provide both a current year-end cash allocation factor and a prior year cash allocation factor.

(*i*) *Current year-end cash allocation factor.* The adjustment factor for cash held by Trust at year end is 1.5960 which represents—

(*A*) The cash held for distribution as of December 31, 2004 ($158x) (the amount of cash held by Trust on December 31, 2004 ($173x) reduced by accrued but unpaid expenses ($15x)); divided by

(*B*) The number of unit interests outstanding at year-end, (99).

(*ii*) Prior Year Cash Allocation Factor. The adjustment factor for distributions of year-end cash from the prior year is .1200 which represents—

(*A*) The amount of the distribution during the current calendar year that was included in a year-end cash allocation factor for a prior year ($12x); divided by

(*B*) The number of units outstanding at the time of the distribution, (100).

(*4*) *Trust sales proceeds information.* To satisfy the safe harbor, Trustee provides a list of dates on which trust assets were sold during the calendar year, and the amount of trust sales proceeds received as the result of the sale or disposition, per unit interest. In this case, only one sale took place during the calendar year, on December 12, 2004, and the amount of trust sale proceeds received per unit interest on that date is $1.1616 ($115x/99).

(iii) *Broker's use of information provided by Trustee*—(A) Broker uses the information furnished by Trustee under the safe harbors to determine that the following items are attributable to *J* and *S*—

With respect to *J*:	
Dividend Income	$58.21x
Interest Income	1.19x
Affected Expenses	4.45x
Trust sale proceeds	10.45x
Gross proceeds paid on redemption of a unit interest	115.00x
With respect to *S*:	
Dividend Income	$58.87x
Interest Income	1.20x
Affected Expenses	4.50x
Trust sale proceeds	11.62x

(B) Broker determines this information as follows—

(*1*) *Step one: Broker determines the total amount of WHFIT distributions attributable to J and S.* The total amount of WHFIT distributions attributable to *J* is $53.46x and the total amount of WHFIT distributions attributable to *S* is $54.06. These amounts

represent the total amount paid to *J* ($155.30x) and *S* ($39.30x)—

(*i*) Increased by an amount equal to the current year-end cash allocation factor (1.5960) multiplied by the number of unit interests held by *J* (9) and *S* (10) as of December 31, 2004, that is for *J*, $14.36x; and for *S*, $15.96x;

(*ii*) Decreased by—

(*A*) An amount equal to the prior year cash allocation factor (.1200) multiplied by the number of unit interests held by *J* (10) and *S* (10) at the time of the distribution, that is for *J* and *S*, $1.20x, each;

(*B*) An amount equal to all gross proceeds paid on redemption of a unit interest to the unit interest holder for the calendar year, or that is, for *J* ($115x).

(*2*) *Step two: Broker applies the factors provided by Trustee to determine the Trust's income and expenses that are attributable to J and S.* The amounts of each type of income (other than OID) and expense that are attributable to *J* and *S* are determined by multiplying the factor for that type of income or expense by the total amount of WHFIT distributions attributable to *J* and *S* as follows—

(*i*) *Application of factor for dividends.* The amount of dividend income attributable to *J* is $58.21x and the amount of dividend income attributable to *S* is $58.87x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* ($53.46x and $54.06x, respectively) by the factor for dividends (1.0889).

(*ii*) *Application of factor for interest income.* The amount of interest income attributable to *J* is $1.19x and the amount of interest income attributable to *S* is $1.20x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* ($53.46x and $54.06x, respectively) by the factor for interest (.0222).

(*iii*) *Application of factor for affected expenses.* The amount of affected expenses attributable to *J* is $4.45x and the amount of affected expenses attributable to *S* is $4.50x. Broker determines these amounts by multiplying the total amount of WHFIT distributions attributable to *J* and to *S* ($53.46x and $54.06x, respectively) by the factor for affected expenses (.0833).

(*3*) *Broker determines the amount of trust sale proceeds attributable to J and S.* The amount of trust sale proceeds attributable to *J* is $10.45x and the amount of trust sale proceeds attributable to *S* is $11.61x. Broker determines these amounts by multiplying the number of unit interests held by *J* (9) and by *S* (10) on the date of sale, December 12, 2004, by the trust sale proceeds per unit interest on that date (1.1616). *J* also recognizes gain or loss on J's redemption of a unit interest on December 10, 2004 based on the amount of gross proceeds paid on redemption of a unit interest ($115x) and J's basis in the redeemed unit interest.

(*g*) *Safe Harbor for certain WHMTs*—(1) *Safe harbors for trustee reporting of trust information*—(i) *In general.* A trustee of a WHMT that meets the requirements of paragraph (g)(1)(ii) of this section and that reports a WHMT item or items under the safe harbor established for it in this paragraph (g)(1) is deemed to provide and calculate the WHMT item or items in accordance with the rules of paragraph (c)(1)(i) of this section. Any item reported under a safe harbor in this paragraph (g)(1) must include a statement giving notice to that effect when providing information to a requesting person.

(ii) *Requirements for use of safe harbors.* To use the safe harbors provided under this paragraph (g)(1), a WHMT must meet the following requirements—

(A) The WHMT must meet the de minimis sales and dispositions test under paragraph (c)(2)(iii) of this section;

(B) All sales and dispositions made by the WHMT during the calendar year must be for an amount equal to the unpaid principal balance plus the accrued but unpaid interest of the mortgage at the time of the sale or disposition;

(C) The trust must make monthly distributions of income and principal to unit interest holders;

(D) All unit interests in the WHMT must represent the right to receive pro-rata shares of both the income and the principal payments received by the WHMT on the mortgages it holds;

(E) The WHMT must report under this paragraph (g)(1)(ii) for the entire calendar year; and

(F) The assets of the WHMT are limited to—

(*1*) Mortgages with uniform characteristics;

(*2*) Amounts received on mortgages and held for distribution to unit interest holders; and

(*3*) Reasonably required reserve funds.

(G) The aggregate outstanding principal balance as defined in paragraph (g)(1)(iii)(D) of this section as of the WHMT's start-up date must equal the aggregate of the original face amounts of all issued unit interests.

(iii) *Safe harbor for reporting WHMT income, expenses, principal receipts, and sales and dispositions of mortgages.* A trustee satisfies this safe harbor for providing information with respect to income, expense, principal receipts, and sales and dispositions by complying with each step of the safe harbor provided in this paragraph (g)(1)(iii).

(A) *Step one: Trustee determines monthly pool factors that provide information regarding the WHMT's receipt of principal payments and the WHMT's receipt of proceeds from sales and dispositions of mortgages.* The trustee must, for each month of the calendar year and for January of the following calendar year, calculate and provide the ratio (expressed as a decimal carried to at least eight places and called a *pool factor*) of—

(*1*) The amount that represents the aggregate outstanding principal balance of the WHMT as of the first business day of the month; divided by

(*2*) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up day.

(B) *Step two: Trustee determines monthly expense factors that provide information regarding WHMT expenses.* For each month of the calendar year and for each type of expense paid by the WHMT during that month, the trustee calculates and provides the ratio (expressed as a decimal carried to at least eight places and called an *expense factor*) of—

(*1*) The gross amount, for the month, of each type of expense; divided by

(*2*) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up day, divided by 1,000.

(C) *Step three: Trustee determines monthly income factors that provide information regarding the trust's gross monthly income.* For each month of the calendar year and for each type of gross income earned by the WHMT during that month, the trustee calculates and provides the ratio (expressed as a decimal carried to at least eight places and called an *income factor*) of—

(*1*) The gross amount, for the month, of each type of income; divided by

(*2*) The amount that represents the aggregate outstanding principal balance of the WHMT as of the start-up date, divided by 1,000.

(D) *Definition of aggregate outstanding principal balance.* For purposes of this paragraph (g)(1)(iii), the amount of the aggregate outstanding principal balance of a WHMT is the aggregate of—

(*1*) The outstanding principal balance of all mortgages held by the WHMT;

(*2*) The amounts received on mortgages and held for distribution by the WHMT; and

(*3*) The amount of the reserve fund.

(iv) *Safe harbor for reporting OID information*—(A) *Safe harbor for reporting OID prior to the issuance of final regulations under section 1272(a)(6)(C)(iii).* With respect to information regarding OID, the trustee, prior to the issuance of final regulations under section 1272(a)(6)(C)(iii), may satisfy paragraph (c)(1)(i) of this section by providing, for each reporting period during the calendar year, the aggregate daily accrual of OID per $1,000 of aggregate outstanding principal balance as of the start-up day. In calculating the

aggregate daily accrual of OID per unit interest, the trustee must use a method that utilizes the prepayment assumption used in pricing the original issue of unit interests.

(B) *Safe harbor for reporting OID after the issuance of final regulations under section 1272(a)(6)(C)(iii).* [Reserved]

(v) *Safe Harbor for reporting market discount information—(A) Safe harbor for reporting market discount information prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* With respect to information regarding market discount, the trustee, prior to the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3), may satisfy the requirements of paragraph (c)(1)(i) of this section by providing—

(*1*) In the case of a WHMT holding mortgages issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(*i*) The OID accrued during the reporting period calculated in accordance with paragraph (g)(1)(iv) of this section; divided by

(*ii*) The total remaining OID as of the beginning of the reporting period as determined under paragraph (g)(1)(v)(A)(*3*) of this section; or

(*2*) In the case of a WHMT holding mortgages not issued with OID, the ratio (expressed as a decimal carried to at least eight places) of—

(*i*) The amount of stated interest paid to the WHMT during the reporting period; divided by

(*ii*) The total amount of stated interest remaining to be paid to the WHMT as of the beginning of the reporting period as determined under paragraph (g)(1)(v)(A)(*3*) of this section.

(*3*) *Computing the total amount of stated interest remaining to be paid and the total remaining OID at the beginning of a period.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the reporting period and the total remaining OID as of the beginning of the reporting period, the trustee must use a method that utilizes the prepayment assumption used in pricing the original issue of unit interests.

(B) *Safe harbor for reporting market discount information following the issuance of final regulations under sections 1272(a)(6)(C)(iii) and 1276(b)(3).* [Reserved]

(vi) *Safe harbor for reporting premium information.* [Reserved]

(2) *Use of information provided by a trustee under the safe harbor.* If a trustee reports an item in accordance with a safe harbor described in paragraph (g)(1) of this section, then the information provided, with respect to that WHMT item, on the Forms 1099 required to be filed with the IRS under paragraph (d) of this section and on the statement required to be furnished to the unit interest holder under paragraph (e) of this section must be determined as provided in this paragraph (g)(2).

(i) *Use of information provided in accordance with the safe harbor for reporting WHMT income, expenses, receipt of principal payments, and sales and dispositions of mortgages.* The amount of each type of income and expense, principal payments, and proceeds from sales and dispositions of mortgages that are attributable to a unit interest holder for each month of the calendar year is computed as follows:

(A) *Step one: Determine the monthly amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to each unit interest*—(*1*) *Use of factor.* For each month of the calendar year that a unit interest was held on the record date, the amount of principal receipts and the amount of proceeds from sales and dispositions of mortgages that are attributable to each unit interest is determined by multiplying—

(*i*) The original face amount of the unit interest; by

(*ii*) The difference between the pool factor for the current month and the pool factor for the following month.

(*2*) *Reporting of principal receipts and proceeds from sales and dispositions of mortgages.* The aggregate of the amount of principal receipts and proceeds from sales and dispositions of mortgages that are attributable to each unit interest for the calendar year are reported to the IRS on Form 1099 as trust sales proceeds.

(B) *Step two: Apply the expense factors provided by the trustee to determine the amount of each type of expense that is attributable to each unit interest.* For each month of the calendar year that a unit interest was held on the record date, the amount of each type of expense that is attributable to each unit interest is determined by multiplying—

(*1*) The original face amount of the unit interest divided by 1000; by

(*2*) The expense factor for that month and that type of expense.

(C) *Step three: Apply the income factors provided by the trustee to determine the amount of each type of income that is attributable to each unit interest.* For each month of the calendar year that a unit interest was held on the record date, the amount of each type of income that is attributable to each unit interest is determined by multiplying—

(*1*) The original face amount of the unit interest divided by 1000; by

(*2*) The income factor for that month and that type of income.

(D) *Definitions for this paragraph (g)(2)(i).* For purposes of this paragraph (g)(2)(i)—

(*1*) The *record date* is the date used by the WHMT to determine the owner of the unit interest for the purpose of distributing the payment for the month.

(*2*) The *original face amount of the unit interest* is the original principal amount of a unit interest on its issue date.

(ii) *Use of OID factor to determine the OID attributable to a unit interest holder.* With respect to each OID reporting period, the amount of OID that is attributable to each unit interest held by a unit interest holder is determined by multiplying—

(A) The product of the OID factor by the original face amount of the unit interest divided by 1,000; by

(B) The number of days during the OID reporting period that the unit interest holder held the unit interest.

(iii) *Requirement to provide market discount information.* The market discount information provided by the trustee in accordance with paragraph (g)(1)(v) of this section must be provided to the unit interest holder in, or with, the written statement required to be furnished to the unit interest holder under paragraph (e) of this section.

(iv) *Requirement to provide premium information.* [Reserved]

(3) *Example of safe harbor.* The following example illustrates the use of the safe harbor factors in paragraphs (g)(1) and (2) of this section to calculate and provide trust information:

Example. (i) *Facts*—(A) *In general. X* is a WHMT. As of January 1, 2004, *X*'s assets consist of 100 15-year mortgages, each having an unpaid principal balance of $125,000 and a fixed, annual interest rate of 7.25 percent. *X*'s unit interest holders are entitled to monthly, pro-rata distributions of the principal payments received by *X. X*'s unit interest holders are also entitled to monthly, pro-rata distributions of the interest earned on the mortgages held by *X*, reduced by expenses. Unit interests are issued in increments of $5,000 with a $25,000 minimum. Broker holds a unit interest in *X*, with an original face amount of $25,000, in street name, for *J* during the entire 2004 calendar year.

(B) *Trust events during the 2004 calendar year.* During the 2004 calendar year, *X* collects all interest and principal payments when due and makes all monthly distributions when due. One mortgage is repurchased from *X* in July for $122,249, the mortgage's unpaid principal balance interest at the time. During November, another mortgage is prepaid in full. *X* earns $80 interest income each month from the

temporary investment of *X*'s funds pending distribution to the unit interest holders. All of *X*'s expenses are affected expenses. The aggregate outstanding principal balance of *X*, *X*'s interest income, and *X*'s expenses, for each month of the 2004 calendar year are as follows:

Month	Principal balance	Income	Expenses
January	12,500,000	75,601	5,288
February	12,461,413	75,368	5,273
March	12,422,593	75,133	5,256
April	12,383,538	74,897	5,240
May	12,344,247	74,660	5,244
June	12,304,719	74,421	5,207
July	12,264,953	74,181	5,191
August	12,102,696	73,200	5,122
September	12,062,850	72,960	5,106
October	12,022,763	72,717	5,089
November	11,982,433	72,474	5,073
December	11,821,235	71,500	5,006
January	11,780,829	.....	.....

(ii) *Trustee reporting*—(A) Trustee, *X*'s fiduciary, comes within the safe harbors of paragraph (g)(1)(iii) of this section by providing the following information to requesting persons:

Month	Pool factor	Income factor	Expense factor
January	1.00000000	6.04808000	.42304000
February	.99691304	6.02944000	.42184000
March	.99380744	6.01064000	.42048000
April	.99068304	5.99176000	.41920000
May	.98753976	5.97280000	.41952000
June	.98437752	5.95368000	.41656000
July	.98119624	5.93448000	.41528000
August	.96821568	5.85600000	.40976000
September	.96502800	5.83680000	.40848000
October	.96182104	5.81736000	.40712000
November	.95859464	5.79792000	.40584000
December	.94569880	5.72000000	.40048000
January	.94246632	.....	.....

(B) Trustee determines this information as follows:

(*1*) *Step one: Trustee determines monthly pool factors that provide information regarding X's receipt of principal payments and X's receipt of proceeds from sales and dispositions of mortgages.* Trustee calculates and provides *X*'s pool factor for each month of the 2004 calendar year. For the month of January the pool factor is 1.0, which represents the ratio of—

(*i*) The amount that represents the aggregate outstanding principal balance of *X* (12,500,000) as of the first business day of January; divided by

(*ii*) The amount that represents the aggregate outstanding principal balance of *X* (12,500,000) as of the start-up day.

(*2*) *Step two: Trustee determines monthly expense factors that provide information regarding X's expenses.* Trustee calculates and provides the expense factors for each month of the 2004 calendar year. During 2004, *X* has only affected expenses, and therefore, will only have one expense factor for each month. The expense factor for the month of January is .42304000 which represents the ratio of—

(*i*) The gross amount of expenses paid during January by *X* (5,288); divided by

(*ii*) The amount that represents the aggregate outstanding principal balance of *X* as of the start-up date (12,500,000) divided by 1,000 (12,500).

(*3*) *Step three: Trustee determines monthly income factors that provide information regarding X's gross monthly income.* Trustee calculates and provides the income factors for each month of the 2004 calendar year. During 2004, *X* has only interest income, and therefore, will only have one income factor for each month. The income factor for the month of January is 6.04808000 which represents the ratio of—

(*i*) The gross amount of interest income earned by *X* during January ($75,601); divided by

(*ii*) The amount that represents that aggregate outstanding principal balance of *X* as of the start-up date (12,500,000), divided by 1,000 (12,500).

(*iii*) *Broker's use of the information provided by Trustee*—(A) Broker uses the information provided by Trustee under the safe harbor to determine that the following trust items are attributable to *J*:

Month	Trust sale proceeds	Affected expenses	Gross interest income
January	$77.17	$10.58	$151.20
February	77.64	10.55	150.74
March	78.11	10.51	150.27
April	78.58	10.48	149.79
May	79.06	10.49	149.32

Month	Trust sale proceeds	Affected expenses	Gross interest income
June	79.53	10.41	148.84
July	324.51	10.38	148.36
August	79.69	10.24	146.40
September	80.17	10.21	145.92
October	80.66	10.18	145.43
November	322.40	10.15	144.95
December	80.81	10.01	143.00
Total	1438.33	124.19	1774.22

(B) Broker determines this information as follows:

(*1*) *Step one: Broker determines the amount of principal receipts and the amount of proceeds from sales and dispositions of mortgages that are attributable to J for the 2004 calendar year.* Broker determines the amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to *J* for each month of the 2004 calendar year. For the month of January, Broker determines that the amount of principal receipts and the amount of proceeds from the sales and dispositions of mortgages that are attributable to *J* is $77.17. Broker determines this by multiplying the original face amount of *J*'s unit interest ($25,000) by .00308696, the difference between the pool factor for January (1.00000000), the current month, and the pool factor for February (.99691304) the following month. Broker reports the aggregate of the monthly amounts of principal receipts and amounts of proceeds from sales and dispositions that are attributable to *J* for the 2004 calendar year as trust sales proceeds on the Form 1099 filed with the IRS.

(*2*) *Step two: Broker applies the expense factors provided by Trustee to determine the amount of expenses that are attributable to J for the 2004 calendar year.* Broker determines the amount of *X*'s expenses that are attributable to *J* for each month of the 2004 calendar year. For the month of January, Broker determines that the amount of expenses attributable to *J* is $10.58. Broker determines this by multiplying the original face amount of *J*'s unit interest (25,000) divided by 1,000 (25) by the expense factor for January (.42304000). Broker determines the expenses that are attributable to *J* for the 2004 calendar year by aggregating the monthly amounts.

(*3*) *Step three: Broker applies the income factors provided by Trustee to determine the amount of gross interest income attributable to J for the 2004 calendar year.* Broker determines the amount of gross interest income that is attributable to *J* for each month of the 2004 calendar year. For the month of January, Broker determines that the amount of gross interest income attributable to *J* is $151.20. Broker determines this by multiplying the original face amount of *J*'s unit interest (25,000) divided by 1,000 (25), by the income factor for January (6.04808000). Broker determines the amount of the gross interest income that is attributable to *J* for the 2004 calendar year by aggregating the monthly amounts.

(h) *Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers*—(1) *In general.* A middleman that holds a unit interest on behalf of, or for the account of, any exempt recipient listed in paragraph (j)(2) of this section and any noncalendar-year unit interest holder must provide to such exempt recipient or noncalendar-year unit interest holder, upon request, the information provided by the trustee to the middleman under paragraph (c) of this section.

(2) *Time and manner of providing information.* The middleman must provide the requested information in writing to any such requester on or before the later of the 44th day after the close of the reporting period for which the information was requested, or the day that is 28 days after the receipt of the request. A middleman must provide information with respect to a WHFIT holding an interest in another WHFIT or a WHFIT holding an interest in a REMIC on or before the later of the 58th day after the close of the reporting period for which the information was requested, or the day that is 42 days after the receipt of the request.

(3) *Clearing organization.* A clearing organization described in § 1.163–5(c)(2)(i)(D)(*8*) is not required to furnish information to exempt recipients or non-calendar-year taxpayers under this paragraph.

(i) [Reserved]

(j) *Exempt recipients*—(1) *Requirement that exempt recipient include accurate trust information in computing taxable income.* Under this § 1.671–5, trustees and middlemen are not required to file Forms 1099 with respect to a unit interest holder that is an exempt recipient or furnish statements to a unit interest holder that is an exempt recipient. An exempt recipient that is a beneficial owner must, however, obtain trust information and must include the items of income, deduction, and credit of the trust in computing its taxable income and credits on its income tax return.

(2) *Exempt recipients defined.* For purposes of this section, an exempt recipient includes—

(i) *Persons described in § 1.6049–4(c)(1)(ii).* Any person described in § 1.6049–4(c)(1)(ii) is an exempt recipient.

(ii) *Middlemen.* Middlemen, as defined in paragraph (b)(7) of this section, are exempt recipients.

(iii) *Real estate mortgage investment conduit.* A real estate mortgage investment conduit, as defined in section 860D(a), is an exempt recipient.

(iv) *A WHFIT.* A WHFIT, as defined in paragraph (b)(15) of this section, is an exempt recipient.

(v) *Certain trusts and estates.* A trust or an estate for which the trustee or middleman of the WHFIT is also required to file a Form 1041, ''U.S. Income Tax Return for Estates and Trusts,'' in its capacity as a fiduciary of that trust or estate is an exempt recipient.

(k) *Coordination with information reporting rules under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Information Returns Concerning Transactions With Other Persons).* In general, in cases where reporting is required for a WHFIT under both this § 1.671–5 and under subpart B, part III, subchapter A, chapter 61 of the Internal Revenue Code (Sections 6041 through 6050S) (Information Reporting Sections), the reporting rules for WHFITs under this § 1.671–5 control. The provisions of the Information Reporting Sections and the regulations thereunder are incorporated into this § 1.671–5 as applicable, except that

those rules do not apply to the extent that they are inconsistent with the provisions of this § 1.671–5.

(l) *Backup withholding requirements.* Every trustee and middleman required to file a Form 1099 under this section § 1.671–5 is a payor within the meaning of § 31.3406(a)–2 of this chapter, and must backup withhold as required under section 3406 and any regulations thereunder.

(m) *Penalties for failure to comply.* Every trustee and middleman who fails to comply with the reporting obligations imposed by this § 1.671–5 is subject to penalties under sections 6721, 6722, and any other applicable penalty provisions.

(n) *Effective date.* These regulations are applicable beginning January 1, 2004.

4. Section 1.6041–9 is added to read as follows:

§ 1.6041–9 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section. For purposes of section 6041, middlemen and trustees of widely held fixed investment trust are deemed to have management and oversight functions in connection with payments made by the widely held fixed investment trust.

5. Section 1.6042–5 is added to read as follows:

§ 1.6042–5 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section.

6. Section 1.6045–1 is amended by adding paragraph (d)(7) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(d) * * *

(7) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.* See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section.

* * * * *

7. Section 1.6049–4 is amended by adding paragraph (c)(3) to read as follows:

§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.

* * * * *

(c) * * *

(3) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.* See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section.

* * * * *

8. In § 1.6049–5, paragraph (a)(6) is revised to read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

(a) * * *

(6) Interest paid on amounts held by investment companies as defined in section 3 of the Investment Company Act (15 U.S.C. section 80–a) and on amounts paid on pooled funds or trusts. The interest to be reported with respect to a widely held fixed investment trust, as defined in § 1.671–5(b)(15), shall be the interest earned on the assets held by the trust. See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section.

* * * * *

9. Section 1.6050N–2 is added to read as follows:

§ 1.6050N–2 Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.

See § 1.671–5 for the reporting rules for widely held fixed investment trusts as defined under that section.

PART 301—PROCEDURE AND ADMINISTRATION

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

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

11. Section 301.6109–1 is amended by revising the last sentence of paragraph (a)(2)(i) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * *

(2) * * *

(i) * * * If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for the trust as provided in paragraph (d)(2) of this section in order to report pursuant to § 1.671–4(a), (b)(2)(i)(B), (b)(3)(i), or 1.671–5 of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

13. In § 602.101, paragraph (b) is amended by adding an entry ''1.671–5'' in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.671–5	1545–1540
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–15352 Filed 6–19–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–065]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessel Transits, Narragansett Bay, Providence River, and Taunton River, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent safety and security zones around high interest vessels (HIVs) while those vessels are operating within Rhode Island Sound, Narragansett Bay and the Providence and Taunton Rivers. This proposed rule would also create safety and security zones around HIVs and adjacent land areas while HIVs are moored at waterfront facilities in the Providence Captain of the Port zone. The safety and security zones are needed to safeguard the public, high interest vessels and their crews, and other vessels and their crews, and the Port of Providence, Rhode Island from sabotage or other subversive acts, accidents, or other causes of a similar nature.

DATES: Comments and related materials must reach the Coast Guard on or before August 5, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island 02914. Marine Safety Office Providence maintains the public docket for this rulemaking. Comments and materials received from the public, as well as

documents indicated in this preamble as being available in the docket, will become part of the docket (CGD01–02–065) and will be available for inspection or copying at Marine Safety Office Providence between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata at Marine Safety Office Providence, at (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–02–065) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

Public Hearing

The Coast Guard plans no public hearing regarding this rulemaking. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In light of terrorist attacks on New York City and Washington, DC on September 11, 2001, and the continuing concern for future terrorist acts against the United States, permanent safety and security zones are proposed to safeguard various high interest vessels transiting Narragansett Bay en route commercial facilities in the upper Providence River and Taunton River. For purposes of this proposed rulemaking, high interest vessels operating in the Providence Captain of the Port zone include barges or ships carrying liquefied petroleum gas (LPG), liquefied natural gas, chlorine, anhydrous ammonia, or any other cargo deemed to be high interest by the Captain of the Port. Title 33 CFR 165.121 currently provides for safety zones for LPG vessels while at anchor in Rhode Island Sound, while transiting Narragansett Bay and the Providence River, and while LPG vessels are either moored at the Port of Providence LPG facility or at the manifolds connected at the Port of Providence LPG facility. However, in light of the current terrorist threats to national security, this zone is insufficient to protect LPG vessels while anchored in Rhode Island Sound, or while a vessel is transiting or moored in the Port of Providence. Moreover, this proposed rulemaking is necessary to protect other high interest vessels not currently covered by 33 CFR 165.121. This proposed rulemaking would revise 33 CFR 165.121 to cover HIV transits and while vessels are moored at facilities, as described below.

This rulemaking proposes to make permanent the temporary safety and security zones established on October 6, 2001, published at 66 FR 64144. That rulemaking created temporary safety and security zones around high interest vessels in the Providence, Rhode Island Captain of the Port Zone, identical to those proposed to be made permanent in this rulemaking. That rulemaking was effective until June 15, 2002. The temporary rulemaking was extended until September 15, 2002, by a notice in the **Federal Register** dated May 17, 2002 (67 FR 35035).

Discussion of Proposed Rule

The proposed safety and security zones are needed to protect high interest vessels, their crews, and the public, from harmful or subversive acts, accidents or other causes of a similar nature. The proposed safety and security zones would have identical boundaries, as follows: (1) All waters of Rhode Island Sound within a one half mile radius of any high interest vessel while the vessel is anchored within one half mile of the position Latitude 41°25′ N, Longitude 71°23′ W in the Narragansett Bay Precautionary Area; (2) all waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers two (2) miles ahead and one (1) mile astern and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers; (3) all waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone.

No person or vessel would be able to 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 would be required to obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port would be able to take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person would be able to 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. The public would be made aware of dates and times during which the safety and security zones will be enforced through a Marine Safety Information Radio Broadcast on channel 22 (157.1 MHz). Any violation of any safety or security zone proposed herein, would be 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 addition to liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed 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).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The proposed sizes of the zones are the minimum necessary to provide adequate protection for high interest vessels and their crews, other vessels operating in the vicinity of high interest vessels and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the upper Providence River and Taunton River and pleasure craft engaged in recreational activities and sightseeing. The proposed safety and security zones would prohibit any commercial vessels from meeting or overtaking a high interest vessel in the main ship channel,

effectively prohibiting use of the channel. However, the zones would only be effective during the vessel transits, which would last for approximately three hours. In addition, vessels would be able to safely transit around the zones while a vessel is moored or at anchor in Rhode Island Sound. Additionally, the Captain of the Port would be able to allow persons to enter the zone on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the main ship channel in Narragansett Bay, Providence River, and the Taunton River at the same time as high interest vessels, and vessels transiting in the vicinity of moored high interest vessels. The proposed safety and security zones would not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic would be able to pass safely around the zones and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the safety and security zones to engage in these activities. When a high interest vessel is at anchor, vessel traffic would have ample room to maneuver around the safety and security zones. The outbound and inbound transit of a high interest vessel would each last a maximum of three hours. Although this proposed rule would prohibit simultaneous use of the channel, this prohibition is of short duration and marine advisories would be issued prior to transit of a high interest vessel. While a high interest vessel is moored, commercial traffic and small recreational traffic would have an opportunity to coordinate movement through the safety and security zones with the patrol commander. Before the effective period, we will issue maritime advisories widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LT David C. Barata, at (401) 435–2335. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comments on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard has analyzed this action under Executive Order 13132, Federalism, and has determined that this proposed rule does not have implications for federalism under that Order.

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, 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 proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.121 to read as follows:

§ 165.121 Safety and Security Zones; High Interest Vessels, Narragansett Bay, Rhode Island.

(a) *Location.* (1) All waters of Rhode Island Sound within a one half mile radius of any high interest vessel while the vessel is anchored within one half mile of the point Latitude 41°25′ N, Longitude 71°23′ W in the Narragansett Bay Precautionary Area; (2) All waters of Rhode Island Sound, Narragansett Bay, the Providence and Taunton Rivers two (2) miles ahead and one (1) mile astern, and extending 1000 yards on either side of any high interest vessel transiting Narragansett Bay, or the Providence and Taunton Rivers; (3) all waters and land within a 1000-yard radius of any high interest vessel moored at a waterfront facility in the Providence Captain of the Port zone.

(b) *Regulations.*

(1) Entry into or movement within these zones, including below the surface of the water, during times in which high interest vessels are present and the zones are enforced is prohibited unless authorized by the COTP (Captain of the Port) Providence or authorized representative.

(2) The general regulations covering safety and security zones in § 165.23 and § 165.33 of this part apply.

(3) All persons and vessels shall comply with the instructions of the COTP, and the designated on-scene U.S. Coast Guard personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 23, 2002.

Mark G. VanHaverbeke,

Captain, Coast Guard, Captain of the Port.

[FR Doc. 02–15610 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–35–2–7339b; FRL–7234–4]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Volatile Organic Compounds From Industrial Wastewater Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to take direct final action to approve revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound (VOC) emissions from industrial wastewater facilities by means of Reasonable Available Control Technology (RACT).

DATES: Written comments must be received by July 22, 2002.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least 24 hours in advance.

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

Louisiana Department of Environmental Quality, Air Quality Division, H. B. Garlock Building, 7290 Bluebonnet Blvd., Baton Rouge, LA 70810

FOR FURTHER INFORMATION CONTACT: Joe Kordzi of the EPA Region 6 Air Planning Section, at (214) 665–7186 and at the Region 6 address above.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, we are approving the State's request as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no relevant adverse comment, we will not take further action on this proposed rule. If we receive relevant adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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

Dated: June 9, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 02–15454 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7224–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Facility Area portion of the A.O. Polymer Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Facility Area portion of the A.O. Polymer Site (Site) located in Sussex County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and the State of New Jersey (State), through the Department of Environmental Protection, have determined that all appropriate response actions relating to the Facility Area portion of the Site have been implemented. This partial deletion pertains only to the Facility Area portion of the Site and does not include the other portions of the Site.

The purpose of the proposed deletion of the Facility Area is to remove remediated and potentially useful property from the NPL, thereby making the land available for beneficial reuse.

EPA compiled Facility Area EPA documents, such as soil sample results and locations, maps, Pollution Reports, and other relevant deletion

documentation, which EPA used in its determination to propose the Facility Area for deletion from the NPL. These Site files can be reviewed in the repositories listed below.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a local newspaper of record.

ADDRESSES: Comments may be mailed to: Jeff M. Catanzarita, Remedial Project Manager, EPA, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Information Repositories: Comprehensive information on the Site, as well as information specific to this proposed partial deletion is available for review at EPA's Region II office in New York, New York, and at the information repository listed below. The Site file and the Deletion Docket for this partial deletion are maintained at the EPA Records Center, 290 Broadway, 18th Floor, New York, New York 10007–1866. The Records Center hours of operation are 9–5 p.m., Monday through Friday, and the Records Center staff can be reached at (212) 637–4308.

EPA has established a local information repository at the Sparta Public Library, 22 Woodport Road, Sparta, New Jersey 07871, where the Deletion Docket is available for public review.

FOR FURTHER INFORMATION CONTACT: Jeff M. Catanzarita (212) 637–4409, fax No. (212)-637–4429; e-mail catanzarita.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The U. S. Environmental Protection Agency (EPA) Region II announces its intent to delete a portion of the A.O. Polymer Site (Site), located in Sussex County, New Jersey, from the National Priorities List (NPL) and requests comment on this proposal. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List 60 FR 55466 (Nov. 1, 1995). The Site has two land portions, hereafter referred to as the Facility Area and the Disposal Area. This proposal for partial deletion only pertains to the 3.76-acre Facility Area of the Site. The 0.42-acre Disposal Area and the contaminated groundwater will remain on the NPL.

The Site is an inactive facility located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. The Site occupies 4.18 acres near the Sparta Rail Road Station along the New York, Susquehanna and Western (NYS&W) Railway. The Site is bounded to the north and east by Station Park, a municipal recreation area, to the southeast by Station Road, and to the south and west by the NYS&W Railway. The Site is located on two lots delineated by a Sussex County tax map as Block 19, Lot 45–B (3.22 acres) and Lot 45–C (0.96 acres).

The proposal for partial deletion pertains to both lots except for a portion of Lot 45–B, which is the Disposal Area and is described in Section IV, Basis for Intended Partial Site Deletion. The Disposal Area is located in the northwest corner of the property, separated from other areas by a dirt road.

No further action is necessary to protect human health, welfare, and the environment in relation to the Facility Area portion of the Site and, therefore, EPA proposes to delete the Facility Area because all appropriate CERCLA response activities have been completed. However, ongoing soil cleanup activities at the Disposal Area and the groundwater are not complete, and the Disposal Area and groundwater will remain on the NPL and are not subject to this partial deletion.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (''the Fund''). Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a local newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR Sec. 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

III. Deletion Procedures

The following procedures were used for the proposed deletion of the Facility Area at the Site:

(1) From 1993 to 1997, EPA's Removal Action Branch conducted removal activities at the Facility Area, which included confirmatory soil sampling. Sampling results found contaminant levels below the New Jersey Residential Soil Cleanup Criteria and, therefore, the Facility Area is available for unrestricted use.

(2) EPA has recommended the partial deletion and has prepared the relevant documents.

(3) The State through the NJDEP concurs with this partial deletion in a letter dated February 20, 2002.

(4) Concurrent with this national Notice of Intent for Partial Deletion, a

notice has been published in a local newspaper of record and has been distributed to appropriate federal, state, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a local newspaper of record.

(5) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** notice, and a concurrent notice in a local newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the Facility Area portion of the Site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the EPA Region II information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. If appropriate, EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final Notice of Partial Deletion in the **Federal Register**. Deletion of the Facility Area does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Facility Area of the Site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

The Site is located at 44 Station Road in the Township of Sparta, Sussex County, New Jersey. From the early 1960s until 1978, the Site was the location of two businesses: Mohawk Industries (Mohawk), which operated a resins manufacturing and solvent reclamation facility; and later A.O. Polymer Corporation (A.O. Polymer), which continued the resins manufacturing processes of Mohawk. The activities of these companies contaminated the soil and groundwater at the Site.

The Site occupies approximately 4 acres near the Sparta Rail Road Station along the New York, Susquehanna and Western (NYS&W) Railway and is situated in a semi-rural area near the Wallkill River. The Site is divided into two distinct areas, the Disposal Area and the Facility Area.

In 1978, the facility was purchased by A.O. Corporation, the parent corporation of A.O. Polymer. A.O. Polymer purchased the rights to manufacture resins products previously produced by Mohawk. A.O. Polymer continued to utilize the same processing machinery, storage vessels, and laboratories used by Mohawk. For approximately one year in 1978, A.O. Polymer also continued Mohawk's solvent reclamation process.

Until 1994, A.O. Polymer continued to use the Facility Area for resins manufacturing operations. The Facility Area structures present at the Site include office and laboratory facilities, a main reactor building, assorted storage buildings, numerous storage tanks, and a non-contact water cooling pond. These structures remain on the Facility Area but are no longer used.

Complaints of odors emanating from well water and air near the Site were first registered by citizens living or working near the Site in 1973. Complaints of odors and bad smelling well water intensified in 1978, touching off formal investigations by the Sparta Health Department and the NJDEP. In December 1978, NJDEP inspectors and Sparta Health Department officials collected samples from potable wells surrounding the Site. Analysis of these samples revealed the existence of Volatile Organic Compounds (VOCs) in three domestic wells located along Station Road. In June 1979, the owners of the three affected wells filed damage claims with the New Jersey Hazardous Spill Fund, and in January 1980, these homes were connected to a municipal water supply.

In 1978, NJDEP began investigating reports of drum stockpiling at the Site. These investigations identified on-site waste disposal and storage practices as the source of groundwater contamination in residential wells. Waste handling practices included disposal of liquid chemical waste into unlined lagoons, improper storage of over 800 deteriorating drums, and burial of crushed and open drums containing waste materials including volatile and semi-volatile organic compounds.

In 1980 and 1981, surficial cleanup at the Site was initiated by NJDEP, including the removal of surface drums and the excavation and removal of contaminated soil located in the unlined lagoon area (i.e., the Disposal Area). The Disposal Area of the Site was reportedly excavated to a depth of approximately 10 feet and backfilled with clean soil. This cleanup resulted in the removal of 1,150 drums; 1,700 cubic yards of contaminated soil; and 120 cubic yards of crushed drums and debris.

Concern regarding the extent of groundwater contamination resulted in additional investigations by NJDEP. In January 1982, NJDEP's Division of Water Resources installed 11 monitoring wells on and adjacent to the Site to determine the extent of groundwater contamination. Sampling confirmed that contamination had reached the Allentown formation, which is a source of potable water in the area. Sampling also revealed that groundwater contamination had migrated to Station Park, 300 yards northeast of the Site.

On September 1, 1983, the Site was placed on the NPL.

Complaints of odors emanating from the Site continued throughout the 1980s. In response to repeated complaints from residents in the area, the NJDEP Division of Environmental Quality cited and fined the A.O. Polymer facility for air emission violations.

In 1984, a Remedial Investigation and Feasibility Study (RI/FS) was performed by NJDEP and funded by EPA through a Cooperative Agreement with NJDEP. During the RI, the Disposal Area was sampled. Soil samples taken from this area of the Site and compared with other soil samples taken from other portions of the Site led to the conclusion that the soil ten to twenty feet beneath the Disposal Area contained residual VOC contamination that acted as a source of contamination to the groundwater.

After initial indications of groundwater contamination were confirmed, NJDEP installed a network of 18 additional monitoring wells during the RI/FS. These 18 monitoring wells were installed in and around the Site to characterize the nature and extent of groundwater contamination. The RI/FS report confirmed that the source of groundwater contamination was located in Disposal Area soil and the groundwater contamination threatened a drinking water aquifer. This contaminated soil area takes up approximately 0.42 acre of the Site and is bounded to the northwest and southwest by the Gun Club access road and to the northeast and southeast by a steep embankment that adjoins the park property.

The area of groundwater contamination is approximately 1,000 feet long and 900 feet wide and extends from the Site to the Wallkill River. The majority of the groundwater contamination is located beneath Station Park.

On June 28, 1991, EPA and NJDEP completed the RI/FS and issued a Record of Decision (ROD), which selected a remedy to address contaminated soil at the Disposal Area and groundwater under both areas and extending off the Site. EPA selected Soil Vapor Extraction (SVE) to treat the source of the groundwater contamination (i.e., Disposal Area soil) and a groundwater extraction and treatment system to remediate the groundwater contamination.

After the ROD was signed, EPA became the lead agency in charge of response activities at the Site. EPA identified Potentially Responsible Parties (PRPs) and issued a Unilateral Administrative Order to conduct the Remedial Design and Remedial Action (RD/RA). Design of the SVE system started on April 2, 1992. Both the SVE and groundwater extraction waste streams are run through treatment plants located on property adjacent to the A.O. Polymer property designated in the county tax records as Lot 45–A. By October 1994, construction of the SVE system was completed and the system was operational and functional in January of 1995. Through February 2002, the SVE system has removed over 5,205 gallons of VOCs from contaminated soil.

The groundwater treatment component of the selected remedy consisted of pumping the contaminated groundwater from the aquifer, treating it with a Powdered Activated Carbon Treatment (PACT) system and then returning the treated groundwater to the aquifer. Treatability studies conducted on the PACT system showed that this treatment system could not meet the discharge limitations; therefore, an Explanation of Significant Differences (ESD), issued on September 17, 1996, called for modifying the ROD to allow the use of an air stripper to remove contaminants from groundwater, so that the contingent surface water discharge point, outlined in the ROD, could be implemented instead of using groundwater re-injection. In addition, the ESD called for only the most contaminated part of the plume to be treated via the extraction and treatment system, thereby allowing the remaining low level contaminant concentrations to naturally attenuate. Construction of the groundwater pump and treatment system was completed on March 26, 1998. On April 30, 1998, the NJDEP approved a Classification Exception Area (CEA) and a Well Restriction Area, dated April 8, 1998, for a portion of the Site, which are included in the Deletion Docket. The CEA was established in accordance with N.J.A.C. 7:9–6.6, because constituent groundwater quality standards are not being met at this Site due to pollution caused by human activity. The Well Restriction Area was established to preclude withdrawal of the contaminated groundwater associated with this Site, except for the purposes of monitoring and/or additional treatment at another time. Through February 2002, the groundwater treatment system has removed over 1,414 gallons of VOCs from contaminated groundwater. During the remedial design, it was estimated that the implemented remedy would take about 13 years to achieve groundwater cleanup goals (i.e., Maximum Contaminant Levels [MCLs]) in down-gradient compliance monitoring wells. However, the goal of the groundwater component of the remedy is to achieve the cleanup goals in all monitoring wells, and additional treatment beyond 13 years may be required. The SVE system only treats the source of the groundwater contamination in soils, and it is likely that the SVE system could be turned off within the next five years.

Facility Area Response Actions

The 3.76-acre Facility Area contains structures, such as office and laboratory facilities, a main reactor building, assorted storage buildings, numerous storage tanks, and a non-contact water cooling pond.

In early 1994, production activities at the facility ceased and the Site operator left hazardous material improperly stored and unsecured on the Facility Area of the Site. In response to requests from the Township of Sparta Health Department, EPA initiated a removal action at the recently abandoned facility on April 27, 1994. Additional soil samples and waste samples were collected at the Facility Area during the removal action. Sample results indicated that hazardous substances contained in drums and tanks found at the Site were being released to the environment. EPA removal activities included removal of hazardous materials from the laboratory building, storage building, reactor building, some above-ground piping and tanks, as well as an underground storage tank.

During EPA's removal activities, 121 cubic yards of soil, 91 cubic yards of asbestos-containing materials, 34,000 pounds of hazardous waste, 37,600 pounds of non-hazardous waste, and 3,491 gallons of bulked hazardous liquids were removed from the Site.

After removal activities were completed, EPA collected confirmatory soil samples to determine if any remaining areas of the Site were in need of remediation. An analysis of earlier RI/FS soil samples and the post-removal action soil samples taken on the Facility Area indicated that soil on the Facility Area does not exceed New Jersey Residential Direct Contact Soil Cleanup Criteria.

On August 18, 1998, EPA removal activities were concluded. EPA bases its proposal to delete the Facility Area at the A.O. Polymer Site on the determination by EPA and the NJDEP, that all appropriate actions under CERCLA have been completed to protect human health, welfare, and the environment related to the Facility Area portion of the Site.

EPA compiled Facility Area documents, such as soil sample results and locations, maps, Pollution Reports, and other relevant deletion documentation, which EPA used in its determination to propose the Facility Area for deletion from the NPL. These Site files can be reviewed in the repositories listed above.

All of EPA's response actions at the Facility Area were conducted using funds from the Hazardous Substance Superfund.

The Site boundaries are delineated by a Location Survey Map, dated June 29, 1998, which demarcated the entire Site. The Site is mapped out according to Sparta, New Jersey tax records as: Block 19, Lot 45–B (3.22 acres), and Block 19, Lot 45–C (0.96 acres). The Disposal Area is located on the northern side of Lot 45–B and is separated from the Facility Area by a dirt road. The Facility Area is all of Lot 45–C and the majority of Lot 45–B, minus the Disposal Area. The 3.76-acre Facility Area is bounded on the west by the New York, Susquehanna and Western Railroad property, to the north by the Disposal Area, on the east by a Township park and to the south by commercial property.

EPA demarcates the Facility Area portion of the Site as follows: all of Block 19, Lot 45–C and all of Block 19, Lot 45–B, except, the 0.42-acre Disposal Area located within Block 19, Lot 45–B. EPA delineates the 0.42-acre Disposal Area portion by the following Easting and Northing coordinates: point A (2,009,826.645: 806,913.161) ; to point B (2,010,049.344: 806,913.161); to point F (2,010,052.240: 806,758.795); to point G (2,009,880.808: 806,726.615); to point H (2,009,856.230: 806,760.672); and back to point A. The area within the above

referenced Easting and Northing coordinates represents the area that shall remain on the NPL (i.e., the Disposal Area). This proposal for partial deletion pertains only to the above-described Facility Area of the Site. The Disposal Area described in the above Easting and Northing coordinates will remain on the NPL along with the groundwater cleanup.

Community Relations Activities

Initial community interest was high, related to fears about contaminated drinking water and odors emanating from the Site. Since the 1991 ROD was issued, the community concern with the Site has been minimal. EPA did not hold a public meeting for the Facility Area removal action.

The community and Sparta Township officials expressed a desire to possibly redevelop the Facility Area property. Any future developer or owner of the Facility Area property should be aware that EPA, the State, and the PRP conducting the cleanup will need access to the Facility Area for the duration of the ongoing response action at the Site.

Current Status

Based on the successful completion of EPA's removal action and the extensive investigations and sampling performed on the Facility Area of the Site, there are no further response actions planned or scheduled for the Facility Area of the Site. There are no further cleanup activities, except periodical groundwater monitoring, necessary at the Facility Area. Pursuant to the NCP, a five-year review is not required at the Facility Area portion of the Site. However, since five-year reviews are needed at other portions of the Site, five-year reviews will be performed. The selected remedy is ongoing at the Disposal Area and will continue for an estimated 13 years.

While EPA does not believe that any future response actions at the Facility Area of the Site will be needed, if future conditions warrant such action, the Facility Area potion of the Site will remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the Disposal Area of the Site and the groundwater, which are not proposed for deletion and remain on the NPL.

In a letter dated February 20, 2002, the State, through the NJDEP, has concurred on EPA's final determination regarding the proposed partial deletion.

EPA and NJDEP have determined that the Facility Area portion of the Site does not pose a significant threat to human health, welfare, or the environment and that all appropriate response actions have been completed at the Facility Area portion. Therefore, EPA makes this proposal to delete the Facility Area portion from the NPL.

Dated: June 7, 2002.

Jane M. Kenny,

Regional Administrator, Environmental Protection Agency, Region II.

[FR Doc. 02–15455 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings for a Petition To List the Beluga Sturgeon (*Huso huso*) as Endangered Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day and 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the 90-day and 12-month findings for a petition to list the beluga sturgeon (*Huso huso*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial information indicating that listing this species may be warranted. After further review of all available scientific and commercial information, we also find that listing this species is warranted.

DATES: The findings announced in this document were made on May 13, 2002. Comments and information must be submitted by August 19, 2002.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Chief, Division of Scientific Authority; Mail Stop ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240 (fax number: 703–358–2276; E-mail address: *FW9 Scientific Authority@fws.gov*). The petition finding, supporting data, and comments are available for public inspection, by appointment, from 8 a.m to 4 p.m., Monday through Friday, at Room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (telephone number: 703–358–1708; fax number: 703–358–2276; E-mail address: *FW9 Scientific Authority@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the requested action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, Section 4(b)(3)(A) of the Act requires us to promptly commence a review of the status of the species. We now announce a 90-day finding on a recently received petition.

Section 4(b)(3)(B) of the Act also requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Service make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as though resubmitted on the date of such finding (i.e., requiring a subsequent finding to be made within 12 months). Such 12-month findings are to be published promptly in the **Federal Register**.

On December 18, 2000, the Service received a petition dated December 4, 2000, from the Wildlife Conservation Society (Ellen Pikitch, Ph.D., and Liz Lauck), the Natural Resources Defense Council (Lisa Speer), and Sea Web (Vicki Spruill and Susan Boa) to list the beluga sturgeon (*Huso huso*) as endangered throughout its entire range. A 90-day finding is being announced concurrently with the Service's 12-month finding in this document. The 90-day finding is that the petition presented substantial information indicating that the requested action may be warranted. The Service has reviewed the petition, the literature cited in the petition, and other available literature and information. On the basis of the best scientific and commercial information available, the 12-month finding is that the petitioned action is warranted.

The beluga sturgeon is a member of the genus *Huso,* family Acipenseridae, order Acipenseriformes, class Osteichthyes, phylum Chordata, and kingdom Animalia (Pirogovskii *et al,* 1989). *Huso huso* historically inhabited the waters of the Caspian, Black, Azov, and Adriatic Seas, as well as rivers within their watersheds (Bacalbasa-Dobrovici, 1997a). The Adriatic Sea population is now considered extirpated. The last record of a wild-caught specimen in the Sea of Azov occurred in the mid-1980s (TRAFFIC/Europe, 1999).

The life-history characteristics of beluga sturgeon make them particularly vulnerable to depletion. This species is long-lived and slow to mature. Reproductive maturity is reached somewhere between 11 and17 years (Khodorevskaya *et al.,* 1997). Males have been found to spawn only every 4–7 years, whereas females may only reproduce every 4–8 years (Raspopov, 1993). Adult females may produce up to 12% of their body weight in roe (DeMeulenaer and Raymakers, 1996). Beluga sturgeon is an anadromous species, spending most of its life in salt water, returning to breed in the freshwater reaches of rivers (Bemis and Kynard, 1997). Sturgeons generally are considered fairly easy to harvest, as a result of predictable migration patterns and feeding habits, therefore adding to their vulnerability.

Currently, population estimates for Caspian Sea and Black Sea beluga sturgeon are not available (TRAFFIC/Europe, 1999). However, based on Russian fisheries reports, it is clear that the total population has declined drastically over the past 30 years and continues to decline at an alarming rate. During the early 1970s, an estimated 25,000 Caspian Sea beluga sturgeon spawned in the Volga River. However, by the early 1990s this estimate had dropped to 7,000 spawning fish (Khodorevskaya *et al.*, 2000). At the present time, the Caspian Sea population is believed to be so depleted that natural reproduction in the wild may be insufficient to sustain the species (Khodorevskaya *et al.*, 1997). Even hatchery production to augment this stock may no longer be a viable alternative due to the lack of available funding to continue artificial propagation programs and maintain an aging hatchery infrastructure in range countries. Additionally, the number of female beluga sturgeon taken in the Volga River delta was considered insufficient to even support artificial propagation efforts (Birstein *et al.*, 1997). Russian fisheries officials recently observed that there were few, if any, large spawning-age females available to provide hatchery broodstock (TRAFFIC/Europe, 1999).

The population structure of beluga sturgeon in the Caspian Sea has shifted during the last 30 years, adding to concerns regarding declines in abundance. The relative percentage of older, spawning-age fish has dropped from 16.9 percent during 1966–1970 to 3.7 percent in 1991–1995 (Khodorevskaya *et al.*, 2000). The Volga River population is believed to be 96.3 percent hatchery reared, contributed through past practices of replacing harvested older fish with hatchery-produced fish (Khodorevskaya *et al.*, 1997).

Beluga sturgeon have been commercially harvested in the Black Sea for more than 2,000 years (Bacalbasa-Dobrovici, 1997b). By the mid-19th Century, beluga sturgeon harvest in the mid and upper reaches of the Danube River declined precipitously; only 16 individuals were taken from 1857 to 1957 (Hensel and Holcik, 1997). Construction of the Iron Gates I (Djerdap I) and Iron Gates II (Djerdap II) dams late in the 20th Century further stressed the mid- and upper-river remnant populations. By 1835, the lower-river population was in decline. By the 1960s, harvest ebbed to 220 tons per year and dwindled to an average annual harvest of 12.7 tons in 1994 (Bacalbasa-Dobrovici, 1997b). Currently, beluga sturgeon are considered vulnerable in the lower Danube River, critically endangered in the middle reaches, and extirpated from the upper reaches (Hensel and Holcik, 1997).

Loss of centralized control after the dissolution of the Soviet Union in 1992, dam construction, and economic development of emerging former Soviet nations are contributing factors that have adversely modified or destroyed beluga sturgeon habitat in many areas. These factors will continue to threaten, modify, or destroy habitat over the entire beluga sturgeon range in the near future. However, the international demand for caviar is the most serious threat to the continued existence of this species. The decline of beluga sturgeon populations may be principally attributed to over-utilization to meet this demand, due to a combination of legal and illegal harvest of the species.

All sturgeon are killed to collect their roe. Even the males are destroyed, as it is impossible to differentiate between the sexes. Seven kilograms of caviar are retrieved for each 100 kilograms of total beluga sturgeon harvested (Doroshov and Binkowski, 1985, cited in Williot and Bourguignon, 1991). The caviar market is highly lucrative, involving a product that is in constant demand, is easily poached, and generates maximum prices, and is packaged in small containers that are easily smuggled. Previously, there was a state monopoly in the former Soviet Union that was tightly restricted through the institution of specific harvest regulations and controlled hatchery programs.

The loss of centralized control has resulted in rapidly escalating harvest (legal and illegal combined), a lack of effective enforcement measures, and the release of insufficient hatchery-reared fish to replace those taken in the legal fishery. Prior to the political upheaval in the region, open-sea fishing for sturgeon was prohibited. However, since the mid-1990s, the open-sea fishery has been exploited, resulting in the take of young and immature stocks, effectively destroying future stock development. Bycatch of immature and adult beluga sturgeon are common in other regional fisheries, another factor contributing to the decline of the species (TRAFFIC/Europe, 1999). In 1970, the Caspian Sea beluga sturgeon harvest was estimated at 2,800 tons, yet by 1994, less than 300 tons were legally taken (Khodorevskaya *et al.*, 1997).

With the rapid decrease in legal harvest, poaching has become essentially uncontrollable. Reports of organized, large-scale poaching rings are common in all beluga sturgeon range countries. The level of poaching in the Caspian Sea and Volga River is estimated to be 6–10 times greater than the legal harvest, and it is believed that 80–85 percent of the legal catch remains unreported (DeMeulenaer and Raymakers, 1996). Prior to the 1998 listing of all previously unlisted Acipenseriformes in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Service's Office of Law Enforcement estimated that more than 50 percent of the global caviar trade was illegal (USFWS, 1998). This activity is in violation of CITES, as well as the laws and regulations in effect in the beluga sturgeon range countries. The U.S. Department of Justice has recently prosecuted significant caviar trafficking cases, including cases where individuals were indicted for paying off-duty airline employees to transport suitcases packed with caviar into the United States. In the Black Sea region, Turkey and Georgia are among the countries that continue to report illegal bycatch and fishing in their waters. Despite a CITES Appendix-II listing, and some protection by domestic legislation at the national level in the beluga sturgeon range countries, existing regulatory mechanisms have

been inadequate to prevent poaching of beluga sturgeon or the international smuggling of processed caviar. Finally, most beluga sturgeon range states lack the funding, experience, personnel, and equipment to adequately prevent sturgeon poaching and other threats to the species.

We find that the petition presents substantial information to show that the requested action may be warranted. Specifically, the information provided by the petitioners indicates that the total population of beluga sturgeon has declined precipitously over the last three decades, and that this decline has resulted primarily from over-utilization for commercial purposes, present and continued destruction and modification of its habitat or range, and the inadequacy of existing regulatory mechanisms.

Section 4(b)(3)(B) of the Act requires that the Service make a finding within 12 months of receipt of the petition as to whether the listing of *Huso huso* as threatened or endangered is warranted. The Service has reviewed the petition, the literature cited in the petition, and other available literature and information. On the basis of the best scientific and commercial information available, the Service's 12-month finding is that the petition is warranted and that sufficient information is available to support a proposed rule to classify the species as endangered or threatened.

Export quotas for sturgeons of the Caspian Sea, including the beluga sturgeon, have been established for the 2002 harvest season by the countries bordering the Caspian Sea. These quotas were approved by the CITES Secretariat and reported to the Standing Committee at its 46th meeting. Data from the recently completed trawl surveys of the Caspian Sea, conducted in 2001, and analysis thereof, which formed the basis for the establishment of these quotas, were recently published on the web site of the CITES Secretariat. These data and analyses are highly pertinent to this issue and any rulemaking action to follow. We believe that, prior to publication of a proposed rule in the **Federal Register** to classify the beluga sturgeon as endangered or threatened, adequate time must be allowed for the Service to evaluate the methodology used for the stock assessment, the resultant data and data analysis, and the conclusions drawn from them. Therefore, after review and consideration of the 2001 Caspian Sea stock assessment information, we intend to publish a proposed rule in the **Federal Register** no later than June 30, 2002.

References Cited

You may request a complete list of references cited in this notice from the Division of Scientific Authority (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 13, 2002.

Steve Williams,

Director.

[FR Doc. 02–15580 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

RIN 1018–AI34

2002–2003 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (we or the Service) proposes to add seven additional refuges to the list of areas open for hunting and/or sport fishing activities and increase the activities available at eight other refuges, along with pertinent refuge-specific regulations for such activities, and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for 2002–2003.

DATES: We must receive your comments on or before July 22, 2002.

ADDRESSES: Submit written comments to Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203. See **SUPPLEMENTARY INFORMATION** for information on electronic submission.

FOR FURTHER INFORMATION CONTACT: Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 (NWRSAA) closes national wildlife refuges to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or fishing, upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We annually review refuge hunting and fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the purposes of the refuge or the System's mission.

You may find provisions governing hunting and fishing on national wildlife refuges in Title 50 of the Code of Federal Regulations in part 32. We regulate hunting and fishing on refuges to:

- Ensure compatibility with the purpose(s) of the refuge;
- Properly manage the fish and wildlife resource;
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for high-quality recreational and educational experiences.

On many refuges where we decide to allow hunting and fishing, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled ''Statutory Authority.'' We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of areas open to hunting or fishing, and other provisions as

appropriate. You may find previously issued refuge-specific regulations for hunting and fishing in 50 CFR part 32. In this rulemaking, we are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Plain Language Mandate

In this rule some of the revisions to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Service, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 (16 U.S.C. 668dd–668ee, as amended), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of national wildlife refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA or Act) amend and build upon the NWRSAA in a manner that provided an ''Organic Act'' for the System similar to those that exist for other public Federal lands. The Act served to ensure that we effectively manage the System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitats. This Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible and promotes public safety. The Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the System. Those priority uses are: Hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The RRA requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the acts and regulate uses.

We develop hunting and sport fishing plans for each refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge. We have ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of Comprehensive Conservation Plans, hunting and sport fishing plans, and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' ''opening package'' (which the Region completes, the Regional Director signs, and sends a copy to Headquarters Office): (1) Step-down hunting and/or fishing management plan; (2) appropriate NEPA documentation (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement); (3) appropriate decision documentation (e.g., Finding of No Significant Impact); (4) Section 7 Endangered Species Act evaluation; (5) copies of letters requesting State and, where appropriate, Tribal involvement and the results of the request; (6) draft news release; (7) outreach plan; and (8) draft refuge-specific regulation. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

In accordance with the NWRSAA and RRA, we have determined that these openings are compatible and consistent with the purpose(s) for which we established the respective refuges. A copy of the compatibility determinations for these respective refuges is available by request to the Regional contact noted under the heading ''Available Information for Specific Refuges''.

We propose to allow the following wildlife-dependent recreational activities:

Hunting of migratory game birds on seven refuges, including:

- Bayou Teche National Wildlife Refuge, Louisiana
- Black Bayou Lake National Wildlife Refuge, Louisiana
- Cat Island National Wildlife Refuge, Louisiana
- Catahoula National Wildlife Refuge, Louisiana
- Marais des Cygnes National Wildlife Refuge, Kansas
- Trinity River National Wildlife Refuge, Texas
- Whittlesey Creek National Wildlife Refuge, Wisconsin

Hunting of upland game on five refuges, including:

- Bayou Teche National Wildlife Refuge, Louisiana
- Black Bayou Lake National Wildlife Refuge, Louisiana
- Cat Island National Wildlife Refuge, Louisiana
- Lost Trail National Wildlife Refuge, Montana
- Okefenokee National Wildlife Refuge, Georgia

Big game hunting on eight refuges, including:

- Bayou Teche National Wildlife Refuge, Louisiana
- Black Bayou Lake National Wildlife Refuge, Louisiana
- Cat Island National Wildlife Refuge, Louisiana
- Lost Trail National Wildlife Refuge, Montana
- Occoquan Bay National Wildlife Refuge, Virginia
- Rappahannock River Valley National Wildlife Refuge, Virginia
- Wallops Island National Wildlife Refuge, Virginia
- Washita National Wildlife Refuge, Oklahoma

Sport fishing on three refuges, including:

- Bayou Teche National Wildlife Refuge, Louisiana
- Cat Island National Wildlife Refuge, Louisiana
- Rydell National Wildlife Refuge, Minnesota

We also propose several administrative changes. In § 25.41 we will clarify that refuge managers have the authority to issue permits required by subchapter C of 50 CFR. In § 25.43

we will clarify that refuge managers may terminate or revoke permits. These two changes will not alter our current practice but rather explicitly state the delegation to the refuge manager. In § 32.2(f) we are revising the section designation in the last sentence of the paragraph of the refuge-specific regulations from §§ 32.20 through 32.71 to read §§ 32.20 through 32.72 to reflect the addition of Guam. In § 32.2(f), § 32.3(e), § 32.5(e), § 32.6(e), and the introductory text of § 32.7 we are revising the section designations to reflect the addition of Guam. Additionally in § 32.3(e) we will explain that the refuge manager may adopt and issue relevant refuge-specific season dates and times after the State establishes its hunting seasons by publication through one or more of the methods identified in 50 CFR 25.31 We are authorizing this limited departure from the existing process because seasons are set too late in the year for us to include in our annual regulations. In § 32.2(l) we reiterate that in addition to adopting the various items enumerated in the refuge-specific regulations (§ 32.20 through § 32.72), we will continue to notify the public of those items described in refuge permits and brochures available at that area's headquarters. Finally, we propose that each refuge describe the designated areas where we allow hunting and/or fishing in the refuge-specific regulations, if practicable.

Request for Comments

You may comment on this proposed rule by any one of several methods:

1. You may mail comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203.

2. You may comment via the Internet to: *refugesystempolicycomments@fws.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AI34'' and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744.

3. You may fax comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System at (703) 358–2248.

4. Finally, you may hand-deliver or courier comments to the address mentioned above. In light of recent increased security measures, please call (703) 358–1744 before hand-delivering comments.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request 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 inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day rather than a 30-day comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and fishing regulations would hinder the effective planning and administration of our hunting and fishing programs. That delay would jeopardize establishment of hunting and fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into 50 CFR parts 25 and 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on national wildlife refuges. Part 25 contains the administrative provisions for the National Wildlife Refuge System.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this rule is to open 15 refuges to hunting and/or fishing activities. Eight of these refuges are already open to certain activities, and the remaining seven refuges will open to hunting and/or fishing activities for the first time. The refuges are located in the States of Virginia, Montana, Louisiana, Wisconsin, Oklahoma, Texas, New Mexico, Kansas, Minnesota, and Georgia. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognizes as legitimate and appropriate, and we should facilitate their pursuit, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the purpose of each refuge. Many of the 538 existing national wildlife refuges already have programs where we allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or fishing programs at the following refuges: Occoquan Bay, Rappahannock River Valley, Wallops Island, Lost Trail, Bayou Teche, Cat Island, Catahoula, Whittlesey Creek, Washita, Trinity River, Bosque del Apache, Marais des Cygnes, Rydell,

Okefenokee, and Black Bayou Lake. We state impacts in 2001 real dollars.

Following a best case scenario, if the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean a consumer surplus of $706,000 annually and an estimated increase of 10,320 user days of hunting and 575 user days of fishing (Table 1). However, the participation trend is flat in fishing and hunting activities because the number of Americans participating in these activities has been stagnant since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites losing participants, especially if the new sites have higher quality fishing and/or hunting opportunities. Using the value of the difference in the upper and lower bounds of the 95 percent confidence interval for average consumer surplus to represent the estimate of the increase in consumer surplus for higher quality fishing and hunting (Walsh, Johnson, and McKean, 1990) [1] yields an estimated increase in consumer surplus of $185,000 annually, which is a true estimate of the benefits. Consequently, this rule will have a small measurable economic benefit on the U.S. economy.

TABLE 1.—ESTIMATED CHANGES IN CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2002

Refuge	Additional fishing days	Additional hunting days	Fishing and hunting combined
Occoquan Bay	.....	50	50
Rappahannock River Valley	.....	500	500
Wallops Island	.....	30	30
Lost Trail	.....	2,000	2,000
Bayou Teche	25	75	100
Cat Island	250	750	1,000
Catahoula	.....	2,000	2,000
Whittlesey Creek	.....	100	100
Washita	.....	50	50
Trinity River	.....	675	675
Bosque del Apache	.....	90	90
Marais des Cygnes	.....	500	500
Rydell	300	.....	300
Okefenokee	.....	500	500
Black Bayou Lake	.....	3,000	3,000
Total Days per Year	575	10,320	10,895
Consumer Surplus per Day	$61.19	$64.99	.....
Consumer Surplus for Quality Change	*$23.23*	*$16.62*	.....
Change in Total Consumer Surplus	$35,184	$670,736	$705,921
Change in Quality Consumer Surplus	$13,357	$171,505	$184,862

Note: All estimates are stated in 2001 real dollars.

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the National Wildlife Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule opens seven additional refuges for fishing and hunting activities and increases the activities available at eight other refuges. This proposed rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the System currently have opportunities for the public to hunt and fish on refuge lands.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Congress created the National Wildlife Refuge System to conserve fish, wildlife, plants, and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing and hunting, as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This proposed rule does not increase the types of recreation allowed on the System but establishes hunting and/or fishing programs on 15 refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of permitted use are likely to increase visitor activity on these national wildlife refuges. But, as stated above, this is likely to be a substitute site for the activity and not necessarily an increase in participation

[1] Article presented at the Western Regional Science Association Annual meeting in Molokai, Hawaii, on February 22, 1990.

rates for the activity. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best case scenario, and we expect to overstate the benefits to local businesses. The latest information on the distances traveled for fishing and hunting activities indicates that over 80 percent of the participants travel less than 100 miles from home to engage in the activity. This indicates that participants will spend travel-related expenditures in their local economies. Since participation is scattered across the country, many small businesses benefit. The 1996 National Survey of Fishing, Hunting, and Wildlife Associated Recreation identifies expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the Refuge System as a result of this proposed rule yields the following estimates (Table 2) compared to total business activity for these sectors.

TABLE 2.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN EIGHT REFUGES AND THE OPENING OF SEVEN REFUGES TO FISHING AND/OR HUNTING FOR 2002

	U.S. total expenditures in 1996	Average expenditures per day	Current refuge expenditures w/o duplication	Possible additional refuge expenditures
Anglers:				
Total Days Spent	626 Mil		6.7 Mil	575
Total Expenditures	$42.7 Bil	$68	$456.2 Mil	$39,194
Trip Related	$17.4 Bil	$28	$185.7 Mil	$15,950
Food and Lodging	$6.8 Bil	$11	$72.3 Mil	$6,211
Transportation	$4.2 Bil	$7	$45.0 Mil	$3,868
Other	$6.4 Bil	$10	$68.3 Mil	$5,871
Hunters:				
Total Days Spent	257 Mil		2.0 Mil	10,320
Total Expenditures	$23.3 Bil	$91	$182.4 Mil	$935,492
Trip Related	$5.8 Bil	$23	$45.6 Mil	$233,962
Food and Lodging	$2.8 Bil	$11	$22.2 Mil	$114,007
Transportation	$2.0 Bil	$8	$15.7 Mil	$80,761
Other	$1.0 Bil	$4	$7.6 Mil	$39,194

Note: All estimates are in 2001 real dollars.

Using a national impact multiplier for wildlife-associated recreation developed for the report ''1996 National and State Economic Impacts of Wildlife Watching'' for the estimated increase in direct expenditures yields a total economic impact of over $2.8 million (2001 dollars). Since we know that most of the fishing and hunting occur within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy and, therefore, would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $2.8 million and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $570,000 annually. The maximum increase (if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 3).

A large percentage of the retail trade establishments in the majority of affected counties qualify as small businesses. With the small increase in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased recreationist spending near the affected refuges.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2002

Refuge/County(ies)	Retail trade in 1997 (2001 dollars) (millions)	Estimated maximum addition from new refuge	Addition as a % of total	Total retail establ.	Establ. with < 10 emp.
Occoquan Bay, Prince William, VA	$283	$4,550	0.002	915	560
Rappahannock River Valley, Northumberland, VA	4.9	45,500	0.93	54	45
Wallops Island, Accomack, VA	199	2,730	0.001	208	152
Lost Trail, Flathead, MT	768	182,000	0.02	475	398
Bayou Teche, St. Mary, LA	437	8,525	0.002	256	176
Cat Island, Avoyelles, LA	234	85,250	0.04	169	129
Catahoula		182,000	0.13		
LaSalle, LA	75			64	49
Catahoula, LA	69			52	33
Whittlesey Creek, Ashland, WI	165	9,100	0.01	113	87
Washita, Custer, OK	259	4,550	0.002	172	119
Trinity River, Liberty, TX	487	61,425	0.01	204	151

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2002—Continued

Refuge/County(ies)	Retail trade in 1997 (2001 dollars) (millions)	Estimated maximum addition from new refuge	Addition as a % of total	Total retail establ.	Establ. with < 10 emp.
Bosque del Apache, Socorro, NM	78	8,190	0.01	57	40
Marais des Cygnes, Linn, KS	33	45,500	0.14	34	27
Rydell Polk, MN	234	20,400	0.01	152	97
Okefenokee, Charlton, GA	35	45,500	0.13	49	47
Black Bayou Lake, Ouachita, LA	1,600	273,000	0.02	753	519

Many small businesses may benefit from some increased wildlife refuge visitation. However, we expect that much of this benefit will be offset as recreationists spend the same money in a different location. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at the 15 refuges that do not currently have these programs would generate expenditures by anglers and hunters with an economic impact estimated at $2.8 million per year (2001 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will have only a slight effect on the costs of hunting and fishing opportunities of Americans. Under the assumption that any additional hunting and fishing opportunities would be of high quality, participants would be attracted to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that, since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Because this proposed rule represents such a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of $2.8 million annually in impact, This rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. This proposed rule adds seven refuges to the list of refuges that have hunting and/or fishing programs and increases the type of activities offered at eight other refuges. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase with only seven refuges adding new programs and eight refuges increasing programs by this proposed rule. Consequently, we anticipate no significant employment or small business effects.

Unfunded Mandates Reform Act

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (Executive Order 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. In preparing this proposed rule, we worked with State governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens 15 refuges to hunting and/or sport fishing programs and makes minor changes to other refuges open to those activities, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a

significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

In preparation for new openings, we include Section 7 consultation documents approved by the Service's Endangered Species program in the refuge's ''openings package'' for Regional review and approval from the Headquarters Office. We reviewed the changes in hunting and fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543, as amended) (ESA). For the national wildlife refuges proposed to open for hunting and/or fishing we have determined that Rappahannock River Valley, Trinity River, Bosque del Apache, Okefenokee, and Bayou Teche National Wildlife Refuges will not likely adversely affect and Catahoula, Washita, Rydell, Marais des Cygnes, Black Bayou Lake, Cat Island, Occoquan Bay, Whittlesey Creek, Lost Trail, and Wallops Island National Wildlife Refuges will not affect any endangered or threatened species or designated critical habitat.

We also comply with Section 7 of the ESA when developing Comprehensive Conservation Plans, step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans (CCPs) and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–6804.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Minnesota 55111; Telephone (612) 713–5400.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7154.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8302.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3354.

Primary Author

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List of Subjects

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 260k, 664 dd, 715i, and 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 1961.

2. Revise § 25.41 to read as follows:

§ 25.41 Who issues refuge permits?

We authorize the refuge manager of the facility where the activity is to take place to issue permits required by this subchapter C unless the regulations in this subchapter C require the applicant to obtain the applicable permit from the Director or Secretary. In those situations, the refuge manager will so inform the applicant, giving the applicant all necessary information as to how and where to apply.

3. Revise § 25.43 to read as follows:

§ 25.43 Who may terminate or revoke a permit and why?

The refuge manager may terminate or revoke a permit at any time for noncompliance with the terms of the permit or of the regulations in this subchapter C: for nonuse; for violation of any law; regulation, or order applicable to the refuge; or to protect public health or safety or the resources of a national wildlife refuge.

PART 32—[AMENDED]

4. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

5. In § 32.2 by revising the section heading and paragraph (f) and adding paragraph (l) to read as follows:

§ 32.2 What are the requirements for hunting on areas of the National Wildlife Refuge System?

* * * * *

(f) Each person must comply with the provisions of any refuge-specific regulations governing hunting on the wildlife refuge area. Regulations, special conditions, and maps of the hunting areas for a particular wildlife refuge are available at that area's headquarters. In addition, refuge-specific hunting regulations for migratory game bird, upland game, and big game hunting appear in §§ 32.20 through 32.72.

* * * * *

(l) The refuge-specific regulations (§ 32.20 through § 32.72) include the items discussed in § 32.3(b). Refuge permits and brochures should also include those items and any special conditions allowed by paragraph (f) of this section. If practicable, we will include in the refuge-specific regulations a description of the designated areas where we allow hunting and/or fishing.

6. In § 32.3 by revising the section heading and paragraph (e) to read as follows:

§ 32.3 What are the procedures for publication of refuge-specific hunting regulations?

* * * * *

(e) We initially publish refuge-specific hunting regulations in the daily issue of the **Federal Register**, and subsequently they appear in §§ 32.20 through 32.72, except that the refuge manager may adopt and issue relevant refuge-specific season dates and times after the State establishes its hunting seasons by publication through one or more of the methods identified in §§ 25.31 of this subchapter C.

* * * * *

7. In § 32.5 by revising the section heading and paragraph (e) to read as follows:

§ 32.5 What are the general provisions regarding fishing on wildlife refuges?

* * * * *

(e) Each person shall comply with the provisions of any refuge-specific regulation governing fishing on the wildlife refuge area. Regulations for a particular wildlife refuge are available at its headquarters office. In addition, refuge-specific fishing regulations appear in §§ 32.20 through 32.72.

8. In § 32.6 by revising the section heading and paragraph (e) to read as follows:

§ 32.6 What are the procedures for publication of refuge-specific fishing regulations?

* * * * *

(e) We initially publish refuge-specific fishing regulations in the daily issue of the **Federal Register**, and subsequently they appear in §§ 32.20 through 32.72.

* * * * *

9. In § 32.7 ''What refuge units are open to hunting and/or fishing?'' by:

a. Revising the introductory text as set forth below;

b. Alphabetically adding Bayou Teche National Wildlife Refuge and Cat Island National Wildlife Refuge in the State of Louisiana;

c. Alphabetically adding Lost Trail National Wildlife Refuge in the State of Montana;

d. Alphabetically adding Occoquan Bay National Wildlife Refuge, Rappahannock River Valley National Wildlife Refuge, and Wallops Island National Wildlife Refuge in the State of Virginia; and

e. Alphabetically adding Whittlesey Creek National Wildlife Refuge in the State of Wisconsin.

§ 32.7 What refuge units are open to hunting and/or fishing?

Refuge units open to hunting and/or fishing in accordance with the provisions of subpart A of this part and §§ 32.20–32.72, inclusive, are as follows:

* * * * *

10. In § 32.22 Arizona by revising paragraph B. of Buenos Aires National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Buenos Aires National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow hunting of cottontail rabbit, coyote, and skunks on designated areas of the refuge subject to the following condition: We require refuge permits for hunting of coyotes and skunks.

* * * * *

11. In § 32.24 California by:

a. Revising paragraph A.2. of Merced National Wildlife Refuge;

b. Revising paragraph A.2. of Modoc National Wildlife Refuge;

c. Revising paragraph A. of Salinas River National Wildlife Refuge;

d. Adding paragraph A.11. of San Luis National Wildlife Refuge; and

e. Revising paragraphs A. and B. of San Pablo Bay National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Merced National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. You may possess no more than 25 approved nontoxic shotshells per day while in the field.

* * * * *

Modoc National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. After the first weekend of the open season, we allow hunting only on Wednesdays, Saturdays, and Sundays. Hunters must check in and out of the refuge by using self-service permits.

* * * * *

Salinas River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, and moorhens on designated areas of the refuge subject to the following conditions:

1. You may possess no more than 25 approved nontoxic shotshells per day while in the field.

2. Access to the hunt area is by foot traffic only. We do not allow bicycles and other

conveyances. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

3. You must keep firearms unloaded until you are within the designated hunt area.

* * * * *

San Luis National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

11. We do not allow vehicle trailers of any type or size to be in the refuge hunt areas at any time or to be left unattended at any locations on the refuge.

* * * * *

San Pablo Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge and subject to the following conditions:

1. You may possess no more than 25 approved nontoxic shotshells while in the field.

2. Access is by boat only.

3. You must remove all portable blinds, decoys, and personal equipment following each day's hunt.

4. We allow floating blinds on the refuge, and they are available to any hunter on a first-come, first-served basis. Floating blinds require refuge manager approval or are subject to removal. Floating blinds may be left overnight, but hunters must remove them from the refuge at the end of the waterfowl season.

5. We prohibit digging into levees or slough channels.

6. We allow only dogs engaged in hunting activities on the refuge during waterfowl season. We allow no other domesticated animals or pets.

B. Upland Game Hunting. We allow hunting of pheasant on designated areas of the refuge in accordance with State regulation and subject to the following conditions:

1. You may possess no more than 25 approved nontoxic shotshells while in the field.

2. You may access the Tolay Creek Unit by foot and bicycle only.

3. We allow only dogs engaged in hunting activities on the refuge during pheasant season. We allow no other domesticated animals or pets.

* * * * *

12. In § 32.28 Florida by:

a. Revising paragraphs A., B., and C. of Lower Suwannee National Wildlife Refuge;

b. Revising paragraph A.3. and adding paragraph D.9. of Merritt Island National Wildlife Refuge;

c. Revising paragraphs A., B., and C., and adding paragraph D.11. of St. Marks National Wildlife Refuge; and

d. Revising paragraph C. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Lower Suwannee National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit.

2. Parents or adult guardians over the age of 21 are responsible for supervising hunters under the age of 16 and must remain within sight and normal voice contact of the juvenile hunter. Parents or adult guardians are responsible for ensuring that hunters under the age of 16 do not engage in conduct that would constitute a violation of the refuge regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit.

2. Parents or adult guardians over the age of 21 are responsible for supervising hunters under the age of 16 and must remain within sight and normal voice contact of the juvenile hunter. Parents or adult guardians are responsible for ensuring that hunters under the age of 16 do not engage in conduct that would constitute a violation of the refuge regulations.

C. Big Game Hunting. We allow hunting of big game on designated areas of the refuge subject to the following conditions:

1. We require a refuge permit.

2. Parents or adult guardians over the age of 21 are responsible for supervising hunters under the age of 16 and must remain within sight and normal voice contact of the juvenile hunter. Parents or adult guardians are responsible for ensuring that hunters under the age of 16 do not engage in conduct that would constitute a violation of the refuge regulations.

* * * * *

Merritt Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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3. You may hunt only in four designated areas of the refuge subject to delineation in the refuge hunting map and brochure, including the open waters of Mosquito Lagoon, Indian River, and designated impoundments outside the NASA security area. We do not allow hunting in the Banana River. You may not hunt in or enter any portion of the refuge south of Haulover Canal and east of the western boundary when the Kennedy Space Center activates its outer security perimeter.

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D. Sport Fishing. * * *

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9. You may not fish in or enter any portion of the refuge south of Haulover Canal and east of the western boundary when the Kennedy Space Center activates its outer security perimeter.

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St. Marks National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots in designated areas of the refuge subject to the following condition: We require refuge permits.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following condition: We require refuge permits.

C. Big Game Hunting. We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. * * *

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11. While on the refuge, anglers must keep all harvested fish in whole condition.

St. Vincent National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer, sambar deer, and feral hog on designated areas of the refuge subject to the following condition: We require refuge permits.

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13. In § 32.29 Georgia by revising paragraph B. of Okefenokee National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

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Okefenokee National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of rabbit, squirrel, bobwhite quail, and turkey in the Cowhouse Unit of the refuge. The season will be consistent with the adjacent Dixon Memorial Wildlife Management Area and subject to the following conditions:

1. We require sign in/sign out.

2. We allow no vehicles on the refuge portion of Cowhouse Island.

3. We allow no dogs except for pointing dogs during quail hunts.

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14. In § 32.32 Illinois by revising paragraph A.2. and C.3. of Crab Orchard National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

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Crab Orchard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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2. We only allow the use of portable or temporary blinds. Blinds must be a minimum of 200 yards (180 m) apart. You must remove portable or temporary blinds, any material brought onto the refuge for blind construction, boats, decoys, and all other personal property from the refuge at the end of each day's hunt.

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C. Big Game Hunting. * * *

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3. We prohibit deer hunting with a firearm in the controlled goose hunting areas or on all refuge lands north of Illinois State Route 13. We allow deer hunting in the controlled goose hunting areas and on all refuge lands north of Illinois State Route 13 only with

archery equipment and in accordance with State regulations.

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15. In § 32.35 Kansas by:

a. Revising paragraphs A., B., and C. of Flint Hills National Wildlife Refuge; and

b. Revising paragraph A. of Marais des Cygnes National Wildlife Refuge to read as follows:

§ 32.35 Kansas.

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Flint Hills National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, mourning doves, rails (Virginia and sora only), and common snipe on designated areas of the refuge in accordance with State regulations and subject to the following condition: You may use only approved nontoxic shot.

B. Upland Game Hunting. We allow hunting of pheasant, quail, prairie chicken, rabbit, squirrel, and crow on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We prohibit centerfire rifles and pistols.

2. You may use only approved nontoxic shot for all shotgun hunting.

C. Big Game Hunting. We allow hunting of turkey and deer on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow only shotguns, muzzleloading firearms, or bow and arrow.

2. You may use only approved nontoxic shot for turkey hunting.

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Marais des Cygnes National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, rails (sora), coots, common snipe, and woodcock on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We restrict motor vehicles, including all-terrain vehicles (ATVs), to public roads and parking lots.

2. We restrict outboard motor use to the westernmost 5.5-mile (8.8 km) section of the Marais des Cygnes River. You may use nonmotorized boats and electric trolling motors on all open portions of the refuge, including the eastern 4-mile (6.4 km) section of the Marais des Cygnes River. Property boundaries are at the center of the River. Where sections of the River border private property, only the half of the River adjacent to public property is open to public use.

3. You must remove decoys each day.

4. We prohibit discharge of firearms within 150 yards (135 m) of any residence or other occupied building.

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16. In § 32.37 Louisiana by:

a. Revising paragraph B. of Bayou Cocodrie National Wildlife Refuge;

b. Adding Bayou Teche National Wildlife Refuge;

c. Revising paragraphs A., B., and C. of Black Bayou Lake National Wildlife Refuge;

d. Adding Cat Island National Wildlife Refuge; and

e. Revising Catahoula National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

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Bayou Cocodrie National Wildlife Refuge

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B. Upland Game Hunting. We allow the hunting of rabbit, squirrel, raccoon, beaver, feral hog, and coyote on designated areas of the refuge subject to the following condition: We require a refuge permit.

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Bayou Teche National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following conditions:

1. We require the use of either refuge-issued Self-clearing daily permits or Lottery permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge brochure.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

1. We require refuge-issued Self-clearing daily permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge brochure.

C. *Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

1. We require the use of either refuge-issued Self-clearing daily permits or Lottery permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge brochure.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the refuge brochure.

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Black Bayou Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds in designated areas of the refuge subject to the following conditions:

1. We require refuge permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

B. Upland Game Hunting. We allow hunting of raccoon, opossum, squirrel, rabbit, quail, woodcock, coyote, and beaver on designated areas of the refuge subject to the following conditions:

1. We require refuge permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

C. Big Game Hunting. We allow archery hunting of white-tailed deer on the refuge subject to the following conditions:

1. We require refuge permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

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Cat Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, coots, woodcock, and common snipe on designated areas of the refuge in accordance with State regulations and subject to the following condition: We require refuge permits.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, beaver, nutria, and coyote on designated areas of the refuge in accordance with State regulations and subject to the following condition: We require refuge permits.

C. Big Game Hunting. We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations and subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing and crayfishing on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We require refuge permits.

2. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

Catahoula National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: We require refuge permits.

B. Upland Game Hunting. We allow hunting of raccoon, squirrel, rabbit, and feral hog on designated areas of the refuge subject to the following condition: We require refuge permits.

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following condition: We require refuge permits.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from 1 hour before sunrise until ½-hour after sunset.

2. We allow boat launching on all refuge waters as designated in the refuge brochure. We allow only nonmotorized boats or boats with motors of 10 horsepower or less, except on Bushley Creek, Big Bushley Creek, and Little Bushley Creek where there is no horsepower restriction.

3. Cowpen Bayou, the Highway 28 borrow pits, and Bushley Bayou Unit are open to fishing all year.

4. All other refuge waters on the Headquarters Unit, including Duck Lake, Muddy Bayou, Willow Lake, ditches, all

outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.

5. On the Headquarters Unit we allow only pole and line or rod and reel fishing. We prohibit snagging.

6. On the Bushley Bayou Unit we allow fishing and crayfishing subject to the following conditions:

i. Anglers must reset trotlines when receding water levels expose them, and trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

ii. Anglers must attend yo-yos during daylight hours only.

iii. We allow recreational gear (slat traps, wire nets, hoop nets) only by refuge permit and only in Bushley Creek, Big Bushley Creek, and Little Bushley Creek.

iv. We prohibit commercial fishing and crayfishing.

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17. In § 32.38 Maine by revising paragraphs C. and D. of Moosehorn National Wildlife Refuge to read as follows:

§ 32.38 Maine.

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Moosehorn National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. During firearms big game season hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) solid-colored hunter orange clothing or material.

2. Hunters harvesting a deer on the refuge must notify the refuge office within 24 hours and present the field-dressed deer for inspection by refuge personnel.

3. Hunters who wish to use portable tree stands or blinds must register at the refuge office prior to placement of the stand or blind.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow nonmotorized boats only on Bearce and Conic Lakes.

2. We allow fishing during daylight hours only.

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18. In § 32.41 Michigan by revising paragraphs C. and D. of Seney National Wildlife Refuge to read as follows:

§ 32.41 Michigan.

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Seney National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer and bear on designated areas of the refuge subject to the following condition: We do not allow the use of dogs while bear or deer hunting.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow the use of fishing weights or lures containing lead.

2. We allow ice fishing from January 1 through the end of February during daylight hours only.

3. We do not allow ice shanties, houses, or shelters on F Pool.

4. When ice fishing, we do not allow snowmobiles or all-terrain vehicles.

5. We allow fishing from May 15 through September 30 during daylight hours only.

6. We allow summer fishing on the Creighton Driggs and Manistique Rivers.

7. We allow only bank fishing in refuge pools.

8. We limit access to Driggs and Creighton Rivers to canoes without motors and to foot traffic along these watercourses.

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19. In § 32.42 Minnesota by:

a. Revising the introductory text of paragraph A. of Litchfield Wetland Management District;

b. Revising paragraph D. of Rydell National Wildlife Refuge; and

c. Adding paragraph B.4. of Tamarac National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

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Litchfield Wetland Management District

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds throughout the district except you may not hunt on the Phare Lake Waterfowl Production Area in Renville County. All hunting is subject to the following conditions:

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Rydell National Wildlife Refuge

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D. Sport Fishing. We only allow fishing from the fishing pier on Tamarac Lake beginning May 1 through July 15 during refuge open hours.

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Tamarac National Wildlife Refuge

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B. Upland Game Hunting. * * *

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4. We require hunters to wear at least one article of blaze orange clothing visible above the waist.

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20. In § 32.45 Montana by:

a. Revising paragraphs A., C., and D. of Lee Metcalf National Wildlife Refuge; and

b. Adding Lost Trail National Wildlife Refuge to read as follows:

§ 32.45 Montana.

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Lee Metcalf National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, geese, and coots from established blinds in designated areas of the refuge in accordance with State regulations and subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. Hunting Access: We number blinds and assign them to a specific access point designated in the refuge hunting leaflet. Hunters must park at the appropriate access point and numbered parking space and walk to a blind along mowed trails designated on the hunting leaflet. We open access points to hunters who intend to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at access points and parking areas.

2. Hunting Hours: We open the hunting area, defined by the refuge boundary fence, 2 hours before and require departure 2 hours after the waterfowl hunting hours, as defined by Montana Department of Fish, Wildlife and Parks.

3. Registration: Each hunter must record his or her name and Conservation License Number at the appropriate register before hunting, must set the appropriate blind selector before and after hunting, and must record hunting data at the appropriate register before departing the hunting area.

4. Blind selection is on a first-come, first-served basis with the exception of the opening weekend of waterfowl season. We will distribute blind permits for the opening weekend by a public drawing. We will announce the drawing time and place in local newspapers.

5. Hunters with a documented mobility disability may reserve an accessible blind in advance by contacting a refuge officer.

6. No more than four hunters may use a single blind at one time.

7. You may not possess more than 20 approved nontoxic shotshells per day.

8. You must conduct all hunting from within 10 feet (3 m) of a blind.

9. All hunters must have a visible means of retrieving waterfowl such as a float tube, chest-high waders, or a dog capable of retrieving.

10. Hunters must deploy a minimum of six decoys per blind in order to hunt from blinds 7, 8, 9, 10, 11, and 14.

11. We prohibit attempting to ''reserve'' a blind for use later in the day by depositing a vehicle or other equipment on the refuge. A hunter must be physically present in the hunting area in order to use a blind.

12. We prohibit falconry hunting.

13. We prohibit blocking access to refuge gates.

14. We prohibit boats, fishing gear, fires, alcoholic beverages, and littering. Litter includes food products, animal parts, and spent shells.

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C. Big Game Hunting. We allow archery hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations and subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. Hunting Access: Hunters must enter and exit through designated archery hunting

access points. Access points are open to hunters intending to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at access points and parking areas.

2. Hunting Hours: We open the hunting area, defined by the refuge boundary fence, 2 hours before and require departure 2 hours after the big game hunting hours as defined by Montana Department of Fish, Wildlife and Parks.

3. Registration: Each hunter must record his or her name and Conservation License Number at the appropriate register before hunting and must record hunting data at the appropriate register before departing the hunting area.

4. Tree Stands and Blinds: We allow only portable tree stands and blinds. We prohibit leaving tree stands or ground blinds on the refuge overnight. We prohibit the use of screw-in tree steps or climbing spikes. We prohibit the use of nails, wire, screws, or bolts to attach a stand to a tree, or hunting from a tree into which a hunter has driven a metal object for support.

5. We prohibit pre-season entry or scouting.

6. Hunters may not enter or retrieve deer from closed areas of the refuge without the consent of a refuge officer.

7. We prohibit boats, fishing gear, fires, firearms, alcoholic beverages, and littering.

8. Hunters with a documented mobility disability may access designated locations in the hunting area to hunt from ground blinds. To access these areas, hunters must contact the refuge manager in advance to obtain a special use permit.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations in effect on the Bitterroot River from Tucker Crossing to Florence Bridge subject to specific regulations detailed in refuge publications, signs, and brochures.

Lost Trail National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. We allow hunting of turkey and mountain grouse in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We do not allow hunting in areas around the refuge headquarters, maintenance buildings, and quarters posted as ''Closed to Hunting.''

2. We prohibit guiding and outfitting.

3. We allow use of riding or pack stock on access routes designated through the refuge to access off-refuge lands as designated in the public use leaflet.

4. You may not use dogs for hunting of any species.

5. You may possess only approved nontoxic shot while on the refuge.

6. We prohibit overnight camping.

7. We prohibit retrieval of game through areas closed to hunting without prior consent by the refuge manager.

8. We allow only portable or temporary blinds and tree stands.

9. We allow parking in designated areas only.

C. Big Game Hunting. We allow hunting of elk, white-tailed deer, and mule deer within designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We do not allow hunting in areas around the refuge headquarters, maintenance buildings, and quarters posted as ''Closed to Hunting.''

2. We prohibit guiding and outfitting.

3. We allow use of riding or pack stock on access routes designated through the refuge to access off-refuge lands as designated in the public use leaflet.

4. You may not use dogs for hunting of any species.

5. You may possess only approved nontoxic shot while on the refuge.

6. We prohibit overnight camping.

7. We prohibit open fires.

8. We prohibit retrieval of game through areas closed to hunting without prior consent by the refuge manager.

9. We allow only portable or temporary blinds and tree stands.

10. We allow parking in designated areas only.

11. The first week of the archery and the first week of general elk and deer hunting season are open to youth-only (ages 12 and 13 only) hunting.

D. Sport Fishing. [Reserved]

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21. In § 32.47 Nevada by:

a. Revising the introductory text of paragraph A., removing paragraph A.2., and redesignating paragraph A.3. as paragraph A.2, and revising paragraphs D.2., D.3., D.4., D.5., D.6., and D.7. of Ruby Lake National Wildlife Refuge; and

b. Revising Stillwater National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

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Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of dark geese, ducks, coots, moorhens, and common snipe on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

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D. Sport Fishing. * * *

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2. We allow fishing by wading and from personal flotation devices (float tubes) and bank fishing in designated areas.

3. You may use only artificial lures in the Collection Ditch and adjoining spring ponds.

4. We do not allow boats on refuge waters from January 1 through June 14.

5. During the boating season, we allow boats only on the South Marsh. Beginning June 15 through July 31, we allow only motorless boats or boats with battery-powered electric motors. Anglers must remove all gasoline-powered motors. Beginning August 1 through December 31, we allow only motorless boats and boats propelled with motors with a total of 10 horsepower or less.

6. We allow launching of boats only from designated landings.

7. We prohibit the possession of live or dead bait fish, any amphibians (including frogs), and crayfish on the refuge.

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Stillwater National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We close the following areas to all hunting: The area south of Division Road, south of Stillwater Farms, and east of West County Road; and other areas as posted.

2. You may possess only approved nontoxic shotshells while in the field.

3. On refuge units open to boating, we allow boating during the waterfowl hunting season only, except for Swan Check Lake that is open to nonmotorized boating all year.

4. We do not allow boats on Swan Lake, the northeast portion of North Nutgrass Lake, and the north portion of Pintail Bay. We allow use of nonmotorized carts, sleds, floating blinds, and other floating devices on these units only for transporting hunting equipment and concealing hunters but not for transporting hunters.

5. We allow motorized boats (except air-thrust boats) only on Lead Lake, Tule Lake, Goose Lake, South Nutgrass Lake, and the portions of North Nutgrass Lake and Pintail Bay open to boats.

6. We allow air-thrust boats only on Goose Lake, South Nutgrass Lake, and the portions of North Nutgrass Lake and Pintail Bay open to boats.

7. Air-thrust boat owners must obtain a Special Use Permit from the refuge manager prior to operating or allowing others to operate their air-thrust boat on the refuge.

8. We allow nonmotorized boats on all refuge units open to boating.

B. Upland Game Hunting. We allow hunting of authorized upland game species on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We close the following areas to all hunting: the area south of Division Road, south of Stillwater Farms, and east of West County Road; and other areas as posted.

2. You may possess only approved nontoxic shotshells while on the refuge.

3. We allow shotgun hunting only.

C. Big Game Hunting. We allow hunting of mule deer on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We close the following areas to all hunting: the area south of Division Road, south of Stillwater Farms, and east of West County Road; and other areas as posted.

2. We allow shotgun, muzzleloader, and archery hunting only.

D. Sport Fishing. [Reserved]

22. In § 32.50 New Mexico by:

a. Revising paragraph C. of Bitter Lake National Wildlife Refuge; and

b. Revising paragraphs A. and C. of Bosque del Apache National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

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Bitter Lake National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of mule deer, white-tailed deer, and feral hog on designated areas of the refuge subject to the following condition: We allow hunting during seasons, dates, times, and areas as posted by signs and/or indicated on refuge leaflets, special regulations, and maps available at the refuge office.

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Bosque del Apache National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of mourning and white-winged doves and snow geese on designated areas of the refuge subject to the following conditions:

1. You may hunt snow geese on Monday, Wednesday, and Friday during the second full week of January.
2. We require a refuge permit and payment of a fee to hunt snow geese.
3. You may possess only nontoxic shot while in the field.
4. We allow use of hunting dogs for bird retrieval.
5. We do not allow hunters and dogs to retrieve dead or wounded birds in closed areas.
6. Each hunter must successfully complete a New Mexico crane and snow goose hunter identification training course for hunting on State and Federal refuges in the Middle Rio Grande Valley.
7. Snow goose hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Shooting time will be 6:45 a.m. to 10:00 a.m. local time.

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C. Big Game Hunting. We allow hunting of mule deer and oryx on designated areas of the refuge subject to the following conditions:

1. Refer to the refuge map for designated areas.
2. Hunts are subject to State regulations and seasons.
3. Oryx hunters should contact the refuge manager for special hunt dates.

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23. In § 32.52 North Carolina by:

a. Revising Alligator River National Wildlife Refuge;

b. Revising paragraph D. of Pea Island National Wildlife Refuge; and

c. Adding paragraph A.5. and revising paragraphs B.3. and C.3. of Pocosin Lakes National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

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Alligator River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of swans, geese, ducks, coots, common snipe, mourning doves, and woodcock on designated areas of the refuge subject to the following conditions;

1. We require possession of a refuge permit.
2. You may possess only approved nontoxic shot in the field.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, raccoon, and opossum on designated areas of the refuge subject to the following conditions:

1. We require possession of a refuge permit.
2. You may possess only approved nontoxic shot while on the refuge when hunting with a shotgun, except you may possess slugs and buckshot containing lead to hunt deer.
3. We require possession of a refuge Special Use Permit to hunt raccoon and opossum at night.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require possession of a refuge hunting permit.

D. Sport Fishing. We allow fishing and frogging on designated areas of the refuge subject to the following conditions:

1. You may fish year-round from only ½ hour before sunrise to ½ hour after sunset. We require possession of a refuge special use permit to fish at night.
2. You may use only a pole and line, rod and reel, hand line, dip net, or cast net for fishing.
3. You may take frogs only at night from April 1 through August 31. We require possession of a refuge Special Use Permit to take frogs.

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Pea Island National Wildlife Refuge

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D. Sport Fishing. We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

1. We prohibit fishing and crabbing in North Pond, South Pond, Newfield, North Carolina Department of Transportation Mitigation and other impoundments west of North Carolina Highway 12.
2. You may fish year around only from ½ hour before sunrise to ½ hour after sunset. You may surf fish at night from September 15 through May 31 east of North Carolina Highway 12. We require possession of a refuge permit to surf fish at night.
3. You may use only pole and line, rod and reel, hand line, dip net, or cast net for fishing and crabbing.

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Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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5. You must unload, encase, or dismantle firearms transported via motorized vehicle or in a boat under power.

B. Upland Game Hunting. * * *

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3. You must unload, encase, or dismantle firearms transported via motorized vehicle or in a boat under power.

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C. Big Game Hunting. * * *

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3. You must unload, encase, or dismantle firearms transported via motorized vehicle or in a boat under power.

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24. In § 32.53 North Dakota by:

a. Revising paragraphs B.3. and B.4. and by adding paragraphs B.5. and B.6. of Des Lacs National Wildlife Refuge; and

b. Revising paragraphs B., C., and D. of Long Lake National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

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Des Lacs National Wildlife Refuge

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B. Upland Game Hunting. * * *

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3. Upland game bird and rabbit season opens annually on the day following the close of the regular firearm deer season through the end of the State season.
4. The upland game bird and rabbit falconry season opens annually on the day following the close of the regular firearm deer season through March 31.
5. Fox hunting opens annually on the day following the close of the regular firearm deer season through March 31.
6. Turkey hunting is subject to all State regulations, license requirements, units, and dates.

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Long Lake National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of ring-necked pheasant, sharp-tailed grouse, and gray partridge on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. The upland game bird season opens annually on the day following the close of the firearm deer season and runs through the close of the State season.

C. Big Game Hunting. We allow hunting of deer only on designated areas of the refuge subject to the following conditions:

1. Hunters must enter the refuge on foot only.
2. We allow archery hunting. We restrict open archery areas to those areas of the refuge open to firearms during the firearm season.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We restrict bank fishing to public use areas on Unit 1, Unit 2, and Long Lake Creek.
2. We restrict boat fishing to Long Lake Creek.
3. We restrict boats to 25 horsepower maximum.
4. We restrict boats to the period from May 1 through September 30.
5. We restrict ice fishing to Unit 1 and Long Lake Creek.

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25. In § 32.55 Oklahoma by revising paragraph C. to Washita National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

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Washita National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following conditions:

1. We allow hunting during the special refuge season in accordance with the refuge hunt information sheet.
2. You must obtain a refuge hunt permit and pay a fee (fee waived for Youth Hunt participants).
3. You must check in and out of hunt areas daily at the refuge office or check station.
4. You must take bagged deer and/or hog to the refuge check station.
5. We will determine bag limits on deer annually.
6. We prohibit the use of bait.
7. A nonhunting mentor of 21 years of age or older must accompany, and be in the immediate presence of, participants in the Youth Hunt, who must be between the ages of 12 and 18. Hunters and mentors must BOTH wear hunter orange clothing meeting or exceeding the minimum State requirements.
8. We prohibit handguns.

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26. In § 32.56 Oregon by:

a. Revising paragraph C. of Malheur National Wildlife Refuge; and

b. Revising McNary National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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Malheur National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer and pronghorn during authorized State seasons only on the refuge area west of Highway 205 and south of Foster Flat Road.

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McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of doves on designated areas of the refuge in accordance with State regulations.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations and subject to the following condition: We allow shotgun and archery hunting only.

D. Sport Fishing. [Reserved]

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27. In § 32.57 Pennsylvania by revising the introductory text of paragraph C. and adding paragraphs C.4. and C.5. to Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania

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Erie National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of deer, bear, and turkey on designated areas of the refuge subject to the following conditions:

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4. We prohibit organized deer drives by three or more persons in hunt area B of the refuge. We define a ''drive'' as three or more individuals involved in the act of chasing, pursuing, disturbing, or otherwise directing game as to make the animals more susceptible to harvest.
5. We require a refuge Special Use Permit for hunting of bear.

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28. In § 32.60 South Carolina by:

a. Revising paragraph C. of ACE Basin National Wildlife Refuge; and

b. Revising Cape Romain National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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ACE Basin National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge subject to the following condition: We require a refuge permit.

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Cape Romain National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of marsh hens/rails only on designated areas of the refuge subject to the following conditions:

1. We require a refuge hunt permit.
2. You may possess only approved nontoxic shot.

B. Upland Game Hunting. We allow hunting of raccoon on designated areas of the refuge subject to the following condition: We require a refuge hunt permit.

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge hunt permit.

D. Sport Fishing. We allow fishing, crabbing, and shell fishing on designated areas of the refuge subject to State regulations and the following condition: Marsh Island, White Banks, and Bird Island are open from September 15 through February 15. We close them the rest of the year to protect nesting birds.

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29. In § 32.62 Tennessee by revising paragraphs B.1. and C.1. of Tennessee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

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Tennessee National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We require annual refuge hunting permits.

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C. Big Game Hunting. * * *

1. We require annual refuge hunting permits.

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30. In § 32.63 Texas by:

a. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.3., and removing paragraphs A.5. and A.6. of Anahuac National Wildlife Refuge;

b. Removing paragraph A.3 from Brazoria National Wildlife Refuge;

c. Revising the introductory text of paragraph A., revising paragraphs A.1., A.2., A.3., removing paragraphs A.4., A.5., and A.7., and redesignating paragraph A.6. as paragraph A.4. of McFaddin National Wildlife Refuge;

d. Removing paragraph A.3. from San Bernard National Wildlife Refuge;

e. Revising the introductory text of paragraph A., revising paragraph A.1., A.2., removing paragraphs A.3., A.4., and A.6., and redesignating paragraph A.5 as paragraph A.3. of Texas Point National Wildlife Refuge; and

f. Revising paragraph A. of Trinity River National Wildlife Refuge to read as follows:

§ 32.63 Texas.

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Anahuac National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require a permit to hunt on all hunting units of the refuge, and hunters must have this permit in their possession while hunting. The annually issued waterfowl hunting permit contains all refuge-specific waterfowl hunting regulations. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the waterfowl hunting permit.
2. We require payment of a fee to hunt on portions of the refuge.
3. You may hunt only on designated days of the week and on designated areas during the general waterfowl hunting season. You may hunt on designated areas during all days of the September teal season. We annually issue notice of hunting days and maps depicting areas open to hunting in the refuge hunting permit.

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McFaddin National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require a permit to hunt on all hunting units of the refuge, and hunters must have this permit in their possession while hunting. The annually issued waterfowl hunting permit contains all refuge-specific

waterfowl hunting regulations. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the waterfowl hunting permit.

2. We require payment of a fee to hunt on portions of the refuge.

3. You may hunt only on designated days of the week and on designated areas during the general waterfowl hunting season. You may hunt on designated areas during all days of the September teal season. We annually issue notice of hunting days and maps depicting areas open to hunting in the refuge permit.

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Texas Point National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require a permit to hunt on all hunting units of the refuge, and the hunter must have this permit in his or her possession while hunting. The annually issued waterfowl hunting permit contains all refuge-specific waterfowl hunting regulations. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the waterfowl hunting permit.

2. You may hunt only on designated days of the week and on designated areas during the general waterfowl hunting season. You may hunt on designated areas during all days of the September teal season. We annually issue notice of hunting days and maps depicting areas open to hunting in the refuge hunting permit.

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Trinity River National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks on designated areas of the refuge subject to the following conditions:

1. We allow hunting on Champion Lake by drawing only.

2. We require an application fee for participants to enter the drawing. We will issue a refuge permit to those drawn, and the hunter must carry the permit at all times when hunting.

3. We allow hunting on Saturday and Sunday during the State duck and teal season. Hunters may not enter the refuge before 4 a.m. and must be off the hunt area by 12 p.m.(noon). We may require hunters to check in and out.

4. We allow only temporary blinds. Hunters must remove blinds and decoys daily.

5. We limit motors to 10 horsepower or less.

6. We allow retrievers, but they must be under the control of the owner.

7. Youth hunters, 17 years of age and under, must be under direct supervision of an adult, 18 years of age or older.

8. You must unload and encase all shotguns while in transit through the refuge.

9. You may possess only approved nontoxic shot.

10. The minimum distance we allow between hunt parties is 150 yards (135 m).

11. We prohibit the use, possession, or being under the influence of alcoholic beverages while hunting in or accessing or returning from the field.

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In § 32.64 Utah by revising paragraph A. of Fish Springs National Wildlife Refuge to read as follows:

§ 32.64 Utah.

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Fish Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks and coots on designated areas of the refuge in accordance with State regulations and the following conditions:

1. All hunters must register individually at the visitor information station before entering the open hunting area and prior to exiting the refuge.

2. We do not allow hunters or dogs to enter closed areas to retrieve birds.

3. You may only possess firearms legally used to hunt waterfowl unless you case or break them down.

4. You may construct nonpermanent blinds. You must remove all blinds constructed out of materials other than vegetation at the end of a hunt day.

5. We allow use of small boats (15' or less). We do not allow gasoline motors and air boats.

6. You may enter the refuge 2 hours prior to sunrise and must exit the refuge by 1½ hours after sunset. You may not leave decoys, boats, vehicles, and other personal property on the refuge overnight.

7. We have a Special Blind Area for use by the disabled. We prohibit trespass for any reason by any individual not registered to utilize that area.

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31. In § 32.66 Virginia by:

a. Revising paragraph C. of James River National Wildlife Refuge;

b. Adding Occoquan National Wildlife Refuge;

c. Revising paragraph C. of Presquile National Wildlife Refuge;

d. Adding Rappahannock River Valley National Wildlife Refuge; and

e. Adding Wallops Island National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

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James River National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

1. Hunters must carry a refuge permit at all times on the refuge.

2. You may not discharge a firearm or archery equipment across or within any refuge road, as designated on the refuge hunt maps.

3. We close the refuge to all hunting from December 1 until the end of the State hunting season to protect roosting and nesting bald eagles.

4. Hunters in the field shall retrieve and maintain in their custody all crippled and killed game, if possible.

5. You may not transport a loaded firearm in any vehicle on the refuge.

6. Deer hunters, when hunting with guns, must wear a minimum of 400 square inches (2,600 cm^2) of solid blaze orange visible from 360 degrees on the refuge.

7. We allow only portable tree stands on the refuge, and hunters must remove them at the end of the day.

8. We prohibit hunting with dogs.

9. We prohibit camping on refuge lands.

10. We prohibit the use of open fires.

11. Report all accidents and injuries to the refuge office as soon as possible but no later than 24 hours after the accident.

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Occoquan Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We require a refuge permit.

2. Hunters must have in their possession at all times a copy of the refuge permit containing the refuge regulations, their hunting license, and, if issued, their State-issued deer management assistance program (DMAP) tag.

3. We will select specific hunting dates within the State seasons. Consult the refuge office for information on specific hunt dates.

4. You may not transport a loaded firearm in any vehicle on any refuge road or right of way.

5. Hunters must wear in a conspicuous manner on chest and back a minimum of 400 square inches (2,600 cm^2) of solid hunter orange clothing or material and a hunter orange cap or hat.

D. Sport Fishing. [Reserved]

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Presquile National Wildlife Refuge

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C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

1. Hunters must carry a refuge permit at all times on the refuge.

2. You may not discharge a firearm or archery equipment across or within any refuge road, as designated on the refuge hunt maps.

3. We close the refuge to all hunting from December 1 until the end of the State hunting season to protect roosting and nesting bald eagles.

4. Hunters in the field shall retrieve and maintain in their custody all crippled and killed game, if possible.

5. You may not transport a loaded firearm in any vehicle on the refuge.

6. Deer hunters, when hunting with guns, must wear a minimum of 400 square inches (2,600 cm^2) of solid blaze orange visible from 360 degrees on the refuge.

7. We allow only portable tree stands on the refuge, and hunters must remove them at the end of the day.

8. We prohibit hunting with dogs.
9. We prohibit camping on refuge lands.
10. We prohibit the use of open fires.
11. Report all accidents and injuries to the refuge office as soon as possible but no later than 24 hours after the accident.

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Rappahannock River Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer in designated areas of the refuge subject to the following conditions:

1. Hunters must carry a refuge permit at all times on the refuge.
2. You may not discharge a firearm or archery equipment across or within any refuge road, as designated on the refuge hunt maps.
3. We close the refuge to all hunting from December 1 until the end of the State hunting season to protect roosting and nesting bald eagles.
4. Hunters in the field shall retrieve and maintain in their custody all crippled and killed game, if possible.
5. You may not transport a loaded firearm in any vehicle on the refuge.
6. Deer hunters, when hunting with guns, must wear a minimum of 400 square inches (2,600 cm^2) of solid blaze orange visible from 360 degrees on the refuge.
7. We allow only portable tree stands on the refuge, and hunters must remove them at the end of each hunt day.
8. We prohibit hunting with dogs.
9. We prohibit camping on refuge lands.
10. We prohibit the use of open fires.
11. Report all accidents and injuries to the refuge office as soon as possible but no later than 24 hours after the accident.

D. Sport Fishing. [Reserved]

Wallops Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations and the following conditions:

1. We require a refuge permit
2. We do not allow dogs.
3. We allow only portable tree stands on the refuge, and hunters must remove them at the end of each hunt day.
4. Hunters must comply with refuge check-in and check-out procedures as specified on the hunt permit.
5. During firearms big game season, including scouting days, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 cm^2) of solid-colored hunter orange clothing or material.
6. We prohibit camping.
7. We prohibit the use of open fires.

D. Sport Fishing. [Reserved]

32. In § 32.67 Washington by:

a. Adding paragraphs A.4., A.5., A.6., A.7., B.4., and B.5., revising the introductory text of paragraph C., and adding paragraphs C.3. and C.4. of Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge; and

b. Revising McNary National Wildlife Refuge to read as follows:

§ 32.67 Washington.

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Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

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4. We do not allow hunters or dogs to enter closed areas to retrieve game.
5. We do not allow permanent or pit blinds or cutting vegetation on the refuge. You must remove all blind materials, decoys, and other equipment (including spent casings) following each day's hunt.
6. We allow nonmotorized boats and boats with electric motors on the WB–10 Ponds (Wahluke Lake), with walk-in access only.
7. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along public rights of way.

B. Upland Game Hunting. * * *

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4. We do not allow hunters or dogs to enter closed areas to retrieve game.
5. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along public rights of way.

C. Big Game Hunting. We allow hunting of deer and elk on the Wahluke Unit of the Monument/Refuge in accordance with State regulations and subject to the following conditions:

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3. We do not allow hunters to enter closed areas to retrieve game.
4. You must unload and encase or dismantle firearms before transporting them in a vehicle or boat within the boundaries of the refuge or along public rights of way.

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McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of geese, ducks, coots, doves, and common snipe on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. You may not leave decoys and other personal property on the refuge overnight.
3. On the McNary Division, we allow hunting by refuge permit only. This area is open to hunting from 5:00 a.m. to 1½ hours after sunset. You may possess no more than 25 shells while in the field.
4. On the Wallula and Two Rivers Units, we allow waterfowl hunting 7 days a week during State waterfowl seasons. We allow dove hunting in accordance with State regulations.
5. On the Wallula Unit, we close the Walla Walla Delta to hunting from February 1 to September 30.
6. On the Peninsula Unit we allow dove hunting in accordance with State regulations. We allow waterfowl hunting subject to the following conditions:

i. We allow duck hunting Wednesdays through Sundays only.

ii. We allow goose hunting Wednesdays, Saturdays, and Sundays only.

iii. On Wednesdays we allow waterfowl hunting only from the goose pits.

iv. Hunting on the east side of the peninsula and in the goose pits is by assigned blinds on a first-come, first-served basis.

B. Upland Game Hunting. We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. Except on the Peninsula Unit, you may possess only approved nontoxic shot while on the refuge.
2. On the McNary Division we allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day only. We do not allow hunting until noon of each hunt day. We allow hunting of pheasant and quail only. You may possess no more than 25 shells while in the field.
3. On the Wallula and Two River Units, we allow upland game hunting in accordance with State regulations.
4. On the Peninsula Unit, we do not allow hunting until noon on legal goose hunting days.

C. Big Game Hunting. We allow hunting of deer only on the Peninsula, Two Rivers, and Wallula Units in accordance with State regulations and subject to the following condition: We allow shotgun and archery hunting only.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. On the McNary Division the refuge is open to fishing from sunrise to sunset only. We do not allow use of boats and other flotation devices.
2. We allow fishing only with hook and line.

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33. In § 32.69 Wisconsin by adding Whittlesey Creek National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

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Whittlesey Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. We allow only the use of portable or temporary blinds.
2. You must remove portable or temporary blinds and any material brought on to the refuge for blind construction at the end of each day's hunt.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

34. In § 32.70 Wyoming by revising Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

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Seedskadee National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, coots, dark geese, common snipe, rails, and mourning doves on designated areas of the refuge in accordance with State regulations and the following conditions:

1. Waterfowl hunters may enter the refuge 1 hour before legal shooting hours to set up decoys and blinds.
2. You may use only portable blinds or blinds constructed from dead or downed wood. We prohibit digging pit blinds.
3. You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.
4. You may possess only approved nontoxic shot.

B. Upland Game Hunting. We allow hunting of sage grouse, cottontail rabbit, red fox, jackrabbit, raccoon, and skunk on designated areas of the refuge in accordance with State regulations and the following conditions:

1. You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.
2. You may possess only approved nontoxic shot.
3. We prohibit the shooting of prairie dogs, coyotes, and other species not listed.

C. Big Game Hunting. We allow hunting of pronghorn, mule deer, and moose on designated areas of the refuge in accordance with State regulations and the following condition: You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.

D. Sport Fishing. You may sportfish on designated areas of the refuge in accordance with State regulations and general refuge regulations.

35. In § 32.72 Guam by adding paragraphs D.5., D.6., and D.7., of Guam National Wildlife Refuge to read as follows:

§ 32.72 Guam.

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Guam National Wildlife Refuge

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D. Sport Fishing. * * *

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5. We prohibit use of Self Contained Underwater Breathing Apparatus (SCUBA) to take fish or invertebrates.
6. We prohibit anchoring of boats on the refuge.
7. We prohibit sailboards or motorized personal watercraft on the refuge.

Dated: June 4, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–14900 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020531136–2136–01; I.D. 041802C]

RIN 0648–AP76

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Atlantic Deep-Sea Red Crab Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This proposed rule would establish: A limited access program for the directed fishery; a target total allowable catch (TAC) level; a Days-at-Sea (DAS) allocation effort control program; permitting and reporting requirements, including an Interactive Voice Response (IVR) system for limited access vessels; trip limits and incidental harvest allowances; trap/pot limits; processing at sea restrictions; and a framework adjustment process among other measures. The purpose of this proposed action is to implement permanent management measures for the Atlantic deep-sea red crab (red crab)(*Chaceon quinquedens*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the red crab resource.

DATES: Comments must be received on or before 5 p.m., local time, on July 23, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Red Crab FMP.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the Council in response to concerns that overfishing was occurring due to increased landings and increasing participation and interest in the red crab fishery. Prior to 1970, there was no known fishery for Atlantic deep-sea red crab, although there was some incidental catch of red crab in other fisheries. In the early 1970s, small markets opened up for the species, spurring one or two vessels to attempt to fish directly for red crab. Markets for this species fluctuated over the next decade or so, as did attempts at new techniques to improve the harvest, preservation, and processing of the crabs. Throughout the 1980s, there was a fairly consistent fishery for red crab, with known landings annually averaging over 5.5 million lb (2,495 mt). In the early 1990s, landings fluctuated, but they have been steadily increasing since about 1995. Industry reports suggest that landings exceeded 7 million lb (3,175.2 mt) in 2000.

In late 1999, faced with increasing landings and increased interest in the fishery from potential new entrants, a group of fishermen requested that the Council develop a Red Crab FMP. In November 1999, the Council voted to begin development of the FMP.

In January 2000, at the recommendation of its Red Crab Committee, the Council voted to establish a control date for the red crab fishery, in case the Council chose to differentiate historic participants in the red crab fishery from new, speculative entrants. The Council also intended that a control date serve as a disincentive to any new vessels considering moving to New England to begin fishing for red crab.

On February 2, 2000, the Council published in the **Federal Register** a Notice of Intent to Prepare an

Environmental Impact Statement (EIS), officially beginning the Council's FMP scoping process (65 FR 4941). The Council hosted two scoping meetings, well attended by the red crab industry and other interested parties, at which there was general support for the development of an FMP, including consideration of management measures establishing a limited entry program, a minimum allowable crab size, a male-crab only fishery, a processing-at-sea prohibition, and reasonable trap/pot limits.

The Council established March 1, 2000, as the control date for the red crab fishery through publication in the **Federal Register** (65 FR 11029) on that date.

In November 2000, the Council was notified that at least two new vessels had announced their intentions to relocate to New England from other parts of the country to fish for red crab. The existing members of the fishery and the Council became concerned that the additional fishing power and effort represented by these new entrants could jeopardize the sustainability of the resource before the FMP could be developed and implemented.

In January 2001, faced with an increase in the number of vessels targeting the red crab resource, the Council requested that the Secretary of Commerce (Secretary) take emergency action to prevent overfishing in the red crab fishery while the Council continued to develop an FMP. NMFS, on behalf of the Secretary, determined that the existing level of exploitation and the likelihood of substantial increases in total exploitation in the area north of Cape Hatteras, NC, presented serious conservation problems necessitating emergency action to prevent overfishing. On May 8, 2001, NMFS published emergency regulations designed to prevent overfishing, effective May 18 through November 14, 2001 (66 FR 23182).

On July 23, 2001, to address comments it received from the industry, NMFS amended the emergency regulations by publishing a revision of the conversion factor used to determine the whole weight equivalent of partially processed or butchered crabs (66 FR 38165). The emergency regulations were extended for a second 180–day period, from November 15, 2001 through May 14, 2002 (66 FR 56781).

The threat of overfishing the red crab resource is the primary concern requiring management attention, particularly if additional vessels enter the fishery. Maximum sustainable yield (MSY) is estimated at 6.24 million lb (2,830.4 mt) for the male-only red crab fishery. Commercial landings of red crab have exceeded this level several times since the development of the fishery. Overfishing is of particular concern due to the nature of the species; red crabs are typically slow-growing and major recruitment events are believed to rarely occur.

Historically, a small number of vessels have achieved landings in excess of MSY. The five vessels participating in the directed red crab fishery prior to 2000, averaged 96 ft (29.3 m) in length, fished an average of 544 pots, and had the capacity to land an average of approximately 78,000 lb (35,380 kg) of red crab per trip. This suggests that these five vessels alone can exceed the original estimate of MSY.

Status of the Stocks

The MSY estimate was calculated based on a 1974 NMFS survey of the red crab resource and the resulting stock assessment (Serchuk, 1977). Several assumptions underlie the calculation of MSY: (1) That the fishery continues to retain and land only male crabs larger than 4 inches (10.2 cm); that the natural mortality rate for red crabs is 0.15; and (3) that the management unit extends to Cape Hatteras, NC. The status of the red crab fishery will be updated if and when new scientific data are obtained.

Overfishing Definition

The FMP proposes an overfishing definition that considers both the rate of exploitation and the condition of the stock. Overfishing would be defined as any rate of exploitation that caused the ratio of current exploitation to an idealized exploitation under MSY conditions to exceed 1.0. The FMP includes several methods that could be used to define idealized exploitation, depending on the type of data available.

The red crab stock would be considered to be in an overfished condition if any one of the following three conditions is met:

Condition 1 -- The current biomass of red crab in the FMP management unit is below ½ Bmsy.

Condition 2 -- The annual fleet average catch per unit effort (CPUE), measured as marketable crabs landed per trap haul, continues to decline below a baseline level for 3 or more consecutive years.

Condition 3 -- The annual fleet average CPUE, measured as marketable crabs landed per trap haul, falls below a minimum threshold level in any single year.

Optimum Yield (OY)

OY would be specified at 95 percent of MSY, or 5.928 million lb (2,689 mt). This approach is intended to incorporate future changes to MSY into the estimate of OY, to account for any uncertainty about the status or vulnerability of the resource or the current levels of fishing effort.

Management Unit

The boundaries of the management unit would be limited to the waters north of 35 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. The proposed boundaries reflect the traditional extent of the red crab fishery in the Northeast United States, are consistent with prior action taken by the Secretary (the Emergency Regulations), incorporate a well-known bio-geographic boundary (Cape Hatteras, NC), and are consistent with other New England Council FMPs.

Fishing Year

The fishing year would begin on March 1 of each year, which reflects traditional fishing practices prior to times of relatively higher effort and landings. The timing of the fishing year is anticipated to reduce the margin of error associated with projections of landings made about future fishing years. It also reflects the time after which the cumulative landings for the first 6 months of the fishery are expected to be the highest, which would reduce the margin of error associated with projected landings during the second half of the year.

Permitting Requirements

The owner of any commercial vessel who wishes to fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea red crab in or from the red crab management unit would be required to obtain a Federal red crab permit. Two types of Federal permits would be required: (1) A limited access red crab permit would be required for vessels to participate in the directed fishery; this permit would be issued only to vessels that meet specified eligibility criteria; and (2) a red crab incidental catch permit would be required in order for any vessel to land an incidental catch of red crabs up to 500 lb (226.8 kg) per fishing trip. All vessels would be eligible for this permit. Vessels issued the limited access permit would also be allowed to fish under the red crab incidental catch rules if they had not declared their intent to use a red crab DAS.

Owners of vessels issued a limited access red crab permit would, upon permit renewal beginning with the

second fishing year, be able to declare out of the red crab fishery for the following fishing year by submitting a binding declaration to the Regional Administrator at least 180 days prior to the following fishing year. NMFS would presume that a vessel owner intends to fish the following fishing year unless such a declaration is received. The requirement for owners of vessels to declare if their intent is not to fish prior to each fishing year is necessary in order to facilitate any needed adjustment of the annual allocation of DAS per vessel, which is based on the expected number of vessels that would actually participate in the fishery. A vessel owner who declared out of the fishery for the following year would have to wait until the next year's permit renewal application process to declare back into the fishery for the next full fishing year.

Vessel owners would have 180 days from the effective date of the regulations to apply for their initial limited access permits. Owners who failed to renew their permit for any fishing year, except if they declared their intent not to participate, would be ineligible to renew their permits in subsequent years.

As part of the application for a limited access red crab permit, vessel owners would have to declare the maximum number of traps/pots they use per string and the maximum number of strings they employ, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots.

Dealers who purchase red crab product from any vessel would be required to obtain a Federal dealer permit. Red crabs harvested from the red crab management unit could only be sold by a federally permitted vessel to federally permitted dealers.

Operators of vessels issued a Federal red crab vessel permit would be required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery would not need to reapply, since there is no qualification or test for this permit.

Qualification Criteria for Limited Access

Subject to the restrictions defined in this proposed rule, a vessel could qualify for a limited access red crab permit if the vessel demonstrated that its average landings per year of red crabs during the 3–year period prior to the March 1, 2000, control date were >250,000 lb (113,398 kg).

Reporting Requirements

This proposed rule would extend the existing Northeast Region Vessel Trip Report (VTR) system to vessels with red crab permits. This would require the owner or operator of vessels issued either a limited access or incidental catch permit to submit monthly reports on fishing effort, landings, and discards within 15 days of the end of the reporting month. Both limited access and incidental catch vessels would be required to complete and submit VTRs for all fishing trips, regardless of whether they land any red crab.

Owners or operators of vessels participating in the limited access fishery would also be required to report their total red crab landings through an IVR system within 24 hours of the termination of any trip that lands red crab.

Dealers issued a red crab dealer permit would be required to submit a weekly dealer report on forms provided by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, the form(s) could be submitted electronically or through other media. The report would be provided weekly, and would have to be postmarked and received within 16 days after the end of each reporting week. A negative report would be required even if there were no crabs purchased.

Target TAC

An annual specifications process would provide the mechanism to make adjustments to the amount of target TAC available to the fishery and the number of DAS to be allocated to each vessel authorized to participate in the limited access fishery. Specifications would also include the specification of OY and/or adjustments to trip/possession limits. The Council's Plan Development Team (PDT) would review the most recent landings and effort data on an annual basis in order to provide the information necessary for the Council to recommend the specifications for the following fishing year. Each fishing year, the landings in the red crab fishery would be counted against a target TAC. The target TAC would be set annually through the annual specification process at a level equal to the most current estimate of OY for the fishery. The target TAC would be adjusted based on any projected overage or underage expected for the current fishing year. For example, when the Council is setting the annual specifications for the following fishing year, if OY is 5.928 million lb (2,689 mt) and the Council projects that 6.75 million lb (3,062 mt) will be harvested in the current fishing year (a 822,000 lb (372,853 kg) overage), then the target TAC for the following year could be set at 5.106 million lb (2,316 mt). If, on the other hand, the Council projects that only 5.25 million lb (2,381 mt) will be harvested in the current fishing year (a 678,000 lb (307,536 kg) overage), then the target TAC could be set at 6.606 million lb (2,996 mt). The target TAC for the first full fishing year would be 5.928 million lb (2,689 mt) of whole red crab or its equivalent.

Allocations of Red Crab DAS

Along with the annual target TAC, the annual specification process would involve calculation of the total DAS that could be utilized by the directed fishery, based on average catch per DAS from the previous year. Total DAS would be allocated equally to all vessels issued a limited access red crab permit, divided by the number of vessels that intend to participate in the fishery for the fishing year. Any unused DAS allocated to a vessel in one fishing year could be carried over to the next fishing year, up to a maximum of 10 DAS or 10 percent of the total allocated DAS, whichever is less. The partial end of the year DAS carry-over is intended to ensure that at least some unused fishing effort would not be wasted, while providing no incentive to hoard DAS. This measure would also limit the potential annual fishing capacity to roughly 10 percent above the baseline. The FMP allocates only 130 DAS to each limited access vessel for the fishing year that ends February 28, 2003, because the FMP, if approved, would not go into effect until well after the start of the fishing year. However, if the FMP is approved, the management measures would not be effective for a full year. Because there would be a hiatus between the expiration of the emergency rule described above and the implementation of the FMP and implementing regulations, if approved, the FMP specifies the method by which vessel DAS allocations would be adjusted (see Initial Implementation Year, below).

From March 1, 2003, through February 29, 2004, each participating vessel would be allocated 156 DAS, unless this allocation were changed because of one or more vessel owners declaring out of the fishery or under the FMP specification process. The allocation of 156 DAS per participating vessel would remain the baseline unless modified through the specification process.

A DAS would be counted as a whole day (24 hours). Any portion of a day on

which a vessel is out of port would count as a full DAS. For example, if a vessel embarked on a fishing trip at 11:00 p.m. on June 1, that day of departure would count as one DAS. If it returned from the trip at 1:00 a.m. on June 10, that day of return would also count as one DAS. The vessel would have used 10 DAS during the fishing trip, rather than the 8.0833 DAS that would be counted as used if DAS were counted on an hourly basis.

DAS Allocation for Initial Implementation Year

During the initial year of implementation of the FMP, to account for red crab removed from the resource during the hiatus period, the Regional Administrator would calculate the amount of red crab landed during the hiatus period between the expiration of the red crab emergency regulations on May 15, 2002, and implementation of the FMP. This landings total would be deducted from the target TAC (5.928 million lb)(2,689 mt) and the remainder would represent the amount of target TAC available for the initial fishing year under the DAS program. The percentage of the target TAC remaining would be calculated and vessels participating in the DAS program would be allocated the calculated percentage of the initial baseline of DAS (for example, if landings during the hiatus period equal 20 percent of the target TAC, the allocation of 130 DAS would also be reduced by 20 percent, with the result rounded down to the nearest whole number).

Trip Limits During a Red Crab DAS

All vessels issued a limited access red crab permit would be subject to a baseline trip limit of at least 75,000 lb (34,019 kg) of whole red crab or its equivalent. If a vessel could show documented proof of one trip with higher landings during the limited access qualification period, then that vessel would qualify for a trip limit equal to the larger trip, rounded to the nearest 5,000 lb (2,268 kg). A vessel that partially processes or butchers its harvested red crabs would apply the more appropriate of two recovery rate formulas in accordance with § 648.263(a)(2) to determine its largest trip limit during the qualification period. Such proof would have to be received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner would have to fish consistent with the 75,000–lb (34,019–kg) trip limit until authorized for a trip higher than 75,000 lb (34,019 kg) by NMFS through issuance of an updated vessel permit.

Incidental Catch Limit

An incidental catch limit of 500 lb (226.8 kg) per trip, in whole weight equivalent, would be implemented for all vessels issued a red crab incidental catch permit. This incidental catch limit would also apply to vessels issued a limited access red crab permit when they are not fishing under a red crab DAS.

Female Red Crab Possession Restrictions

The retention and landing of female red crabs in the limited access red crab fishery would be prohibited, except for an incidental catch allowance equal to the amount that would fill one standard U.S. fish tote per vessel per trip (approximately 100 lb (45.4 kg)). This measure would not apply to vessels fishing under the provisions of the red crab incidental catch permit, because the Council did not want to provide any incentive to seek any more than the first 500 lb (227 kg) of red crab harvested.

Processing At Sea Restrictions

This proposed rule would prohibit the full processing of red crabs at sea, but would allow partial processing and butchering. ''Full processing'' is defined as any activity that removes meat from any part of a red crab.

Crabs must be landed whole or split in half along the length of the carapace, with legs and claws still attached to the carapace parts. To determine the equivalent whole crab weight for crabs landed in half sections, this proposed rule provides two different calculations, depending on whether the gills and other detritus are removed. For crab halves where gills and other detritus have not been removed (typically referred to as ''butchering''), the equivalent whole weight is equal to the weight of the halves multiplied by 1.56 (a 64–percent recovery rate). For crab halves where all of the gills and other detritus have been removed (typically referred to as ''partial processing''), the equivalent whole weight is equal to the weight of the halves multiplied by 1.72 (a 58–percent recovery rate).

This requirement is intended to remove the incentive and prevent the harvesting of red crabs for their claws and/or legs alone. This measure would also facilitate the administration and enforcement of the male-only restriction in the directed fishery, because the sex could be discerned either by the shape of the tail flap on whole crabs, or by the outline of the tail flap on partially processed or butchered crabs.

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be allowed to possess red crab claws and legs separate from crab bodies equal to the amount that would fill one standard U.S. fish tote per vessel per trip (approximately 100 lb (45.4 kg)). This mutilation allowance is intended to account for incidental and unintended loss of claws and/or legs during normal fishing operations. Vessels fishing under the provisions of the red crab incidental catch permit could possess no more than two claws and eight legs per crab on board the vessel.

Gear Requirements and Restrictions

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be subject to a maximum limit of 600 red crab traps/pots. If the total number of traps/pots declared by the owner of a vessel on the annual vessel permit application were less than 600, the vessel would be subject to that declared limit on traps/pots.

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be prohibited from hauling any fishing gear other than red crab gear. Red crab gear would be identifiable through required markings on the buoys used at the end of each set of traps/pots.

The maximum allowable size of all traps/pots used in the limited access red crab fishery when under a red crab DAS would be 18 ft^3 (0.51 m^3) in volume. In conjunction with the trap/pot limit described above, this would prevent a potential increase in the per-day efficiency of fishing vessels fishing under a red crab DAS.

The use of parlor traps/pots or non-trap/pot gear by a vessel fishing in the limited access red crab fishery when under a red crab DAS would be prohibited. Because red crab traps/pots, unlike parlor traps/pots, do not prevent the escape of crabs from the trap, many of the crabs that might enter the traps during the period between trips would be gone before the vessel returned to haul the traps on a subsequent trip. Also, lost red crab traps do not present a ghost fishing problem, because the crabs can escape from the traps. Vessels fishing under the red crab incidental catch provisions, including vessels in the red crab fishery when not fishing under a red crab DAS, would not be prohibited from using parlor traps/pots or non-trap/pot gear.

Annual Monitoring and Framework Adjustment Measures

The Council would prepare a biennial Stock Assessment and Fishery

Evaluation (SAFE) Report for the red crab fishery and its resource. The Red Crab PDT would meet at least annually to review the status of the stock and the fishery. The PDT would report any necessary adjustments to the measures and recommendations for the specifications and TACs to the Council's Red Crab Committee, which in turn would recommend appropriate changes to the Council. Specifications would be recommended to NMFS, and changes to management measures would be adopted through a framework adjustment or FMP amendment.

The framework adjustment process, on an annual basis or at any other time during the fishing year, would be similar to that used in other Northeast Region fisheries. This process would permit changes to be made to the regulations in a timely manner without going through the FMP amendment process.

During the framework adjustment process, the Council would meet to develop new management measures to the FMP. Either during, or at the conclusion of the framework process, the public would be provided an opportunity to offer comments on the Council's framework adjustment process and the newly-developed management measures.

In the instant case, the Council provided the public with an opportunity to comment on the framework adjustment measures. The management measures and/or changes to them could be implemented and adjusted through the framework process and specifically include the following: (1) OY; (2) management unit; (3) technical parameters for MSY; (4) description and identification of EFH; (5) description and identification of HAPCs; (6) incidental catch limits; (7) minimum size of landed crabs; (8) restricting directed fishing to male crabs only; (9) butchering/processing restrictions; (10) trap/pot limits; (11) gear requirements/restrictions; (12) TAC; (13) trip limits; (14) controlled access; (15) DAS; and (16) any other measure currently included in the FMP.

Pursuant to section 304(b) of the Magnuson-Stevens Act, the Secretary has made minor modifications to the framework process outlined in the regulations. These modifications help to clarify the Secretary's authority and discretion to publish framework measures as a final rule without prior notice and comment. Although the Council, after consideration of numerous criteria, may recommend that a rule be published directly as a final rule, this recommendation does not affect the Secretary's authority or discretion in deciding whether it is appropriate to publish the rule without prior notice and comment. However, in order to publish a final rule without prior notice and comment, the Secretary must make a finding under the Administrative Procedure Act that good cause exists to waive prior notice and comment.

Essential Fish Habitat (EFH)

The Council proposes to use depth zone affinities for EFH. EFH for red crab includes those areas of the offshore waters (out to the offshore U.S. boundary of the EEZ), in depths between 200—1,800 m, as identified and described in section 3.7.4 of the FMP.

This proposed rule would also revise the definitions of ''Council'', ''Day(s)-at-Sea'', ''Fishing year'', ''Processor'', ''Processing, or to process, in the Atlantic herring fishery'', and ''Sorting machine'', to clarify the meaning of each and to provide consistency with text used in like definitions from other species regulations.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the FMP; a notice of availability for the DEIS was published on November 30, 2001 (66 FR 59787). The Council has selected a preferred alternative management strategy intended to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment. Overall, the proposed action is expected to have significant positive effects on the red crab resource relative to the no action alternative.

The Council prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY**.

The following sections provide a summary of the analyses of the potential impacts of the management alternatives considered in the FMP. The full descriptions of the management alternatives, and the specific measures associated with each alternative, are provided in detail in sections 4.2 and 4.3 of the FMP. Also, the full analyses of the potential impacts of the specific measures associated with each alternative are provided in detail in section 5.3 of the FMP. A full analysis of the differences among the management alternatives is provided in section 5.4 of the FMP.

Quantitative information is limited for this fishery. When possible, the quantitative impacts of the alternatives were considered, but in many instances it was only possible to qualitatively describe impacts.

The proposed measures could affect any vessel that has participated in the red crab fishery, all of which readily fall within the Small Business Administration's (SBA) definition of small business and the RFA's definition of ''small entity.'' Therefore, all alternatives and analyses associated with the FMP and proposed rule necessarily are alternatives and analyses applicable to impacts on small entities. The Council IRFA identified 86 individual vessels that reported some landings of red crab during 1991–2001. The IRFA considered the level of participation in the fishery by examining cumulative landings made by the vessels over the 11–year period. Forty-seven vessels made cumulative landings of less than 1,000 lb (453.6 kg). Twenty-two vessels had cumulative landings between 1,000 lb (453.6 kg) and 10,000 lb (4,535.9 kg). Only two of these vessels landed 5,000 lb (2,268 kg) or more in any one year.

Four vessels reported between 10,000 lb (4,535.9 kg) and 100,000 lb (45,359.2 kg) of cumulative landings during the period, though none of these vessels made landings in more than 2 of the 11 years. Another six vessels reported between 100,000 lb (45,359.2 kg) and 1,000,000 lb (453,592.4 kg) of cumulative landings in the period. None of these vessels reported any landings prior to 1995, and two vessels reported landings only in 2001.

Seven vessels reported cumulative landings greater than 1 million lb (453,592.4 kg). Of the seven, two vessels have not reported any landings since 1993. The remaining five vessels are currently reporting landings.

The Council examined more recent data in the IRFA, but noted that the available landings and revenue data are incomplete because red crab vessels and dealers have not been required to participate in the existing NMFS mandatory reporting program for vessels and dealers. If vessels or dealers are involved in one of the other fisheries that requires Federal permits and mandatory reporting, their red crab activity has been included in those reports. This circumstance means that the stated number of entities subject to the regulation is a lower-bound estimate, since the number of non-

federally permitted entities cannot be estimated.

The Council's IRFA also utilized information obtained through a voluntary survey of participants in the red crab fishery. Most of the vessel owners who responded to the survey reported that they are dependent upon red crab landings for 100 percent of their annual income. The processors who responded to the survey reported that they all process many species besides red crab, and that red crab accounts for an average of 11.5 percent of their fish processing operations.

The IRFA notes that 17 vessels requested the Letter of Authorization (LOA) required under the emergency regulations to harvest more than 100 lb (45.4 kg) of red crab per trip during the period May 18 - November 14, 2001. Of those vessels, seven actually reported red crab landings during the period. Only six vessels made multiple trips during the emergency period and consistently landed at or near the trip limit of 65,000 lb (29.5 mt).

In addition to the proposed management program, the Council considered eight management program alternatives and a ''no action'' alternative. Each management program is composed of a suite of management measures, though some measures are common to most or all of the alternatives. Most of the alternatives included limited access programs, and all of the alternatives included some level of incidental catch limits for vessels targeting species other than red crab. In addition, all of the management alternatives include requirements for fishing gear to be marked, restrictions on the use of non-trap gear in the directed fishery, and permit and reporting requirements. While there are economic impacts on small entities associated with these measures, the impacts are the same for all of the alternatives. The impacts of these measures will be described separately from the discussion of the alternatives.

Limited Access Program

The limited access eligibility criteria included in the proposed action requires a vessel to have landed more than 250,000 lb (113.40 mt) of red crab during the 3 years prior to the control date (March 1, 1997 - February 29, 2000). The Council expected a minimum of five vessels to meet these eligibility criteria. The Council considered establishing less restrictive eligibility criteria, and expected a minimum of eight vessels to meet the least restrictive criteria considered, which would have required a vessel to have landed 40,000 lb (18,143.7 kg) or more during the eligibility period of March 1, 1997—February 29, 2000. This implies that three entities may be negatively impacted because the proposed limited access program will exclude them from the directed fishery. These three vessels landed at least 10,000 lb (4,535.9 kg) of red crab for 3 years prior to the control date, for an average of 3,333 lb (1,511.8 kg) per year. The IRFA estimated the maximum revenue loss to be $2,833 per year for each of these vessels.

The IRFA also evaluated the impact of the proposed program by comparing the qualifying vessels with the vessels that fished multiple times under LOAs issued under the emergency regulations. This comparison indicates that one entity may be excluded from the directed fishery by the proposed criteria because the vessel entered the fishery after the control date of March 1, 2000. This vessel does not currently participate in the fishery and has left the New England area. The impacts on this vessel will be severe, but cannot be detailed in the IRFA because of data confidentiality restrictions.

The revenue effects on these impacted entities would be moderated if they can adapt their fishing activities and redirect their fishing activity onto other species. It appears that most will have this option. Of the 17 vessels noted above that were issued LOAs under the emergency action, 14 had the vessel permits necessary to fish in other fisheries, including other limited access fisheries such as American lobster, summer flounder, scup and black sea bass.

Incidental Catch Allowance

The proposed action would implement an incidental catch limit of 500 lb (226.8 kg) per trip. The Council believed that this would ensure that the offshore lobster fishery, as well as other fisheries, would be able to continue to land relatively small amounts of red crab as incidental catch. Alternative levels for incidental catch that were considered were 50–lb (22.7–kg), 100–lb (45.4–kg), and 1,000–lb (453.6–kg) limits. The Council's IRFA examined red crab landings data for the period 1998–2000 and identified trips that landed red crab as incidental catch. Approximately 27 percent of trips landed 50 lb (22.7 kg) or less; nearly 40 percent landed up to 100 lb (45.4 kg); nearly 75 percent landed up to 500 lb (226.8 kg); and 89 percent landed up to 1,000 lb (453.6 kg).

Gear Restrictions

All of the alternatives would require red crab gear to be marked in a manner consistent with current industry practices, so the impacts of the gear-marking requirements are minor. In addition, all alternatives would prohibit vessels targeting red crab from using any gear other than pot/trap gear. The directed fishery currently uses only pot/trap gear, so there are no impacts associated with this restriction.

Permits and Reporting Requirements

Vessels landing red crab would be required to have permits, as would dealers purchasing red crab from permitted vessels. Operators of vessels with red crab permits would be required to obtain operator permits. Vessels landing red crab would need to submit logbook reports, and dealers purchasing this species would need to submit dealer reports. Some vessels and dealers are currently issued the required permits as a result of their participation in other managed fisheries. For those entities, the red crab fishery would be added to an existing permit and there would be no new impacts.

Some vessel owners and dealers may have to obtain Federal permits for the first time. In these instances, the costs associated with completing the necessary applications would be: Vessel permit, $7.50/applicant; dealer permit, $7.50/applicant; and operator permit, $15.00. Annual costs associated with completing vessel trip reports are estimated at $20.00. Annual costs associated with dealer reporting are estimated at $30.00.

Impacts of Alternatives on Vessels

The economic impacts of the other measures included in the alternatives considered by the Council are summarized below. The proposed action is referred to in the IRFA as Alternative 5 (Preferred Alternative).

Proposed Action: Target TAC, DAS and Trip Limits

The proposed action would establish a target TAC at a level that would prevent overfishing. In order to constrain landings to the level of the target TAC, DAS would be allocated to each vessel that qualified for the limited access permit. These DAS would be calculated based on the average landings in the fishery, but each vessel would be allowed to land red crab under a trip limit restriction of at least 75,000 lb/trip (34,019.4 kg/trip). A vessel that demonstrated higher landings in the past would be assigned a trip limit equal to the highest landings on a historical trip. In addition to the trip limit restriction, the limited access vessels would be limited to using 600 pots/traps. The landings of female crabs

(other than a small allowance for accidental retention) would be prohibited. This would limit the extent to which red crabs could be butchered or processed prior to landing.

The impact of the DAS under the proposed action presumed a potential DAS allocation of up to 183 DAS each. This represents a reduction from the number of days that red crab vessel owners reported being at sea (200–300 days). The IRFA notes that the owners of five vessels active in the fishery commented that they could operate profitably on an allocation of 183 days. Because vessels can expend their DAS when they choose, DAS are expected to allow flexibility in fishing activity and more consistent supply to the red crab market.

The proposed trip limit would allow vessels to operate at their best historical level, so impacts are expected to be slight. The use of historical levels would maintain each vessel's individual competitive position within the fishery. The IRFA noted that it would not always be possible for a vessel to duplicate its highest level of landings, so that, on average, vessel trips would likely land less than the vessel trip limit.

Several of the measures in this alternative are consistent with the way the fishery currently operates and so would have no impact. In response to market demand, red crab landings have been composed almost exclusively of male crabs. The average number of traps used in the fishery is estimated at 560, so the 600–trap limit would have no impacts, except to prevent an expansion of effort. The restrictions on red crab processing at sea are intended to improve the ability to enforce the trip limits and restrictions on landing females. The butchering/processing restriction is consistent with the practice of most of the vessels known to participate in the fishery, although it appears at least one vessel would have to modify its operations.

Alternative 1: Emergency Rule

The incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative does not include a limited access program. The principal management measure in this alternative is a hard TAC, with closure of the directed fishery required when the TAC is attained. This alternative would also establish trip limits and trap limits. When quotas are relatively low, the fishing industry generally attempts to land as much as possible before the TAC is attained and the fishery is closed. This results in a glut of products that may exceed market demand, resulting in lower revenues to fishermen and economic waste. It also interrupts supply to markets due to the closed fishery. Each regulated entity would, therefore, experience unstable revenue and have to deal with market supply problems. The fishery under the emergency regulations demonstrated this effect.

Alternative 2: Hard TAC with Trap/Pot Limits

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would establish a trap limit for all limited access vessels, intended to make fishing effort equivalent. This alternative would also prohibit most landings of female red crab and would restrict butchering/processing at sea. The major impacts associated with this alternative would be related to the fishery closures when the TAC was attained, and to the trap limit. The impacts of the hard TAC would be the same as in Alternative 1. The impacts of the trap limit would be to force vessels to operate at less than their full capacity, reducing their efficiency. Reducing the number of traps/pots from current levels would reduce the catch without any associated reduction of costs, resulting in reduced profitability and higher costs per crab harvested.

Alternative 3: Hard TAC, Trap/Pot Limits, and Trip Limits

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. The measures in Alternative 2 are also included, and a trip limit measure is added. All limited access vessels would be restricted to the same trip limit, whether or not the vessels had the ability to make landings higher than the trip limit. Such vessels would be forced to operate in an inefficient manner, and in some cases might not generate enough revenue to cover their variable costs. Some of these vessels could decide not to participate in the fishery. The impact of such decisions could be offset by fishing for other species, but it is impossible to estimate how much additional revenue this would generate.

Alternative 4: Target TAC with DAS

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would establish a trap limit for all limited access vessels, prohibit most landings of female red crab, and restrict butchering/processing at sea. This alternative would set a target TAC, and allocate DAS to limited access vessel intended to maintain landings consistent with the target TAC. The only difference between this alternative and the measures in the proposed action is that this alternative would not establish trip limits. The lack of a trip limit would reduce the impact on the limited access vessels by allowing them to make each trip as profitable as possible. However, the Council selected the proposed action because the addition of trip limits would constrain vessels to operate at historical levels only, ntaining each vessel's relative individual competitive position within the fishery, as of the control date. It would also constrain the total fleet to meet the conservation objectives of the FMP.

Alternative 5: Trip Limits and Set Number of Trips

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would establish a trap limit for all limited access vessels, prohibit most landings of female red crab, and restrict butchering/processing at sea. This alternative would allocate a specified number of trips to limited access vessels, and set a trip limit for such vessels. The only difference between this alternative and that contained in the proposed measures is that vessel activity would be controlled on a trip level, rather than a DAS level, and there would be no formalized calculation of a target TAC. Even though a TAC would not be specified, the allocation of trips and establishment of trip limits would have to take the total catch into account. Depending on the level of the trip limit, it could require vessels to operate in an inefficient manner. Consideration was given in this alternative to establishing trip limits specific to each vessel, which could have improved the efficiency of operations and reduced the impacts.

Alternative 6: All Possible Measures

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative included all of the measures in the proposed action, but added a minimum size requirement. The minimum size restriction is projected to have little impact because there is no market for small red crabs, so this alternative has economic impacts

similar to those of the preferred alternative.

Alternative 7: IVQ with Controlled Access

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. In addition, this alternative would establish a TAC, and establish Individual Vessel Quotas (IVQs) that would allocate to each vessel an individual percentage share of the TAC. Vessels would be able to operate at their peak efficiency, maximizing their revenue, and thus their profit. The creation of use rights means that some vessel owners would gain economically and some would lose; this creates a redistribution of wealth and has equity implications. New quota-based programs including IVQs are currently not allowed under the Magnuson-Stevens Act.

Alternative 8: IVQ Only

The incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would not establish a limited access program, but would establish an IVQ. In the absence of a limited access program, more vessels would participate in the fishery. Because of this, each IVQ vessel would have a smaller share of the TAC than in the previous alternative. The economic benefits of IVQ would still be realized, but would be shared among a larger group of vessels thus diminishing per-vessel share. New quota-based programs including IVQs are currently not allowed under the Magnuson-Stevens Act.

Alternative 9: No Action

Without regulatory action, additional vessels would enter the fishery and current participants could increase harvest levels without restriction. In the short term, landings and revenue could increase for many vessels, but because uncontrolled landings could not be sustained, eventually the profitability of all vessels would decrease. With the entry of additional vessels, the catch per vessel would decrease. There would initially be an increased supply of red crabs to consumers because landings would not be restricted, but the long-term effect would be decreased supply and, presumably, higher prices. Uncontrolled and potentially escalating fishing effort could have negative economic impacts on those businesses that depend on the red crab fishery.

Economic Impacts on Dealers

In 2001, the NMFS dealer reports indicated that seven dealers purchased red crab; of these, only one purchased more than 1,500 lb (680.4 kg). For the other six, red crab appears to have represented a minor part of their business. Consideration of impacts on dealers is hampered by the limited data available. The dealer(s) who purchased 96 percent of the red crab landed cannot be identified in the existing data.

Another way to look at dealer dependence on red crab is to consider the dollar value of red crab. By this measure, only one dealer depended on red crab for more than $200,000 in revenue. In 2000, there were three dealers listed in the dealer database that purchased 12 percent of the red crab landings. The dealer(s) who purchased 88 percent of the red crab landings could not be identified in the existing data.

The proposed action has only limited impact on dealers because the red crab fishery is expected to operate at levels similar to those in recent years.

Competitive Effects Analysis

Most, if not all, of the vessels, dealers, and processors fall within the definition of small entities and, thus, any alternatives to reduce impacts are necessarily alternatives affecting impacts on small entities. The voluntary survey indicated that one processor employs 1,000 people, which is a number greater than that specified in the definition of a small entity. However, the maximum number of year-round employees, as opposed to seasonal, for any processor, was listed as 400 so it is possible that all dealers would be appropriately categorized as small entities. There is also an indication that a fish and seafood wholesaler that employs 150 people may not be a small entity. However, the percentage of this wholesaler's business revenue that comes from the sale of red crab products ranges from less than 1 percent to 33 percent and averages only slightly more than 25 percent. Because of the small nature of the fishery and the issue of confidentiality, it is not possible to disclose if there are disproportionate size effects. There are no disproportionate costs of compliance among the affected small entities. The proposed action does not create regulations that duplicate, overlap, or conflict with any state regulation or other Federal law.

A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule contains eight collection-of-information requirements, which have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

Vessel trip reports, OMB control number 0648–0212
(5 minutes/response).

Dealer purchase reports, OMB control number 0648–0229
(10 minutes/response).

Limited access vessel permits, OMB control number 0648–0202 (5 minutes/response).

Incidental catch vessel permits, OMB control number 0648–0202 (5 minutes/response).

Dealer permits, OMB control number 0648–0202
(5 minutes/response).

Operator permits, OMB control number 0648–0202
(60 minutes/response).

Observer deployments, OMB control number 0648–0202
(2 minutes/response).

Gear marking requirements, OMB control number 0648–0351
(36 minute/response).

Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: June 14, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); and the tilefish fishery (Tilefish FMP). * * *

* * * * *

3. In § 648.2, the definitions of ''Council'', ''Day(s)-at-Sea'', ''Fishing year'', ''Processor'', ''Processing, or to process, in the Atlantic herring fishery'', and ''Sorting machine'' are revised and new definitions for ''Atlantic deep-sea red crab (red crab)'', ''Full-processing (fully process), with respect to the Atlantic deep-sea red crab fishery'', ''Parlor trap/pot'', ''Red Crab Management Unit'', and ''Red crab trap/pot'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic deep-sea red crab (red crab) means *Chaceon quinquedens*.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, and NE multispecies and monkfish fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), Atlantic sea scallop fishery, and Atlantic deep-sea red crab fishery, means the 24–hour periods of time or any part thereof during which a fishing vessel is absent from port to fish for, possess or land, or fishes for, possesses or lands, regulated species, monkfish, scallops, or red crabs. With respect to the red crab fishery, any portion of a calendar day in which a vessel is out of port, after having declared into the red crab DAS fishery, shall count as a full DAS.

* * * * *

Fishing year means: (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year. (2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year. (3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Full-processing (fully process), with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

Parlor trap/pot means any structure or other device, other than a net, with two or more compartments within designed to impede escape, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

Processor, with respect to the Atlantic surf clam and ocean quahog fisheries, means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

* * * * *

Red Crab Management Unit means an area of the Atlantic Ocean from 35 15.3° N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught or retained in or from such area.

Red crab trap/pot means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

* * * * *

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

* * * * *

4. In § 648.4, paragraph (a) (13) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(13) *Red Crab vessels*. Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea any red crab in or from the EEZ portion of the Red Crab Management Unit.

(i) *Limited access red crab permit*—(A) *Eligibility*. A vessel, or its replacement, may be issued a limited access red crab permit if the vessel's total landings averaged greater than 250,000 lb (113,400 kg) of red crab per year for the 3 years beginning March 1, 1997, through February 29, 2000. To calculate the average value per year, the total landings of whole red crab, or its equivalent by weight, between March 1, 1997, and February 29, 2000, inclusive, shall be divided by 3. If the quotient is greater than 250,000 lb (113,400 kg), the vessel meets the landings criteria. For example, if a vessel caught greater than 750,000 lb (340,200 kg) in the 3–year qualifying time span—even if it fished just 2 of those 3 years—the average per year would be greater than 250,000 lb (113,400 kg).

(B) *Application/renewal restriction*—(*1*) *Initial application*. A vessel owner must apply for an initial limited access red crab permit before [*insert date 180 days from the effective date of the final rule*]. No vessel owner may apply for an initial limited access red crab permit after this date.

(*2*) *Fishing years beyond the initial year*. (*i*) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(*ii*) A vessel owner may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which

must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year.

(C) *Qualification restrictions*. The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership*. The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels*. (*1*) To be eligible for a limited access permit under this section, the replacement vessel's length, GRT, and NT may not exceed by greater than 10 percent the length, GRT, and NT of the vessel's baseline specifications, if applicable. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(*2*) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed red crab between March 1, 1997, and February 29, 2000, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, providing that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

(G) *Consolidation restriction*. The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) *Limited access permit restrictions*. A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history* (CPH). Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. The provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting*. The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Notification of eligibility for 2002*. (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet the qualification criteria described in paragraph (a)(13)(i)(A) of this section and that they qualify for a limited access red crab permit. Vessel owners must still apply by [*insert date 180 days from the effective date of the final rule*] to complete the qualification requirements.

(*2*) If the vessel owner has not been notified that the vessel is eligible to be issued a limited access red crab permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access red crab permit by *[insert date 180 days from the effective date of the final rule*] by submitting evidence that the vessel meets the requirements described in paragraph (a)(13)(i)(A) of this section.

(N) *Appeal of denial of a permit*. (*1*) Any applicant denied a limited access red crab permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(13)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(*3*) Status of vessels pending appeal. A vessel denied a limited access red crab permit may fish, provided that the denial has been appealed, the appeal is pending, the vessel owner has presented prima facie evidence that the decision was made in error, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator

shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(*i*) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

(ii) [Reserved]

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or tilefish harvested in or from the EEZ portion of the Tilefish Management Unit, or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

7. In § 648.7, paragraphs (b)(1)(iii) and (b)(1)(iv) are removed and paragraph (b)(2) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) *IVR system reports*—(i) *Atlantic herring owners or operators.* The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(D) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(iii) *Red crab vessel owners and operators.* The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

* * * * *

8. In § 648.10, paragraph (c) introductory text, and paragraphs (c)(2) and (c)(5) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) *Call-in notification.* Owners of vessels issued limited access multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(M)(*3*), (a)(9)(i)(N)(*3*) and (a)(13)(i)(N)(*3*) are subject to the following requirements:

* * * * *

(2) The vessel's confirmation numbers for the current and immediately prior multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

* * * * *

(5) Any vessel that possesses or lands per trip greater than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-

in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

9. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

* * * * *

10. In § 648.12, the introductory text to this section is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), and N (tilefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

11. In § 648.13, paragraph (g) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), taken in or from the EEZ portion of the Red Crab Management Unit.

12. In § 648.14, paragraphs (x)(12) and (dd) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(12) *Red crab.* All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

* * * * *

(dd) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to do any of the following:

(1) Catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea any red crab in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit or red crab incidental catch permit issued by the Northeast Regional Administrator under this subpart.

(2) Land, or possess on board a vessel, greater than the possession or landing limits specified in § 648.263.

(3) Fail to comply with the recordkeeping and reporting requirements of § 648.7.

(4) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), taken in or from the EEZ portion of the Red Crab Management Unit.

(5) Purchase, possess, or receive, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit under this subpart.

(6) Purchase, possess, or receive, up to 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(7) Fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea greater than 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit issued by the Northeast Regional Administrator under this subpart and fishing under a red crab DAS.

(8) Fail to comply with the provisions of the DAS notification program specified in §§ 648.262(b)(5) and 648.10, if the vessel has been issued a valid limited access red crab permit.

(9) Fish in the Red Crab Management Unit under a red crab DAS if the vessel had declared out of the fishery at least 180 days prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea red crab in excess of a landing limit specified in § 648.263.

(11) Possess, deploy, fish with, haul, harvest red crab from, or carry on board a vessel, in excess of the trap/pot and/or string limit specified at § 648.264(a)(2) when fishing under a red crab DAS.

(12) Retain, possess or land female red crabs in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(13) Retain, possess or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote if the vessel has been issued a valid

limited access red crab permit and is fishing under a red crab DAS.

(14) Retain, possess or land red crab claws and legs separate from crab bodies if the vessel has not been issued a valid limited access red crab permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(15) Retain, possess or land in excess of two claws and eight legs per crab if the vessel has been issued a valid red crab incidental catch permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.(16) Fully process red crabs at sea, i.e., any activity that removes meat from any part of a red crab.

(17) Fail to comply with the gear marking requirements specified at § 648.264(a)(5).

(18) Possess, fish or deploy parlor traps/pots if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(19) Possess, fish or deploy red crab traps/pots larger than the maximum size specified at § 648.263(a)(4), if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

13. Subpart M is added to read as follows:

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

Sec.

648.260 Annual specifications.
648.261 In-season adjustments and annual specification/framework adjustment process.
648.262 Effort-control program for red crab limited access vessels.
648.263 Red crab possession and landing restrictions.
648.264 Gear requirements/restrictions.

Subpart M—Management Measures for the Atlantic Deep-Sea Red Crab Fishery

§ 648.260 Annual specifications.

(a) *Fishing year.* The fishing year begins on March 1 of each year and ends on the last day of February of the following year.

(b) *Total allowable catch.* The TAC for each fishing year will be 5.928 million lb (2,688.9 mt), unless modified pursuant to paragraph (d) of this section.

(c) *Adjustments to the TAC.* Any overage of the TAC for the limited access category that occurs in a given fishing year will be subtracted from the TAC for that category in the following fishing year. Conversely, any underage of the TAC for the limited access category that occurs in a given fishing year will be added to the TAC for that category in the following fishing year.

(d) *Process for setting annual specifications.* The Council's Red Crab Plan Development Team (PDT) will meet at least annually to review the status of the stock and the fishery. (1) Based on this review, the PDT will report to the Council's Red Crab Committee, no later than 5 months prior to the start of the next fishing year, any necessary adjustments to the management measures and recommendations for the specifications and/or TACs. Specifications include the specification of OY, the setting of any hard or target TACs, allocation of DAS, and/or adjustments to trip/possession limits. The PDT will specifically recommend TACs for the following year and an estimated TAC for the year after. In developing these recommendations the PDT will review the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) Based on recommendations from the Council's Red Crab PDT after its review of the available information on the status of the stock and the fishery, the Red Crab Committee may recommend to the Council changes to the appropriate specifications and/or the annual TAC, as well as any measures necessary to assure that the specifications will not be exceeded.

(3) The Council shall review these recommendations and any public comment received and shall recommend to the Regional Administrator appropriate specifications and/or annual TAC, as well as any measures necessary to assure that the specifications will not be exceeded. Specifications, and/or TACs and other management measures, shall be implemented by the Regional Administrator, and may include the specification of OY, the setting of any hard or target TACs, allocation of DAS, and/or adjustments to trip/possession limits. Annual specifications and other measures shall be implemented through the framework adjustment process specified at § 648.261. The previous year's specifications/TACs and other measures shall remain effective unless changed by the Regional Administrator. If the specifications are not changed, this will be announced through notification in the **Federal Register**.

§ 648.261 In-season adjustments and annual specification/framework adjustment process.

(a) *In-season adjustments.* The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Deep-Sea Red Crab FMP objectives and other FMP provisions.

(b) *Annual specification/framework adjustment process.* To implement annual specifications or a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph 1 of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

§ 648.262 Effort-control program for red crab limited access vessels.

(a) *General*. A vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea greater than 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(13)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 unused DAS, or 10 percent of the total allocated DAS, whichever is less, into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *DAS program*—(1) *For fishing year 2002*. For the fishing year beginning March 1, 2002, each limited access permit holder's allocation of DAS shall be based on a baseline of 130 DAS per vessel and, if necessary, adjusted as specified below. Based upon the best available information, the Regional Administrator shall estimate the landings from May 15, 2002, which is the first day following the expiration of the red crab Secretarial interim rule, up to the implementation date of the red crab limited access program. These estimated total landings shall be deducted from the target TAC and the percentage of the TAC that remains available shall be used to reduce the initial baseline of DAS (i.e., a percentage of 130 DAS to an equivalent percentage). For example, if estimated landings equal 20 percent of the target TAC, thereby leaving 80 percent of the target TAC, the DAS allocation shall be reduced by 20 percent to 104 DAS. Each vessel shall be allocated the adjusted DAS for the remainder of the fishing year. The Regional Administrator shall publish in the **Federal Register** the adjusted DAS for the remainder of the fishing year.

(2) *For fishing years 2003 and thereafter*. Each limited access permit holder shall be allocated 156 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(*2*) or the TAC is adjusted consistent with § 648.260(c).

(3) *Accrual of DAS*. Any portion of a day in which a vessel is out of port, after having declared into the DAS fishery, shall count as a full DAS. For example, if a vessel calls into the fishery at 11 p.m. on Thursday and calls out of the fishery at 10 p.m. on Friday, the next day, that vessel shall be assessed 2 full DAS (48 hours) for the fishing trip, even though the trip lasted only 23 hours.

(4) *Good Samaritan credit*. Same as § 648.53(f).

(5) *Declaring red crab DAS*. A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the red crab DAS program using the notification requirements specified in § 648.10.

(6) *Adjustments in annual red crab DAS allocations*. Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260(c).

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*—(1) *Possession and landing restrictions*—(i) A vessel or operator of a vessel that has been issued a valid limited access red crab permit under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 75,000 lb (34,019.4 kg) per trip, unless adjusted consistent with paragraph (a)(1)(ii) of this section, of whole red crab, or its equivalent as specified at paragraphs (a)(2)(i) and (ii) of this section, per fishing trip when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on one trip higher than 75,000 lb (34,019.4 kg) shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) during the limited access qualification period of the higher trip landed. Such proof must be received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner shall fish consistent with the provisions and trip limit specified at paragraph (a)(1)(i) of this section until credible proof of a trip higher than 75,000 lb (34,019.4 kg) is approved by NMFS.

(2) *Conversion to whole crab weight*. (i) For red crab that is landed in half sections, with all gills and other detritus

still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction.* A vessel may not fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition.* No person may fully process at sea, or possess, or land, fully-processed red crab (i.e., the removal of meat from any part of a red crab is not permitted).

(5) *Mutilation restriction.* A vessel may not retain, possess or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing under a red crab DAS.

(b) *Vessels issued red crab incidental catch permits*—(1) *Possession and landing restrictions.* A vessel or operator of a vessel that has been issued a red crab incidental catch permit may catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.262(a)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition.* No person may fully process at sea, or possess, or land, fully-processed red crab (i.e., the removal of meat from any part of a red crab is not permitted).

(3) *Mutilation restriction.* A vessel may not retain, possess or land red crab claws and legs separate from crab bodies.

§ 648.264 Gear requirements/restrictions.

(a) *Limited access red crab permitted vessels.* (1) No vessel may haul any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section, when on a red crab DAS.

(2) A vessel or operator of a vessel may fish with, deploy, possess, haul, harvest red crab from, or carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab when on a red crab DAS. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the maximum number of strings declared on the annual vessel permit application.

(3) Parlor traps/pots. The use of parlor traps/pots in the red crab fishery is prohibited when fishing in the red crab fishery under a red crab DAS.

(4) Maximum trap/pot size. The maximum allowable trap/pot size of traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Traps/pots may be rectangular, trapezoidal or conical only, unless other new trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) Gear markings. The following is required on all buoys used at the end of each red crab trawl:

(i) The letters ''RC'' in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel's permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., ''3 of 6'') must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

[FR Doc. 02–15595 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 119

Thursday, June 20, 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

[Internal File No. 3000–2]

Office of the Chief Information Officer; Notice of Availability of USDA Information Quality Guidelines

AGENCY: Department of Agriculture.

ACTION: Notice of availability and request for comment.

SUMMARY: In accordance with Section 515 of the *Treasury and General Government Appropriations Act for Fiscal Year 2001* (Pub. L. 106–554, H.R. 5618) and Office of Management and Budget (OMB) guidelines issued at 66 FR 49718, 67 FR 8452, and 67 FR 9797, the U.S. Department of Agriculture has developed draft information quality guidelines to ensure and maximize the quality, objectivity, utility and integrity of information it disseminates and administrative mechanisms for affected persons to seek and obtain appropriate correction of that information.

DATES: Comments on this notice must be submitted by July 15, 2002.

ADDRESSES: Submit comments to Dr. Bette Fugitt, eGovernment, Office of the Chief Information Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 7602, Washington, DC 20250–7602. Comments may also be sent to Dr. Fugitt by fax at (202) 205–2831 or by e-mail at *Bette.Fugitt@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Bette Fugitt, eGovernment Office of the Chief Information Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 7602, Washington, DC 20250–7602. Telephone (202) 720–8020.

SUPPLEMENTARY INFORMATION: OMB has issued government-wide guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies. Congress directed OMB to issue guidelines in section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554). OMB published its guidelines in the **Federal Register** on September 28, 2001 at 66 FR 49718–49725 and updated the guidelines on February 22, 2002 at 67 FR 8452–8460 and on March 4, 2002 at 67 FR 9797.

OMB's guidelines require Federal agencies subject to the Paperwork Reduction Act (44 U.S.C. Chapter 35) to: (1) Issue information quality guidelines for the information disseminated by the agency; (2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information dissemination by the agency on or after October 1, 2002 that does not comply with OMB or agency guidelines; and (3) annually report to OMB the number and nature of complaints received by the agency regarding agency compliance with OMB and agency guidelines and how such complaints were resolved.

As the initial step in its development of information quality guidelines, each Federal agency must prepare a draft report providing its guidelines and detailing the administrative mechanisms developed by the agency to allow affected persons to seek and obtain correction of information disseminated by the agency, and post the draft report on the agency's website to provide an opportunity for public comment. As provided for in OMB's guidelines implementing Section 515, USDA is publishing this notice of availability of its draft quality guidelines in the **Federal Register.** The Department has posted the draft guidelines on its website at *http://www.egov.usda.gov/* to provide an opportunity for public comment. Members of the public who do not have Internet access may request a paper copy of the draft quality guidelines by contacting the agency as directed above.

We invite comments on all aspects of the guidelines with emphasis on the following general questions:

1. Are USDA's draft guidelines adequate for ensuring the objectivity, utility, and integrity of the information it disseminates as set out in OMB's notices of September 28, 2001 and February 22, 2002?

2. Are USDA's procedures for allowing affected persons to seek and obtain correction of information appropriate and consistent with OMB requirements?

Dated: June 13, 2002.

Ira L. Hobbs,

Acting Chief Information Officer, Department of Agriculture.

[FR Doc. 02–15505 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–02–004]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection in support of the shell egg surveillance portion of the Regulations for the Inspection of Eggs—7 CFR part 57.

DATES: Comments on this notice must be received by August 19, 2002.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations for the Inspection of Eggs (Egg Products Inspection Act).

OMB Number: 0581–0113.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide, in part, a mandatory inspection program to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs.

The Act authorizes the Department to issue regulations, which provide requirements and guidelines, for both the USDA and industry to use as the basis for common understanding to assure that only eggs fit for human food are used for such purpose.

Under the shell egg surveillance program, shell egg handlers are required to register with USDA. Quarterly, a State or Federal surveillance inspector visits each registered handler to verify that shell eggs packed for consumer use are in compliance, that restricted eggs are being disposed of properly, and that adequate records are being maintained.

The information collection and record keeping requirements in this request are essential to carry out the intent of Congress, to administer the mandatory inspection program, and to take regulatory action, in accordance with the regulations and the Act. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the regulations, and their use is necessary to fulfill the intent of the Act.

The information collected is used only by authorized representatives: AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies. The information is used to assure compliance with the Act and the regulations and to take regulatory action. The Agency is the primary user of the information, with the secondary user each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.30 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 1,004.

Estimated Number of Responses per Respondent: 6.00.

Estimated Total Annual Burden on Respondents: 1,749 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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; or (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 technical collection techniques or other forms of information. Comments may be sent to: David Bowden, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 14, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–15508 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–022–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support cooperative agreements in the study of bovine tuberculosis.

DATES: We will consider all comments that we receive on or before August 19, 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. 02–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–022–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–022–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the National Cooperative State-Federal Bovine Tuberculosis Eradication Program, contact Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agreements in the Study of Bovine Tuberculosis.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the spread of serious communicable animal diseases (such as bovine tuberculosis) from one State to another, and for eradicating such diseases from the United States when feasible. Bovine tuberculosis is a contagious, infectious, and communicable disease that affects cattle, bison, deer, elk, goats, and other species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

Through the National Cooperative State-Federal Bovine Tuberculosis Eradication Program, APHIS works with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and to prevent its recurrence. APHIS sponsors cooperative agreements for research on such issues as testing, vaccinations, pathobiology, and molecular biology relating to bovine

tuberculosis infection in animal species that could lead to improvements in disease detection and prevention. Granting cooperative agreements to institutions of higher education (including State-sponsored universities), hospitals, or other nonprofit organizations to conduct research projects necessitates the use of information collection activities, including the completion of project proposals and progress and financial status reports.

We are asking the Office of Management and Budget (OMB) to approve the information collection activities for cooperative agreements for the study of bovine tuberculosis.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 3.5 hours per response.

Respondents: Program participants (researchers associated with universities, hospitals, or other nonprofit organizations).

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 8.

Estimated total annual burden on respondents: 28 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of June 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–15586 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on July 1, August 5, September 9, and October 7, 2002 at 6:30 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: July 1, August 5, September 9, and October 7, 2002.

ADDRESSES: The meetings will be held at the Kootenai National Forest Supervisor's Office, located at 1101 U.S. Highway 2 West, Libby, MT.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or email *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing project proposals and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: June 13, 2002.

Cami Winslow,

Acting Forest Supervisor.

[FR Doc. 02–15495 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, July 18, 2002, at the Whatcom County Parks and Recreation Department Conference Room, 3373 Mt. Baker Highway, Bellingham, WA. The meeting will begin at 9 a.m. and last until approximately 3 p.m.

The purpose of the meeting will be to review projects under consideration for FY2003 Title II funding under the Secure Rural Schools and Community Self-Determination Act. Project proponents will do presentations, followed by a discussion, and then a prioritized list of recommended 2003 projects will be developed.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmine Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedra Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: June 12, 2002.

Larry Donovan,

Acting Designated Federal Official.

[FR Doc. 02–15545 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) will be holding a field trip to visit the sites of various proposed 2002 and 2003 projects on Thursday, July 18, 2002. The RAC is tentatively planning to meet at 8:30 a.m. at the Granite Falls High School.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend, and must provide their own transportation and lunch.

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this field trip to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Hwy, PO Box 305, Skykomish, WA 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: June 11, 2002.

Barbara Busse,

Designated Federal Official.

[FR Doc. 02–15546 Filed 6–19–02; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 25, 2002; 12 Noon–1 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: June 18, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–15739 Filed 6–18–02; 2:11 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–872]

Notice of Postponement of Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Final Antidumping Duty Determination of Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China.

SUMMARY: The Department of Commerce is postponing the final determination in the less-than-fair-value investigation of certain cold-rolled carbon steel flat products from the People's Republic of China (''PRC''). Suspension of liquidation will be extended accordingly.

EFFECTIVE DATE: June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy at 202–482–0165 or James C. Doyle at 202–482–0159, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. 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).

Background

On May 9, 2002, the Department of Commerce (''Department'') published the notice of preliminary determination of sales at less than fair value for certain cold-rolled carbon steel flat products from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China*, 67 FR 31235 (May 9, 2002). The final determination of this investigation is currently due no later than July 10, 2002. Pursuant to section 735(a)(2) of the Act, on May 30, 2002, the Pangang Economic and Trading Group Corporation (''Pangang'') requested that the Department postpone its final determination in the investigation until 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In addition, in accordance with 19 C.F.R. 351.210(e)(2) Pangang requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act to not more than six months.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters which account for a significant proportion of exports of the subject merchandise. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. In accordance with 19 C.F.R. 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise (*see June 13, 2002 Memorandum to the File from James Doyle, Program Manager, re: Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from the People's Republic of China: Request for a Postponement of the Final Determination*), and (3) no compelling reasons for denial exist, we are granting Pangang's request and are fully extending the due date for the final results by 60 days, until no later than September 23, 2002. Suspension of liquidation will be extended accordingly.

Dated: June 14, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–15593 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–810]

Notice of Postponement of Final Antidumping Duty Determination; Certain Cold-Rolled Carbon Steel Flat Products from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Final Antidumping Duty Determination of Certain Cold-Rolled Carbon Steel Flat Products from Turkey.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of certain cold-rolled carbon steel flat products from Turkey. Suspension of liquidation will be extended accordingly.

EFFECTIVE DATE: June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at 202–482–3518, or 202–482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Postponement of Final Determinations and Extension of Provisional Measures

On May 9, 2002, the Department published the affirmative preliminary determination for the investigation of certain cold-rolled carbon steel flat products (cold-rolled steel) from Turkey. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Turkey*, 67 FR 31264 (May 9, 2002).

Pursuant to section 735(a)(2) of the Tariff Act and section 351.210(b)(2)(ii) of the Department's regulations, on May 31, 2002, the respondent in the case, Borcelik Celik Sanayii ve Ticaret A.S. (Borcelik) requested the Department postpone the final determination in accordance with section 735(a)(2)(A) of the Tariff Act. Borcelik also requested that the Department extend to six months any provisional measures imposed pursuant to section 733(d) of the Tariff Act.

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for a postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination was affirmative, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise from Turkey, and (3) no compelling reasons for denial exist, we are granting Borcelik's request for the postponement of the final determination.

We are postponing the final determination in this case to no later than

September 23, 2002, which is 135 days after the publication of the preliminary determination in the **Federal Register**. Where applicable, suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: June 14, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–15594 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review.

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 22, 2002, the Canadian Lumber Trader Alliance, the Ontario Forest Industries Association filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A Second Request was received on behalf of Tembec, Inc. and the Ontario Lumber Manufacturers Association. Panel review was requested of the Final Affirmative Injury Determination made by the United States International Trade Commission, respecting Certain Softwood Lumber Products from Canada. This determination was published in the **Federal Register,** (67 FR 36022) on May 22, 2002. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–07 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 22, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30

days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 21, 2002);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 8, 2002); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 29, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–15473 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

[I.D. 061702A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Dealer Purchase Reports.

Form Number(s): NOAA Forms 88–30, 88–142.

OMB Approval Number: 0648–0229.

Type of Request: Regular submission.

Burden Hours: 3,451.

Number of Respondents: 730

Average Hours Per Response: 2 minutes for a NOAA Form 88–30; 30 minutes for a NOAA Form 88–142; 4 minutes for an Interactive Voice Response system report; and 2 minutes for an interview.

Needs and Uses: Federally-permitted dealers in specified fisheries are required to submit information weekly regarding their fish purchases. Other dealers are asked to submit the information on a voluntary basis. A small number of commercial fishermen may also be asked to voluntarily provide information related to the purchase. The information obtained is used by economists, biologists, and managers in the management of the fisheries. NOAA is seeking to renew Paperwork Reduction Act approval for these requirements.

Affected Public: Business or other for-profit, individuals or households.

Frequency: On occasion, weekly.

Respondent's Obligation: Mandatory.

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 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–15596 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 061702B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Yellowtail Flounder Exemption Programs and Days-at-Sea Allocation Appeals.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 877.

Number of Respondents: 1,400.

Average Hours Per Response: 2 minutes to enter or leave exemption program; 2 hours for a days-at-sea baseline appeal.

Needs and Uses: NOAA is requesting Paperwork Reduction Act approval for new court-ordered requirements that would allow Northeast multispecies fishermen to enter an exemption program that would permit those fishing north of 40″ N. latitude to possess yellowtail flounder, and those fishing in areas other than the Southern New England regulated mesh area to possess yellowtail flounder in excess of the trip limits. A provision would also be added that would allow permit holders to appeal their baseline allocation of days-at-sea.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

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 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–15597 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 061702C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Logbook Family of Forms.

Form Number(s): NOAA Forms 88–30, 88–140.

OMB Approval Number: 0648–0212.

Type of Request: Regular submission.

Burden Hours: 5,940.

Number of Respondents: 4,800.

Average Hours Per Response: 5 minutes per Fishing Vessel Trip Report; 4 minutes for an Interactive Voice

Response system report; and 12 minutes for a Fishing Trip Record (Shellfish) report.

Needs and Uses: Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. Participants in the herring and tilefish fisheries are also required to make weekly reports on their catch through an Interactive Voice Response (IVR) system. In addition, permitted vessels that catch halibut are asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries. This action seeks to renew Paperwork Reduction Act clearance for these requirements.

Affected Public: Business or other for-profit, individuals or households.

Frequency: On occasion, monthly.

Respondent's Obligation: Mandatory.

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 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 13, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–15598 Filed 6–19–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 0222]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–22 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

7 June 2002

In reply refer to:
I-02/004178

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-22 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Switzerland for defense articles and service estimated to cost $104 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Switzerland

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 72 million
Other	$ 32 million
TOTAL	$104 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 222 AIM-9X Sidewinder Tactical Missiles, eight (8) NATM-9X Telemetry Missiles, 45 CATM-9X Captive Air Training Missiles, missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support

(iv) **Military Department:** Navy (AAM)

(v) **Prior Related Cases, if any:** None

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Switzerland – AIM-9X Sidewinder Missiles

The Government of Switzerland has requested a possible sale of 222 AIM-9X Sidewinder Tactical Missiles, eight (8) NATM-9X Telemetry Missiles, 45 CATM-9X Captive Air Training Missiles, missile containers, missile modifications, test sets and support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $104 million.

The Government of Switzerland is a political and economic power in Europe and a partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist the Swiss in developing and maintaining a strong and ready self-defense capability which will contribute to an acceptable military balance in the area.

The AIM-9X Sidewinder missile enhances self-defense capabilities bringing Swiss Air Force (SAF) F/A-18s up to capabilities found in neighboring country military forces. The incremental effect of the sale of AIM-9X on the overall capability of the SAF should not be particularly significant.

The Swiss Air Force has extensive experience operating the F/A-18 aircraft and should have no difficulties incorporating this upgraded weapon into their forces. The Swiss Air Force needs this upgrade to keep pace with high tech advances in weaponry.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require two contractor representatives on-site during the preparation, equipment installation, equipment installation, and testing/checkout.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-9X represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M. The missile includes a high off-bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM-9X missile. The software continues to be modified during the testing phase in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released. Sensitive and/or classified (up to Secret) elements of the AIM-9X missiles include equipment/hardware, software, training, maintenance, documentation, and operation/performance.

2. The external view of the AIM-9X Sidewinder missile is unclassified and not sensitive. The AIM-9X features a high off-bore-sight seeker, enhanced countermeasure rejection capability, improved acquisition range and the ability to integrate with aircraft sensors. The seeker/guidance and control section and the target detector are confidential and contain sensitive state-of-the-art technology. Specifically, the infrared seeker sensitivity is a significant improvement over the previous AIM-9 variants. Manuals and technical documents for the AIM-9X that are necessary or support operational use and organizational maintenance have portions classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Switzerland can provide essentially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the policy justification portion of the notification.

[FR Doc. 02–15579 Filed 6–19–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on July 10–11, 2002, from 0900 to 1730.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussion on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App II (1982)), it has bee determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Contact Ann Hansen, 703–693–7034.

Dated: June 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–15599 Filed 6–19–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 225. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 225 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 2002.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 224. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: June 14, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGE IN CIVILIAN BULLETIN 225 IS CORRECTION TO LODGING RATE FOR ISLE OF HAWAII: HILO.				
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
BARROW	159	95	254	05/01/2002
BETHEL	129	66	195	05/01/2002
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER	99	63	162	05/01/2002
CORDOVA	105	89	194	05/01/2002
CRAIG	75	57	132	05/01/2002
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	79	58	137	05/01/2002
DENALI NATIONAL PARK				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
DILLINGHAM	95	69	164	05/01/2002
DUTCH HARBOR-UNALASKA	120	78	198	05/01/2002
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
ELMENDORF AFB				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FAIRBANKS				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	79	58	137	05/01/2002
FT. RICHARDSON				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
FT. WAINWRIGHT				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
GLENNALLEN				
05/01 - 09/30	137	61	198	09/01/2001
10/01 - 04/30	89	56	145	09/01/2001
HEALY				
06/01 - 08/31	125	66	191	09/01/2001
09/01 - 05/31	90	63	153	09/01/2001
HOMER				
05/15 - 09/15	109	76	185	06/01/2002
09/16 - 05/14	76	72	148	06/01/2002
JUNEAU	119	83	202	05/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	95	76	171	05/01/2002
11/01 - 03/31	60	71	131	05/01/2002
KENNICOTT	159	77	236	05/01/2002
KETCHIKAN				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	75	57	132	05/01/2002
KODIAK	105	81	186	05/01/2002
KOTZEBUE				
05/01 - 08/31	167	99	266	06/01/2002
09/01 - 04/30	136	96	232	06/01/2002
KULIS AGS				
05/01 - 09/15	161	85	246	05/01/2002
09/16 - 04/30	85	77	162	05/01/2002
MCCARTHY	159	77	236	05/01/2002
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	78	227	05/01/2002
09/16 - 04/30	75	70	145	05/01/2002
NOME	89	64	153	09/01/2001
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/31 - 09/30	179	58	237	05/01/2002
10/01 - 05/30	79	53	132	05/01/2002
SITKA-MT. EDGECUMBE				
05/16 - 09/16	159	98	257	05/01/2002
09/17 - 05/15	139	97	236	05/01/2002
SKAGWAY				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
SPRUCE CAPE	105	81	186	05/01/2002
TANANA	89	64	153	09/01/2001
UMIAT	200	20	220	05/01/2002
VALDEZ				
05/01 - 10/01	124	71	195	05/01/2002
10/02 - 04/30	69	66	135	05/01/2002
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	95	60	155	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WRANGELL				
05/01 - 09/30	130	80	210	05/01/2002
10/01 - 04/30	100	80	180	05/01/2002
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	69	204	11/01/2001
HAWAII				
CAMP H M SMITH	112	72	184	06/01/2002
EASTPAC NAVAL COMP TELE AREA	112	72	184	06/01/2002
FT. DERUSSEY	112	72	184	06/01/2002
FT. SHAFTER	112	72	184	06/01/2002
HICKAM AFB	112	72	184	06/01/2002
HONOLULU (INCL NAV & MC RES CTR)	112	72	184	06/01/2002
ISLE OF HAWAII: HILO	108	69	177	06/01/2002
ISLE OF HAWAII: OTHER	89	54	143	05/01/2000
ISLE OF KAUAI				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	72	184	06/01/2002
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	158	88	246	06/01/2002
12/01 - 04/30	203	93	296	06/01/2002
KILAUEA MILITARY CAMP	108	69	177	06/01/2002
LUALUALEI NAVAL MAGAZINE	112	72	184	06/01/2002
MCB HAWAII	112	72	184	06/01/2002
NAS BARBERS POINT	112	72	184	06/01/2002
PEARL HARBOR [INCL ALL MILITARY]	112	72	184	06/01/2002
SCHOFIELD BARRACKS	112	72	184	06/01/2002
WHEELER ARMY AIRFIELD	112	72	184	06/01/2002
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	149	72	221	04/01/2000
SAIPAN	150	88	238	11/01/2001
TINIAN	85	71	156	05/01/2002
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	93	72	165	01/01/2000
12/15 - 04/14	129	76	205	01/01/2000
ST. JOHN				
04/15 - 12/14	219	84	303	01/01/2000
12/15 - 04/14	382	100	482	01/01/2000
ST. THOMAS				
04/15 - 12/14	163	73	236	01/01/2000
12/15 - 04/14	288	86	374	01/01/2000
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

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[FR Doc. 02–15578 Filed 6–19–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Disposal and Reuse of the Fleet Industrial Supply Center, Naval Fuel Depot Point Molate, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DON) announces its decision to dispose of the Fleet Industrial Supply Center, Naval Fuel Depot Point Molate near Richmond, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Lee, Southwest Div, Naval Facilities Engineering Command, 1230 Columbia St, Suite 1100, San Diego, CA 92101, telephone (619) 532–0975, facsimile (619) 532–0940.

SUPPLEMENTARY INFORMATION: Under the authority of the Defense Base Closure and Realignment Act (DBCRA) of 1990, Public Law 101–510, 10 U.S.C. 2687 note at 582–606, and pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. Section 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, and the Department of Navy regulations implementing the federal regulations, 32 CFR 775, the Department of the Navy announces its decision to dispose of Fleet and Industrial Supply Center, Naval Fuel Depot Point Molate (NFD Point Molate), Richmond, CA. Disposal of this property will permit productive reuse of this surplus federal property. Several reuse alternatives were evaluated in the Environmental Impact Statement (EIS), including the Preferred Alternative (Alternative 2), light commercial and light industrial development.

Alternatives Considered

The proposed action is the disposal of the NFD Point Molate property. The Final EIS analyzed effects of the Preferred Reuse Plan, and effects of two other reuse plan alternatives. The No Action Alternative was also evaluated.

Alternative 1, Residential/Commercial, would use about 55 acres for residential development, 27 acres for commercial activities, 6 acres for light industrial activities, and 325 acres, including 100 acres of submerged land, for open space/recreation.

The Preferred Alternative, Alternative 2, Industrial/Commercial, would use about 27 acres for commercial activities, 61 acres for light industrial activities, and 325 acres, including 100 acres of submerged land, for open space/recreation.

Alternative 3, Recreation/Commercial, would use about 27 acres for commercial activities, 8 acres for light industrial activities, and 378 acres, including 100 acres of submerged land, for open/space recreation.

No Action Alternative, NFD Point Molate would not be disposed and would remain in Federal caretake status. The Navy would maintain the physical condition of the property by providing security and making repairs essential to safety. Because the No Action Alternative has less potential for adverse environmental impacts, it is the environmentally preferable alternative. However, the No action Alternative would not promote local economic development nor create jobs and, therefore, is inconsistent with the statutory direction contained in the DBCRA.

Environmental Impacts

DON analyzed the direct, indirect, and cumulative impacts of each alternative on the environment. Potential significant impacts that could result from Alternative 2 are discussed below.

Expansion of the existing sewage treatment plant or construction of a new sewage treatment plant and operation of a winery on site could result in incomparability between these land uses and other development on site. Until a specific project is identified, it is not possible to identify the amount or type of commercial uses that might be proposed in the Waterfront Park Beach priority use area. Proposed uses could be inconsistent with the San Francisco Bay Plan. The EIS includes minimization and avoidance measures that the developer could implement that would reduce these potential impacts to insignificant levels. There is also the potential for exposures of occupants of the property to accidental releases from a nearby refinery. However, most occupants would not be staying overnight and overnight stays would be limited to guests and staff of a hotel or bed and breakfast facility. The Bay Area Air Quality Management District (BAAQMD) does not consider these occupants sensitive receptors. Because there would be no sensitive receptors on site as defined by the BAAQMD this potential impact is considered insignificant.

The proposed redevelopment would increase the demand for police, fire, and emergency medical services. The distance between NFD Point Molate and local city fire stations could require the city to establish a fire crew and fire truck at the existing fire station. Although the existing water system at NFD Point Molate has inadequate water pressure to meet firefighting requirements, the Preferred Alternative includes upgrading the water system to satisfy these requirements.

Five cultural resources at NFD Point Molate have been identified: Winehaven Historic District and four archeological sites. The Winehaven Historic District is the only property at Point Molate listed on the National Register of Historic Places. Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR part 800, the Navy has completed consultation with the Advisory Council on Historic Preservation (ACHP), the California State Historic Preservation Officer (SHPO), and the Bay Miwok Band American Indian tribe. As a result of these consultations, the Navy has agreed to several actions to avoid or minimize adverse impacts to cultural resources. These obligations are set forth in a Memorandum of Agreement among the Navy, the ACHP, the SHPO, and the Bay Miwok, dated January 29, 2002. Before conveying any property at NFD Point Molate, the Navy will submit an amendment to the National Register of Historic Places for the Winehaven Historic District. The amendment will distinguish between the contributing and non-contributing buildings and structures within the District. The Navy is also applying to the California Historical Resources Commission to reduce the Winehaven Historic District boundary as it appears on the California Register of Historic Resources, so that non-contributing properties are excluded. The Navy is nominating a historic Shrimp Camp (CA–CCO–506H) to the National Register and will formally evaluate the National Register eligibility of three prehistoric archeological sites (CA–CCO–282, CA–CCO–283, and CA–CCO–423), and if they are determined eligible, nominate them to the National Register.

There are no Federally listed threatened or endangered species known to occur on the NFD Point Molate property under the Endangered Species Act.

The Preferred Alternative could have significant impacts on transportation, traffic, and circulation. Projected traffic could cause substantial delays during peak commuting hours at three intersections of freeway ramps and roadways near NFD Point Molate. On one ramp, a local agency planning threshold would be exceeded. In

addition, off-site road segments between NFD Point Molate and the nearby freeway are substandard and access to the property is lacking from one direction of the freeway. Significant impacts could be mitigated by the local and state governmental agencies through widening the road accessing the property, road restriping and other modifications detailed further in the EIS.

The Navy analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative children could be present for short periods in the bed and breakfast establishments, small hotels, and recreational areas. NFD Point Molate is within the toxic or flammable endpoints for accidental releases by Chevron Refinery and General Chemical Corporation, as assessed in conformation with the Risk Management Program Rule (40 CFR 68.130; Section 112(r) of the Clean Air Act). Since children are less able to metabolize, detoxify, and excrete some toxic substances than adults, in the event of an accidental release of substantial quantities of toxic contaminants, there could be disproportionate health and safety risks to children at NFD Point Molate.

Mitigation

The Navy will take certain actions to implement existing agreements and to comply with regulations. Once property is conveyed outside of federal control, land use is solely a function of state and local planning and zoning authorities. The DON cannot impose post conveyance restrictions on land use absent specific statutory authority to do so such as that provided for the imposition of land use controls under Comprehensive Environmental Response, Compensation, and Liability Act. As a result, the DON has no authority to require that parties acquiring the former NFD Point Molate property impose the mitigation measures identified in the Final EIS or this Record of Decision.

Response to Comments Received Regarding the Final EIS

After the Final EIS was distributed to the public the Navy received one comment letter from Contra Costa Health Services. Their concerns had already been addressed in the Final EIS and do not require further clarification.

Conclusion

Although the No Action Alternative is the environmentally preferred alternative, it would not promote local economic redevelopment and create jobs. Keeping the property in caretaker status would not be the highest and best use of the property because it would not take advantage of the property's physical characteristics and infrastructure.

Based on the analysis contained in the Final EIS and the associated administrative record, I have decided, on behalf of the Department of the Navy, to dispose of the Fleet and Industrial Supply Center, Naval Fuel Depot Point Molate.

Dated: June 4, 2002.

Duncan Holaday,

Deputy Assistant Secretary, (Installations and Facilities).

[FR Doc. 02–15540 Filed 6–17–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On June 11, 2002, a 30-day notice inviting comment from the public was inadvertently published for the Application for the ''Annual Performance Report Forms for the FIPSE US-Brazil Higher Education Consortia Program'' in the **Federal Register** (67 FR 41220) dated June 17, 2002. This notice amends the public comment period for this program to 60 days. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 19, 2002.

ADDRESSES: Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1941. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: June 17, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

[FR Doc. 02–15631 Filed 6–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.336C]

Teacher Quality Enhancement Grants Program—Teacher Recruitment Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: This program provides grants to States and to partnerships to promote improvements in the quality of new teachers with the ultimate goal of increasing student achievement in pre-K–12 classrooms.

Eligible Applicants: States (including the District of Columbia, Puerto Rico and the insular areas) and partnerships comprised, at a minimum, of an institution of higher education with an eligible teacher preparation program, a school of arts and sciences, and a high-need local educational agency (LEA). These terms are defined in section 203 of the Higher Education Act and in regulations for this program in 34 CFR 611. States and partnerships that received an FY 1999 grant under this program are not eligible for this competition.

Applications Available: June 20, 2002.

Deadline for Transmittal of Applications: July 25, 2002.

Deadline for Intergovernmental Review: September 24, 2002.

Estimated Available Funds: $8,920,000.

Estimated Range of Awards: $195,000 — $465,000.

Estimated Average Size of Awards: $372,000.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than 50 pages. In addition, you must limit your accompanying work plan to the equivalent of no more than 10 pages, your budget narrative to the

equivalent of no more than 10 pages and your evaluation plan to the equivalent of no more than 5 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, work plan, budget narrative, and evaluation plan, including titles, headings, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Our reviewers will not read any pages of your application that—

• Exceed the page limit if you apply these standards; or

• Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations for this program appear in 34 CFR part 611.

SUPPLEMENTARY INFORMATION: The Teacher Recruitment Grants program, one of the three Teacher Quality Enhancement Grant programs contained in Title II, Part A of the Higher Education Act (HEA), is authorized in section 204 of the HEA. The program affords an opportunity for States and partnerships to address the challenge of America's teacher shortage by making significant and lasting systemic changes to the ways that teachers are recruited, prepared—either through postsecondary teacher preparation programs or alternative routes to teaching for those coming to the profession from other careers or educational backgrounds—and supported to teach in high-need schools. In administering the program, the Department of Education's goal is to support the efforts of the States and partnerships to ensure that all students, especially those in high-need school districts, have a highly qualified teacher to help them achieve to challenging State content and performance standards.

Through this notice the Secretary announces requirements and procedures to govern the competition for FY 2002 grant funds. In particular, the Department will implement only a single application review process and use the selection criteria identified in 34 CFR 611.32 rather than the two-step review process identified in 34 CFR 611.3(a)(iii). In all other respects the requirements and procedures for the upcoming FY 2002 competition are the same as those authorized in the Teacher Quality Enhancement Grant program regulations (34 CFR part 611) and the Education Department General Administrative Regulations (EDGAR).

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(a), the Secretary has determined that proposed rulemaking is not required. These requirements will apply to the FY 2002 grant competition only.

Because the Department did not receive from Congress a FY 2002 appropriation for this and other programs until January of 2002, the Department has had insufficient time to implement the two-stage application process otherwise required by 34 CFR 611.3(a)(3) and still make awards by September 30, 2002, the last day on which the Department may obligate these funds. The public is not prejudiced by eliminating the first of the two-stage review procedures in the upcoming competition because all potential applicants are eligible to apply for awards under the selection criteria identified in 34 CFR 611.32 and will be treated equally.

Pilot Project for Electronic Submission of This Application

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Title II, Teacher Recruitment Program (CFDA No. 84.336C) is included in the pilot project. If you are an applicant under the Title II, Teacher Recruitment Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

• Your participation is strictly voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all grant documents electronically, including the Application for Federal Assistance (ED 424), Budget Information-Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Title II, Teacher Recruitment Grants program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398, Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244.

If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.336C. You may also request application forms by calling (202) 502–7878 or submitting the name of the competition and your name and postal address to: *teacherquality@ed.gov.*

Applications are also available on the Teacher Quality Web Site: *http://www.ed.gov/offices/OPE/heatqp/.*

FOR FURTHER INFORMATION CONTACT: Brenda Shade, U.S. Department of Education, 1919 K Street, NW., Room 6148, Washington, DC 20006–8525. Telephone: (202) 502–7878 or via Internet: *Brenda.Shade@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in alternative format, (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1024.

Dated: June 17, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–15627 Filed 6–19–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Proposed Transfer of Parcel ED–1 to the Community Reuse Organization of East Tennessee

AGENCY: Oak Ridge Operations, U.S. Department of Energy.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE), Oak Ridge Operations (ORO) is proposing to transfer title of Parcel ED–1 (also known as the Horizon Center) to the Community Reuse Organization of East Tennessee (CROET). Parcel ED–1 consists of approximately 957 acres located on the Oak Ridge Reservation, Roane County, Tennessee. A portion of Parcel ED–1 is located within the 100-year floodplain of East Fork Poplar Creek (EFPC). The parcel also contains five wetlands that were identified during a U.S. Army Corps of Engineers (COE) survey in 1991–1992. The total acreage of the wetlands is about 3.5 acres and all five wetlands are within the 100-year floodplain of EFPC. In accordance with 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner that will avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the wetlands assessment are due to the address below no later than July 5, 2002.

ADDRESSES: Comments should be addressed to Mr. David R. Allen, U.S. Department of Energy, P.O. Box 2001, MS–SE–30–1, Oak Ridge, TN 37831. Comments may also be faxed to (865) 576–0746.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Mr. David R. Allen, NEPA Compliance Officer, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, MS–SE–30–1, Oak Ridge, TN 37831, (865) 576–0411.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE proposes to transfer title of Parcel ED–1 to CROET. CROET has leased Parcel ED–1 since 1998 for development of an industrial/business park. Under the proposed transfer, CROET would continue the development of the parcel as an industrial/business park for research and development, medical technology, manufacturing, distribution, and corporate headquarters office facilities. The developable portion of the parcel consists of seven major development areas, ranging in size from 11 to 148 acres. The remaining property, which contains the 100-year floodplain of EFPC and the five wetlands, is protected as a Natural Area. Conditions of the deed and transfer agreement will ensure continued protection of the Natural Area.

The potentially affected 100-year floodplain property lies along EFPC and its tributaries within Parcel ED–1. The five wetlands identified in the COE survey of the EFPC floodplain in 1991–1992 total about 3.5 acres. Hydrology in these wetlands is associated with the backwater of Watts Bar Reservoir; however, some upstream input comes from springs and surface runoff. Vegetation ranges from open water to herbaceous, shrub, and forest and includes sedges, jewelweed, smartweed, buttonbush, silky dogwood, box elder, green ash, and sycamore. One wetland contains an active beaver colony with two beaver dams and a beaver lodge at the confluence of a tributary to EFPC. Beaver activity has apparently increased the size of this wetland from that which was delineated in the 1991–1992 surveys.

Under the current lease CROET encroached upon the 100-year floodplain of EFPC during construction of culverts, bridges, and roads as part of its development of the parcel. These activities were conducted under the appropriate state and federal permits. Upon transfer of Parcel ED–1, additional minor encroachments of the floodplain may be necessary for further development of the parcel. The existing wetlands within Parcel ED–1 have not been disturbed by development activities and would continue to be protected. No additional wetlands have been identified within the parcel in areas proposed for development.

The proposed action is transfer of the entire Parcel ED–1. However, as an option DOE could choose to only transfer the developable areas of Parcel ED–1. The remaining property would stay under DOE ownership and control. Another option is to transfer all of Parcel ED–1 except for the 100-year floodplain of EFPC, which would remain under DOE ownership and control in order to address possible requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which may be identified in the future. For purposes of comparison it was determined that if DOE chose not to transfer Parcel ED–1 (i.e., no action) the current lease with CROET would continue.

Issued in Oak Ridge, Tennessee on May 30th, 2002.

David R. Allen,

NEPA Compliance Officer.

[FR Doc. 02–15561 Filed 6–19–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–054]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

June 14, 2002.

Take notice that on June 7, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction under its Rate Schedule FTS–1:

Service Agreement No. 72975 Between Columbia Gulf Transmission Company and Reliant Energy Services, Inc. Dated May 17, 2002.

Transportation service is to commence November 1, 2002 and end March 31, 2003 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15518 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–190–003]

Kern River Gas Transmission Company; Notice of Tariff Filing

June 14, 2002.

Take notice that on June 5, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 746, with an effective date of May 1, 2002.

Kern River states that the purpose of this filing is to correct a pagination error by submitting Second Revised Sheet No. 746 as a replacement for the First Revised Sheet No. 746 that was filed in this proceeding.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. 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. 02–15521 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–062]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 14, 2002.

Take notice that on June 10, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Original Sheet No. 26A.01 to be effective October 1, 2001.

Natural states that the purpose of this filing is to correct an inadvertent transposition error in an existing negotiated rate transaction entered into by Natural and Aquila Energy Marketing Corporation.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15516 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–063]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

June 14, 2002.

Take notice that on June 10, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.03 to be effective June 9, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction between Natural and Wisconsin Electric-Wisconsin Gas Commodity Resources under Natural's Rate Schedule IBS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15519 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–029]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

June 14, 2002.

Take notice that on June 11, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twenty-first Revised Sheet No. 7.

GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement. GTN requests that this tariff sheet become effective June 12, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15520 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–074]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

June 14, 2002.

Take notice that on June 4, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an original and five copies of its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Ocean State Power. Tennessee requests that the Commission grant such approval effective July 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15517 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–381–000]

Texas Eastern Transmission, LP; Notice of Application

June 14, 2002.

Take notice that on June 5, 2002, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP02–381–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity and related authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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).

Texas Eastern states that it requests authorization to construct, install, own, operate and maintain certain natural gas transportation facilities (the M–1 Expansion Project) to ultimately provide up to 197,147 dekatherms per day (Dth/d) of firm transportation service. Additionally, Texas Eastern states that it is seeking authorization to establish initial Section 7(c) recourse rates for annual and seasonal services using the proposed incremental facilities.

To provide an additional 197,147 Dth/d of firm transportation service, Texas Eastern is requesting authorization to (i) construct, install, own, operate and maintain three new 36-inch diameter pipeline loops totaling approximately 31.95 miles; and (ii) perform uprates at four existing compressor stations in Tennessee, Alabama, and Mississippi to increase system horsepower (HP) by a total of 28,000 HP. To meet the specific requirements of Carolina Power & Light Company, Choctaw Gas Generation, LLC, and the City of Cartersville (the M–1 Expansion Shippers), Texas Eastern states that it has planned the construction of the M–1 Expansion Project facilities to provide for a phasing-in of the shippers' volumes between November 2003 and November 2004.

Texas Eastern also states that firm transportation service through the M–1 Expansion Project facilities will be rendered to the M–1 Expansion Shippers pursuant to Texas Eastern's Rate Schedule FT–1. The M–1 Expansion Shippers will pay incremental FT–1 rates to compensate Texas Eastern for the costs of the M–1 Expansion Project facilities, which are estimated to be approximately $66.125 million.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, call (713) 627–5113 or fax (713) 627–5947.

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 July 5, 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.

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.

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. 02–15510 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF02–5181–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Regulation Filings

June 14, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy—Western Area Power Administration

[Docket No. EF02–5181–000]

Take notice that on June 3, 2002, the Secretary of the Department of Energy by Rate Order No. WAPA–97, did confirm and approve on an interim basis, to be effective on July 1, 2002, the Western Area Power Administration's (Western) Rate Schedule L-AS4 for Energy Imbalance Service. The existing Rate Schedule L-AS4 is terminated June 30, 2002, and replaced by this adjusted rate order.

The rate in Rate Schedule L-AS4 will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of these or of substitute rates

on a final basis, ending September 30, 2002.

Comment Date: June 24, 2002.

2. Immingham CHP LLP

[Docket No. EG02–146–000]

Take notice that on June 10, 2002, Immingham CHP LLP, Incorporated in England and Wales, (the Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged directly or indirectly, through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA) in owning and operating eligible facilities constructed In England.

Comment Date: July 5, 2002.

3. NedPower Mount Storm LLC

[Docket No. EG02–147–000]

Take notice that on June 12, 2002, NedPower Mount Storm LLC (Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 (18 CFR 365) of the Commission's regulations. Applicant, a Delaware limited liability company, proposes to own and operate an up to 300 MW wind energy electric generating plant located in Grant County, West Virginia.

Comment Date: July 5, 2002.

4. Northern Iowa Windpower II LLC

[Docket No. EG02–148–000]

Take notice that on June 12, 2002, Northern Iowa Windpower II LLC (Northern Iowa) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Northern Iowa is developing a wind-powered eligible facility with a capacity of 100.5 megawatts, powered by approximately 67 wind turbine generators, which will be located in Worth County, Iowa.

Comment Date: July 5, 2002.

5. Dominion Davidson, Inc.

[Docket No. EG02–149–000]

Take notice that on June 7, 2002, Dominion Davidson, Inc. (Davidson) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Davidson, a Delaware corporation, is a wholly owned subsidiary of Dominion Energy, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Resources, Inc., also a Virginia corporation. Davidson will be exclusively engaged in the business of owning, operating and selling electricity exclusively at wholesale from an approximately 570 MW electric generating facility located in Reedy Creek Township, Davidson County, North Carolina. The facility will be interconnected with transmission facilities of Duke Electric Transmission, a division of Duke Energy Corporation.

Comment Date: July 5, 2002.

6. LG&E Energy Marketing, Inc., Louisville Gas & Electric Company, & Kentucky Utilities Company, WKE Station 2, Inc., Western Kentucky Energy Corporation

[Docket Nos. ER94–1188–033, ER98–4540–002, ER99–1623–001, ER98–1278–008, and ER98–1279–004]

Take notice that on May 30, 2002, LG&E Energy Marketing, Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, WKE Station 2, Inc., and Western Kentucky Energy Corporation tendered for filing a triennial market power analysis in compliance with: LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994); Louisville Gas & Elec. Co., 85 FERC ¶ 61,215 (1998); LG&E Operating Cos., Docket No. ER99–1623–000, Letter Order, Jun. 4, 1999; WKE Station Two, Inc., 82 FERC ¶ 61,178 (1998); and WKE Station Two, Inc., Docket No. ER99–1755–000, Letter Order, Mar. 16, 1999.

Comment Date: June 24, 2002.

7. Midwest Independent Transmission, System Operator, Inc., Alliant Energy Corporate, Services, Inc., et al.

[Docket No. ER02–438–000]

Take notice that on June 11, 2002, the Midwest ISO Transmission Owners submitted an errata to certain of the tariff sheets filed on November 30, 2001 in this proceeding, as accepted by the Commission in its January 29, 2002 order herein, solely for the purpose of correcting the page, volume, or schedule references on such sheets. The Midwest ISO Transmission Owners state that no substantive changes are being made, and no change is sought in the previously established effective date of these sheets (which was triggered by the effectiveness of the Midwest ISO Tariff).

Comment Date: July 2, 2002.

8. Central Maine Power Company

[Docket No. ER02–2067–000]

Take notice that on June 11, 2002, Central Maine Power Company (CMP), tendered for filing a cancellation notice for the Unexecuted Interconnection Agreement and Unexecuted Transmission Service Agreement with Foss Mill, FERC Electric Tariff, Fifth Revision, No. 3.

CMP states the effective date of August 6, 2002 is given. Notice of the proposed cancellation has been served upon Central Maine Power Company and Maine Public Utilities Commission.

Comment Date: July 2, 2002.

9. Ameren Energy, Inc. on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–2069–000]

Take notice that on June 11, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *The Cincinnati Gas & Electric Company.*

Ameren Energy seeks Commission acceptance of these service agreements effective May 1, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: July 2, 2002.

10. Citizens Communications Company

[Docket No. ER02–2070–000]

Take notice that on June 11, 2002, Citizens Communications Company (Citizens) tendered for filing on behalf of itself and Morgan Stanley Capital Group Inc. a Service Agreement for Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of the Vermont Electric Division of Citizens. Citizens also tendered for filing a revised Attachment E, Index of Point-to-Point Transmission Service Customers, to update the Open Access Transmission Tariff.

Comment Date: July 2, 2002.

11. Central Maine Power Company

[Docket No. ER02–2071–000]

Take notice that on June 11, 2002, Central Maine Power Company (CMP) tendered for filing that effective the 6th day of August, 2002, the Unexecuted Interconnection Agreement and Unexecuted Transmission Service Agreement with Marsh Stream, FERC Electric Tariff, Fifth Revision, No. 3, is to be cancelled.

Notice of the proposed cancellation has been served upon the following:

Stephanie McNeal, Regulatory Services Department, Transmission Services Department, Central Maine Power Company, 83 Edison Dr, Augusta, ME 04336–0002

Velma Brown, Transmission Services Department, Central Maine Power Company, 83 Edison Drive, Augusta, ME 04336–0002.

Arthur Taylor, Chairman, Penobscot River Coalition, President, FISH, 10 High Hill Drive, Lincoln, ME 04457.

John Danyew, Transmission Services Department, Central Maine Power Company, 83 Edison Dr., Augusta, ME 04336–0002.

Dennis Keschl, Maine Public Utilities Commission, 18 State House Station, 242 State Street, Augusta, ME 04333–0001.

Comment Date: July 2, 2002.

12. Entergy Services, Inc.

[Docket No. ER02–2072–000]

Take notice that on June 11, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a unilaterally executed Interconnection and Operating Agreement with Louisiana Generating LLC (LaGen), and a Generator Imbalance Agreement with LaGen. Both tendered agreements address the interconnected operations of LaGen's existing Big Cajun II facility.

Comment Date: July 2, 2002.

13. Entergy Services, Inc.

[Docket No. ER02–2073–000]

Take notice that on June 11, 2002, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a unilaterally executed Interconnection and Operating Agreement with Louisiana Generating LLC (LaGen), and a Generator Imbalance Agreement with LaGen. Both tendered agreements address the interconnected operations of LaGen's existing Big Cajun I facility.

Comment Date: July 2, 2002.

14. Lyon Rural Electric Cooperative

[Docket No. ES02–42–000]

Take notice that on June 5, 2002, Lyon Rural Electric Cooperative (Lyon) filed an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow money under a long-term loan agreement in the form of secured promissory notes in an amount not to exceed $2,182,396. Lyon seeks authorization to borrow money under a short-term line of credit agreement in the form of promissory notes in an amount not to exceed $900,000. Lyon requests authorization for the long-term loan agreement and the short-term line of credit for a two-year period commencing July 12, 2002.

Lyon also seeks waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: July 5, 2002.

15. Cleco Power LLC

[Docket No. ES02–43–000]

Take notice that on June 4, 2002, Cleco Power LLC submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $150 million during a two-year period.

Comment Date: July 5, 2002.

16. Indianapolis Power & Light Company

[Docket No. ES02–44–000]

Take notice that on June 6, 2002, Indianapolis Power & Light Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time, no more than $500 million of short-term debt instruments from July 30, 2002, through July 29, 2004.

Comment Date: July 5, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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. 02–15581 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Solicitation of Comments, Motions to Intervene, and Protests

June 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of Licenses.

b. Project Nos.: 2300–029, 2311–038, 2326–025, 2327–026, 2422–029, and 2423–015.

c. Date Filed: June 3, 2002.

d. Applicants: American Tissue-New Hampshire Electric, Inc. (Transferor) and GNE, LLC (Transferee).

e. Name of Projects: Shelburne, Gorham, Cross Power, Cascade, Sawmill, and Riverside.

f. Location: All of the projects are located on the Androscoggin River, in Coos County, New Hampshire. The projects do not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)).

h. Applicants Contacts: Michael J. Golde, Kugman Associates, Inc., 1 Bank One Plaza, 21 South Clark Street, Suite 3300, Chicago, IL 60603, (312) 251–5550 (for American-Tissue); Amy S. Koch and Ilia Levitine, Cameron McKenna LLP, 2175 K Street, NW., Fifth Floor, Washington, DC 20037, (202) 466–0060, Jeff Martin, GNE, LLC, 1024 Central Street, Millinocket, ME 04462, (207) 723–4341 (for GNE).

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Deadline for filing comments and or motions: July 17, 2002.

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 (2300–029, et al.) on any comments or motions filed.

k. Description of Transfer: On May 9, 2002, the U.S. Bankruptcy Court for the District of Delaware issued an order approving the sale of certain American Tissue Assets, including the projects, to Brascan Corporation or an assignee, which is GNE. GNE acquired the projects pursuant to a bankruptcy sale on May 31, 2002. The applicants seek Commission approval to transfer the licenses for the projects from American Tissue to GNE.

l. Location of the Application: 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 addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. 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, 385.211, 385.214. 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number 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 Applicant specified in the particular application.

p. 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. 02–15511 Filed 6–19–02; 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

June 14, 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.: 12152–000.

c. Date filed: March 11, 2002.

d. Applicant: Moriah Hydro Corporation.

e. Name of Project: Mineville Pumped Storage Project.

f. Location: In the existing mines within the Fisher Hill / Harmony Mine complex within Moriah in Essex County, New York. The Mines are owned by X-Earth Corporation of Elizabethtown, New York.

g. Filed Pursuant to: Federal Power Act, 16 USC 791(a)—825(r).

h. Applicant Contact: Mr. James A. Besha, P.E., Moriah Hydro Corporation, c/o Albany Engineering Corporation, 455 New Karner Road, Albany, NY 12205, (518) 456–7712.

i. FERC Contact: Robert Bell, (202) 219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 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–12152–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed pumped storage project would consist of one of the following alternatives:

Alternative 1

(1) An upper reservoir using underground 3rd level of the Fisher Hill Mine having a surface area of 88 acres, with a storage capacity of 1,762 acre-feet and a normal water surface elevation of 1200 feet NGVD, (2) a lower reservoir using underground 8th, 9th and 10th levels of the Fisher Hill Mine having a surface area of 46 acres, with a storage capacity of 2,299 acre-feet and a normal water surface elevation of 200 feet NGVD, (3) three identical 1000-foot-long, 96-inch-diameter vertical bored penstocks with grouted steel casings, (4) a proposed powerhouse containing three generating units having a total installed capacity of 63 MW; (5) a proposed 1-mile-long, 115 kV transmission line; and (6) appurtenant facilities.

Alternative 2

(1) An upper reservoir using underground 2nd level of the Harmony Mine having a surface area of 99 acres, with a storage capacity of 1,900 acre-feet and a normal water surface elevation of 1100 feet NGVD, (2) a lower reservoir using underground 7th, level of the Harmony Mine having a surface area of 75 acres, with a storage capacity of 2,500 acre-feet and a normal water surface elevation of 100 feet NGVD, (3) three identical 1000-foot-long, 96-inch-diameter vertical bored penstocks with grouted steel casing, (4) a proposed powerhouse containing three generating units having a total installed capacity of 63 MW; (5) a proposed 1-mile-long, 115 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 175 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application

for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15512 Filed 6–19–02; 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

June 14, 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.:* 12153–000.

c. *Date filed:* March 11, 2002.

d. *Applicant:* Mohawk Hydro Corporation.

e. *Name of Project:* Middle Mohawk Project.

f. *Location:* On the Mohawk River, in Montgomery and Schenectady Counties, New York. The existing facilities are owned by New York State Canal Corporation.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. James A. Besha, P.E., Albany Engineering Corporation, Agent for Mohawk Hydro Corp., 455 New Karner Road, Albany, NY 12205, (518) 456–7712.

i. *FERC Contact*: Robert Bell, (202) 219–2806.

f. 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–12153–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project would consist of the following eight Developments:

Lock #8 Development

(1) An existing 530-foot-long, 14-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 336 acres, with a storage capacity of 3,360 acre-feet and a normal water surface elevation of 224 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 1,800-foot-long, 34.5 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 16 GWh that would be sold to a local utility.

Lock #9 Development

(1) An existing 530-foot-long, 15-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 428 acres, with a storage capacity of 4,280 acre-feet and a normal water surface elevation of 239 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 17.6 GWh that would be sold to a local utility.

Lock #10 Development

(1) An existing 500-foot-long, 15-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 414 acres, with a storage capacity of 4,140 acre-feet and a normal water surface elevation of 254 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 1,500-foot-long, 115 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 17.3 GWh that would be sold to a local utility.

Lock #11 Development

(1) An existing 588-foot-long, 12-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 414 acres, with a storage capacity of 4,140 acre-feet and a normal water surface elevation of 266 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 700-foot-long, 34.5 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 16.1 GWh that would be sold to a local utility.

Lock #12 Development

(1) An existing 460-foot-long, 11-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 737 acres, with a storage capacity of 7,370 acre-feet and a normal water surface elevation of 277 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 400-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 11.7 GWh that would be sold to a local utility.

Lock #13 Development

(1) An existing 370-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 464 acres, with a storage capacity of 4,640 acre-feet and a normal water surface elevation of 285 feet USGS, (3) a proposed intake structure, (4) a proposed powerhouse containing 9 generating units having a total installed capacity of 3 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 7.3 GWh that would be sold to a local utility.

Lock #14 Development

(1) An existing 430-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 219 acres, with a storage capacity of 2,190 acre-feet and a normal water surface elevation of 293 feet USGS, (3) a proposed intake structure, (4) a proposed powerhouse containing 9 generating units having a total installed capacity of 3 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 5.8 GWh that would be sold to a local utility.

Lock #15 Development

(1) An existing 430-foot-long, 8-foot-high bridge type dam constructed primarily of steel, (2) an existing reservoir having a surface area of 578 acres, with a storage capacity of 5,780 acre-feet and a normal water surface elevation of 293 feet USGS, (3) a proposed intake structure, (4) two proposed powerhouses containing 18 generating units having a total installed capacity of 6 MW, (5) a proposed 200-foot-long, 13.2 kV transmission line, and (6) appurtenant facilities.

The development would have an annual generation of 5.8 GWh that would be sold to a local utility. The total installed capacity for all eight proposed developments is 41 MW and the total annual generation is 97.6 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15513 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 14, 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.*: 12175–000.

c. *Date filed*: May 30, 2002.

d. *Applicant*: Fern Ridge Hydro, LLC.

e. *Name and Location of Project*: The Fern Ridge Dam Hydroelectric Project would be located on the Long Tom River in Lane County, Oregon. The project would utilize the U.S. Army Corps of Engineer's existing Fern Ridge Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825®).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact*: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie Roman 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–12175–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the existing Fern Ridge Dam and Reservoir, would consist of: (1) a proposed 500-foot-long, 7-foot-diameter steel penstock; (2) a proposed powerhouse containing one generating unit with an installed capacity of 1.8 megawatts; (3) a proposed one-mile-long, 15-kV transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 6.3 gigawatthours.

k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to

take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15514 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

June 14, 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.: 12177–000.

c. Date filed: May 30, 2002.

d. Applicant: Little Grass Valley Hydro, LLC.

e. Name and Location of Project: The Little Grass Valley Hydroelectric Project would be located at an existing dam owned by the Oroville-Wyandotte Irrigation District on Slate Creek, within the Plumas National Forest, in Plumas County, California.

f. Filed Pursuant to: Federal Power Act, 16 USC 791(a)—825(r).

g. Applicant Contact: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. FERC Contact: James Hunter, (202) 219–2839.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: 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–12177–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project would consist of: (1) The existing 210-foot-high, 840-foot-long rockfill dam impounding the Little Grass Valley Reservoir, which has a 1,433-acre surface area at normal maximum water surface elevation 5,034 feet, (2) a proposed 400-foot-long, 8-foot-diameter steel penstock, (3) a proposed powerhouse containing two generating units, each with an installed capacity of 6.5 megawatts, (4) a proposed one-mile-long, 15-kV transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 45 gigawatthours. k. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g. above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–15515 Filed 6–19–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7235–5]

Agency Information Collection Activities: Request for Comments on Twenty-Two Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the twenty-two continuing Information Collection Requests (ICRs) listed in Section A of this notice to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of the **SUPPLEMENTARY INFORMATION** provided in this notice.

DATES: Comments must be submitted on or before August 19, 2002.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling the identified information contact person listed in Section B under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For specific information on an individual ICR, contact the person listed in Section B under **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who respond through the use of automated, electronic, mechanical, or other forms of information technology.

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.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by New Source Performance Standards (NSPS) and Federal Plan Requirements (FPR) must be retained by the owner or operator for at least two years; records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years; and the records required by the NESHAP Maximum Achievable Control Technology standards (NESHAP-MACT) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (See 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 2, 1979).

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paper Work Reduction Act.

Section A: List of ICRs To Be Submitted for OMB Review and Approval

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following twenty-two continuing ICRs to the Office of Management and Budget (OMB).

(1) NSPS subpart HH: NSPS for Lime Manufacturing (40 CFR part 60, subpart HH); EPA ICR Number 1167.07; OMB Control Number 2060–0063; expiration date January 31, 2003.

(2) NSPS subpart I: NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I); EPA ICR Number 1127.07; OMB Control Number 2060–0083; expiration date January 31, 2003.

(3) NSPS subpart Ce: Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ce); EPA ICR Number 1899.02; OMB Control Number 2060–0422; expiration date January 31, 2003.

(4) NSPS subpart DD: New Source Performance Standards for Grain Elevators (40 CFR part 60, subpart DD); EPA ICR Number 1130.07; OMB Control Number 2060–0082, expiration date January 31, 2003.

(5) NSPS subpart EE: NSPS for Metal Furniture Coating (40 CFR part 60, subpart EE); EPA ICR Number 0649.08; OMB Control Number 2060–0106; expiration date January 31, 2003.

(6) NSPS subpart RR: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR); EPA ICR Number 0658.08; OMB Control Number 2060–0004; expiration date January 31, 2003.

(7) NSPS subpart SS: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS); EPA ICR Number 0659.09; OMB Control Number 2060–0108; expiration date January 31, 2003.

(8) NSPS subpart TT: NSPS for Metal Coil Surface Coating (40 CFR part 60, subpart TT); EPA ICR Number 0660.08; OMB Control Number 2060–0107; expiration date January 31, 2003.

(9) NSPS subpart WW: NSPS for Beverage Can Surface Coating (40 CFR part 60, subpart WW); EPA ICR Number 0663.08; OMB Control Number 2060–0001; expiration date January 31, 2003.

(10) NESHAP subpart FF: NESHAP for Benzene Emissions for Benzene Waste Operations (40 CFR Part 61, subpart FF); EPA ICR Number 1541.07; OMB Number 2060–0183; expiration date February 28, 2003.

(11) NSPS subpart AAAA: Reporting and Recordkeeping Requirements for the New Source Performance Standards for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA); EPA ICR Number 1900.02; OMB Control Number 2060–0423; expiration date February 28, 2003.

(12) NSPS subpart BBBB: Emission Guidelines—Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion (MWC) Units (40 CFR part 60, subpart BBBB); EPA ICR Number 1901.02; OMB Control Number 2060–0424; expiration date February 28, 2003.

(13) NSPS subpart D: Standards of Performance for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, subpart D); EPA ICR Number 1052.07; OMB Number 2060–0026; expiration date February 28, 2003.

(14) NSPS subpart Da: Standards of Performance for Electric Utility Steam Generating Units (40 CFR part 60, subpart Da); EPA ICR Number 1053.07; OMB Number 2060–0023; expiration date February 28, 2003.

(15) NSPS subpart Db: Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, subpart Db); EPA ICR Number 1088.10; OMB Number 2060–0072; expiration date February 28, 2003.

(16) NESHAP subpart M: National Emission Standards for Hazardous Air Pollutants for Asbestos (40 CFR part 61, subpart M); EPA ICR Number 0111.10; OMB Control Number 2060–0101; expiration date February 28, 2003.

(17) NESHAP-MACT subpart VVV: NESHAP for Publicly Owned Treatment Works (POTWs) (40 CFR part 63, subpart VVV); EPA ICR Number 1891.03; OMB Number 2060–0428; expiration date February 28, 2003.

(18) NSPS subpart BB: New Source Performance Standards for Kraft Pulp Mills (40 CFR part 60, subpart BB); EPA ICR Number 1055.07; OMB Control Number 2060–0021; expiration date February 28, 2003.

(19) NSPS subpart HHH: New Source Performance Standards for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH); EPA ICR Number 1156.09; OMB Control Number 2060–0059; expiration date January 31, 2003.

(20) NESHAP–MACT subpart AAAA: Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 63, subpart AAAA); EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003.

(21) NSPS subpart JJJ: New Source Performance Standard for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ); EPA ICR Number 0997.07, and OMB Control Number 2060–0079, expiration date March 31, 2003.

(22) FPR subpart FFF: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR part 62, subpart FFF); EPA ICR Number 1847.03; OMB Control Number 2060–0390; expiration date March 31, 2003.

Section B: Contact Person for Individual ICRs

(1) NSPS subpart HH: NSPS for Lime Manufacturing (40 CFR part 60, subpart HH); Gregory Fried of the Office of Compliance at (202) 564–7016 or via E-mail at fried.gregory@epa.gov; EPA ICR Number 1167.07; OMB Control Number 2060–0063; expiration date January 31, 2003.

(2) NSPS subpart I: NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I); Gregory Fried of the Office of Compliance at (202) 564–7016 or via E-mail at *fried.gregory@epa.gov;* EPA ICR Number 1127.07; OMB Control Number 2060–0083; expiration date January 31, 2003.

(3) NSPS subpart Ce: Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ce); Jonathan S. Binder of the Office of Compliance at (202) 564–2516 or via E-mail at *binder.jonathan@epa.gov;* EPA ICR Number 1899.02; OMB Control Number 2060–0422; expiration date January 31, 2003.

(4) NSPS subpart DD: New Source Performance Standards for Grain Elevators (40 CFR part 60, subpart DD); Ken Harmon of the Office of Compliance at (202) 564–7049 or via E-Mail at *harmon.kenneth@epa.gov;* EPA ICR Number 1130.07; and OMB Control Number 2060–0082; expiration date January 31, 2003.

(5) NSPS subpart EE: NSPS for Metal Furniture Coating (40 CFR part 60, subpart EE); Steven Hoover of the Office of Compliance at (202) 564–7007 or via E-mail at *hoover.steven@epa.gov;* EPA ICR Number 0649.08; OMB Control Number 2060–0106; expiration date January 31, 2003.

(6) NSPS subpart RR: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR); Steven Hoover of the Office of Compliance at (202) 564–7007 or via E-mail at *hoover.steven@epa.gov;* EPA ICR Number 0658.08; OMB Control Number 2060–0004; expiration date January 31, 2003.

(7) NSPS subpart SS: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS); Steven Hoover of the Office of Compliance at (202) 564–7007 or via E-mail at *hoover.steven@epa.gov;* EPA ICR Number 0659.09; OMB Control Number 2060–0108; expiration date January 31, 2003.

(8) NSPS subpart TT: NSPS for Metal Coil Surface Coating (40 CFR part 60, subpart TT); Steven Hoover of the Office of Compliance at (202) 564–7007 or via E-mail at *hoover.steven@epa.gov;* EPA

ICR Number 0660.08; OMB Control Number 2060–0107; expiration date January 31, 2003.

(9) NSPS subpart WW: NSPS for Beverage Can Surface Coating (40 CFR part 60, subpart WW); Steven Hoover of the Office of Compliance at (202) 564–7007 or via E-mail at *hoover.steven@epa.gov;* EPA ICR Number 0663.08; OMB Control Number 2060–0001; expiration date January 31, 2003.

(10) NESHAP subpart FF: NESHAP for Benzene Emissions for Benzene Waste Operations (40 CFR part 61, subpart FF); Rafael Sanchez of the Office of Compliance at (202) 564–7028 or via E-mail to *sanchez.rafael@epa.gov;* EPA ICR Number 1541.07; OMB Number 2060–0183; expiration date February 28, 2003.

(11) NSPS subpart AAAA: Reporting and Recordkeeping Requirements for the New Source Performance Standards for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA); Joyce Chandler of the Office of Compliance at (202) 564–7073 or via E-mail at *chandler.joyce@epa.gov;* EPA ICR Number 1900.02; OMB Control Number 2060–0423; expiration date February 28, 2003.

(12) NSPS subpart BBBB: Emission Guidelines—Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion (MWC) Units (40 CFR part 60, subpart BBBB); Joyce Chandler of the Office of Compliance at (202) 564–7073 or via E-Mail at *chandler.joyce@epa.gov;* EPA ICR Number 1901.02; OMB Control Number 2060–0424; expiration date February 28, 2003.

(13) NSPS subpart D: Standards of Performance for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, subpart D); Dan Chadwick, (202) 564–7054, (202) 564–0050, *chawick.dan@epa.gov;* EPA ICR Number 1052.07; OMB Number 2060–0026; expiration date is February 28, 2003.

(14) NSPS subpart Da: NSPS subpart Da—Standards of Performance for Electric Utility Steam Generating Units; Dan Chadwick of the Office of Compliance at (202) 564–7054 or via E-mail at *chadwick.dan@epa.gov;* EPA ICR Number 1053.07; OMB Number 2060–0023; expiration date February 28, 2003.

(15) NSPS subpart Db: Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, subpart Db); Dan Chadwick of the Office of Compliance at (202) 564–7054 or via E-mail at *chadwick.dan@epa.gov;* EPA ICR Number 1088.10; OMB Number 2060–0072; expiration date is February 28, 2003.

(16) NESHAP subpart M: National Emission Standards for Hazardous Air Pollutants for Asbestos (40 CFR part 61, subpart M); Everett Bishop of the Office of Compliance at (202) 564–7032 or via E-mail at *bishop.everett@epa.gov,* EPA ICR Number 0111.10, OMB Control Number 2060–0101; expiration date February 28, 2003.

(17) NESHAP-MACT subpart VVV: NESHAP for Publicly Owned Treatment Works (POTWs) (40 CFR part 63, subpart VVV); Walter Brodtman of the Office of Compliance at (202) 564–4181 or via E-mail at *brodtman.walter@epa.gov;* EPA ICR Number 1891.03; OMB Number 2060–0428; expiration date February 28, 2003.

(18) NSPS subpart BB: New Source Performance Standards for Kraft Pulp Mills (40 CFR part 60, subpart BB); Maria Malave of the Office of Compliance at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1055.07; OMB Control Number 2060–0021; expiration date February 28, 2003.

(19) NSPS subpart HHH: New Source Performance Standards for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH); Maria Malave of the Office of Compliance at (202) 564–7027 or via E-mail to *malave.maria@epa.gov;* EPA ICR Number 1156.09; OMB Control Number 2060–0059; expiration date January 31, 2003.

(20) NESHAP–MACT subpart AAAA: Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 63, subpart AAAA); Kelli A. Smith of the Office of Compliance at (202) 564–2257 or via E-mail at *Smith.Kelli@epa.gov;* EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003.

(21) NSPS subpart JJJ: New Source Performance Standard for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ); Joyce Chandler of the Office of Compliance at (202) 564–7073 or via E-mail at *chandler.joyce@epa.gov;* EPA ICR Number 0997.07, and OMB Control Number 2060–0079, expiration date March 31, 2003.

(22) FPR subpart FFF: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR part 62, subpart FFF); Carolyn Young of the Office of Compliance at (202) 564–7062 or via E-mail at *young.carolyn@epa.gov;* ICR Number 1847.03; OMB Control Number 2060–0390; expiration date March 31, 2003.

Section C: Summaries of Individual ICRs

(1) NSPS subpart HH: NSPS for Lime Manufacturing (40 CFR part 60, subpart HH); EPA ICR Number 1167.07; OMB Control Number 2060–0063; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are rotary lime kilns located at lime manufacturing plants subject to the standards at 40 CFR part 60, subpart HH for which construction, modification, or reconstruction commenced after May 3, 1977.

Abstract: The Administrator has determined that particulate matter from lime manufacturing cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners and operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual startup dates; notification of any physical or operational changes to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test.

Owners and operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Owners and operators of rotary kilns using a control device with multiple stack exhaust or roof monitor may instead monitor visible emissions at least once a day by a certified observer using EPA Method 9. Owners or operators of affected facilities using a wet scrubber emission control device shall install, calibrate, maintain, and operate a continuous monitoring device which monitors the pressure loss of the gas stream through the scrubber, and a continuous monitoring device which monitors the scrubbing liquid supply pressure to the control device.

Semiannual excess emissions reports and monitoring system performance reports shall include all six-minute periods during which the average opacity of the visible emissions from any lime kiln is greater than 15% or for wet scrubbers, any period in which the scrubber pressure drop is greater than 30% below the rate established during the performance test, and reports of the visible emissions; the date and time of

the exceedance or deviance; the nature and the cause of the malfunction and corrective measures taken; and identification of the time period during which the CMS was inoperative.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 49 with 102 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 4,190 hours. On the average, each respondent reported approximately two times per year and 41 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $95,000. This included an annual cost of $22,000 associated with capital/startup costs and $73,000 associated with the annual operation and maintenance costs.

(2) NSPS subpart I: NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I); EPA ICR Number 1127.07; OMB Control Number 2060–0083; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are hot mix asphalt facilities subject to 40 CFR part 60, subpart I and include the following processes: Dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot asphalt; and the loading, transfer and storage systems associated with emission control systems which commenced construction, modification, or reconstruction after June 11, 1973.

Abstract: The Agency has determined that particulate matter from lime manufacturing causes, or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual date of the startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and notification of the date of the initial performance test including information necessary to determine the conditions of the performance test measurements and results, such as particulate matter concentration and opacity. Owners or operators are also required to maintain records of the occurrence and duration of any startup shutdown, or malfunction in the operation of an affected facility as well as the nature and cause of the malfunction and corrective measures taken.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was estimated to be 3,290 with 200 responses per year. The annual recordkeeping and reporting hour burden for this collection was estimated to be 6,890 hours. On the average, each respondent reported approximately 0.06 times per year and 34 hours were spent preparing each response. There are no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(3) NSPS subpart Ce: Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators (40 CFR part 60, subpart Ce); EPA ICR Number 1899.02; OMB Control Number 2060–0422; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are owners and operators of hospital/medical/infectious waste incinerators (HMIWI) for which construction commenced before June 20, 1996 and States and Tribes who develop State or Tribal plans to implement the Emission Guidelines.

Abstract: The Agency has determined that particulate matter, carbon monoxide, dioxins/furans, and mercury from hospital/medical/infectious waste incinerators cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Emission Guidelines contain monitoring, reporting, and recordkeeping requirements that are to be included in State or Tribal plans. These requirements differ for HMIWI burning hospital waste and/or medical/infectious waste; for combustors co-firing hospital waste and/or medical/infectious waste with other fuels; and for incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste.

Owners and operators of HMIWI are required to submit one-time-only increments of progress reports showing progress toward meeting the new emissions limitations. Owners and operators of HMIWI are also required to submit annual and semiannual compliance reports on a variety of site-specific operating parameters malfunction episodes, exceedances, and performance tests. For small rural HMIWI, an annual report containing information recorded during the annual equipment inspection is also required. Owners and operators of co-fired combustors are required to provide the Administrator with notification reports on an exemption claim and report and maintain records on the weight of hospital waste and medical/infectious, and other fuels and/or wastes to be combusted. Owners and operators of incinerators burning only pathological, low-level radioactive, and/or chemotherapeutic waste are required to provide notification reports to Administrator of an exemption claim.

The information will be used by the appropriate State, Tribal or EPA enforcement official to ensure that the requirements of the State, Tribal, or Federal Plan are being implemented on a continuous basis through proper operation and maintenance of the emission control device. In addition, certain records and reports are necessary to enable the Administrator to identify an HMIWI that may not be in compliance with the standards.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 537 with 1,146 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 133,404 hours. On the average, each respondent reported approximately 2.1 times per year and 116 hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(4) NSPS subpart DD: New Source Performance Standards for Grain Elevators (40 CFR part 60, subpart DD); EPA ICR Number 1130.07; OMB Control Number 2060–0082, expiration date January 31, 2003.

Affected Entities: Potentially affected facilities include each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar unloading station, railcar loading station, grain dryer, and all grain handling operations at any grain terminal elevator or any grain storage elevator.

The standards require owners or operators of the affected facilities to make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the actual date of startup; notification of any physical or operational change to an existing facility that may increase the rate of emission of the regulated pollutant; notification of the date of the initial performance test; and the results of the initial performance test. Records must be maintained of the occurrence and

duration of any startup, shutdown, or malfunction in the operation of an affected facility, as well as the nature and cause of the malfunction and corrective measures taken.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 121 with 121 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 250 hours. On the average, each respondent reported approximately two times per year and two hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(5) NSPS subpart EE: NSPS for Metal Furniture Coating (40 CFR part 60, subpart EE); EPA ICR Number 0649.08; OMB Control Number 2060–0106; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are each metal furniture surface coating operation in which organic coatings are applied. These standards apply to surface coating facilities for which construction, modification or reconstruction commenced after the date of proposal, November 28, 1980. A surface coating operation includes the coating application station(s), flash-off area, and curing oven.

Abstract: The Agency has determined that the emissions from surface coating operations cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Volatile organic compounds (VOC) are the pollutants regulated under this rule. Owners and operators of the affected facilities described must make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Recordkeeping and reporting requirements include the performance test results including the type of coating used, and the VOC content. The rule requires daily records of temperature if thermal incineration is used. For catalytic incineration, daily records of gas stream temperature both upstream and downstream are required, or a daily record of the quantity of solvent recovered if a solvent recovery device is used. Monthly averages are calculated, and any affected facility shall report quarterly on any excess emissions, or semiannually if no excess emissions occur. Any owner or operator subject to the provisions of the rule, shall maintain at the source, for a period of at least two years, records of all data calculations used to determine monthly VOC emissions from each affected facility and to determine the monthly emissions limit, where applicable.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 553 with 1,600 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 101,070 hours. On the average, each respondent reported approximately 2.9 times per year and 63 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $1,120,000. This included an annual cost of $114,000 associated with capital/startup costs and $1,006,000 associated with the annual operation and maintenance costs.

(6) NSPS subpart RR: NSPS for Pressure Sensitive Tape and Label Surface Coating (40 CFR part 60, subpart RR); EPA ICR Number 0658.08; OMB Control Number 2060–0004; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are each coating line used in the manufacture of pressure sensitive tape and label materials that was construction or commenced reconstruction after December 30, 1980.

Abstract: The Agency has determined that the emissions from pressure sensitive tape and label surface coating operations cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Volatile organic compounds (VOC) are the pollutants regulated. Under the standards, owners and operators of the affected facilities must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of initial startup; notification of any physical change to an existing facility that may increase the regulated pollutant emission rate; notification of initial performance test and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

The recordkeeping requirements for the surface coating industry of pressure sensitive tape and labels consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine conditions of the performance test; performance test measurements and results including, for affected facilities complying with the standard without the use of add-on controls, a weighted average of the mass of solvent used per mass of coating solids applied; the weighted average mass of VOC per mass of coating solids applied at facilities controlled by a solvent recovery device; the weighted average mass of VOC per mass of coating solids applied being used at a facility controlled by a solvent destruction device; and the results of the monthly performance and records of operating parameters.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 410 with 1,025 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 39,104 hours. On the average, each respondent reported approximately 2.5 times per year and 38 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $1,880,000. This included an annual cost of $240,000 associated with capital/startup costs and $1,640,000 associated with the annual operation and maintenance costs.

(7) NSPS subpart SS: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS); EPA ICR Number 0659.09; OMB Control Number 2060–0108; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are each surface coating operation in a large appliance surface coating line commencing construction, modification or reconstruction after December 24, 1980.

Abstract: The Agency has determined that the emissions from large appliance surface coating line operations cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Volatile organic compounds (VOC) are

the pollutants regulated under the standards. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Recordkeeping and reporting requirements include the performance test results including the type of coating used, and the VOC content. The standards require daily records of temperature if thermal incineration is used. For catalytic incineration, daily records of gas stream temperature both upstream and downstream are required, or a daily record of the quantity of solvent recovered if a solvent recovery device is used. Monthly averages are calculated, and any affected facility shall report quarterly excess emissions or semiannual reports if no excess emissions occur.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 294 with 1,273 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 29,564 hours. On the average, each respondent reported approximately 4.3 times per year and 23 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $618,000. This included an annual cost of $83,000 associated with capital/startup costs and $535,000 associated with the annual operation and maintenance costs.

(8) NSPS subpart TT: NSPS for Metal Coil Surface Coating (40 CFR part 60, subpart TT); EPA ICR Number 0660.08; OMB Control Number 2060–0107; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this standard are operations that are part of metal coil coating manufacturing including: each prime coat operation; each finish coat operation; and each prime and finish coat operation cured simultaneously where the finish coat is applied wet-on-wet over the prime coat. These standards apply to metal coil surface coating facilities commencing construction, modification or reconstruction after January 5, 1981.

Abstract: The Agency has determined that the emissions from metal coil surface coating facilities cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Volatile organic compounds (VOC) are the pollutants regulated under the standards. Owners or operators of the affected facilities must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Recordkeeping requirements depend on whether low VOC content coatings are used, or higher VOC content coatings are used in conjunction with an emission control device. Where compliance is achieved through the use of low VOC-content coating without emission control devices, or through the use of higher VOC content coating in conjunction with emission control devices, each owner or operator shall include in the initial compliance report the weighted average of the VOC content of coatings used during the period of one calender month for each affected facility. Where compliance is achieved using an emission control device that destroys VOC, each owner or operator shall include in the initial compliance report the overall VOC destruction rate used to attain compliance and the combustion temperature of the thermal incinerator, or the gas temperature both upstream and downstream of the incinerator catalyst bed. The standards also require reports of incinerator temperature drop. Affected facilities shall report quarterly excess emissions or semiannual reports if no emissions occur.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 156 with 585 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 15,335 hours. On the average, each respondent reported approximately 3.8 times per year and 26 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $398,000. This included an annual cost of $114,000 associated with capital/startup costs and $284,000 associated with the annual operation and maintenance costs.

(9) NSPS subpart WW: NSPS for Beverage Can Surface Coating (40 CFR part 60, subpart WW); EPA ICR Number 0663.08; OMB Control Number 2060–0001; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this action are facilities in the beverage can surface coating industry including: each exterior base coat operation, each over varnish coating operation, and each inside spray coating operation. These standards apply to coating facilities commencing construction, modification or reconstruction after November 26, 1980.

Abstract: The Agency has determined that the emissions from beverage can surface coating lines cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Volatile organic compounds (VOC) are the pollutants regulated under the standards. Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of a startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Records must be maintained if the VOC content of coatings is below the specified limits. If one or more coatings are used, the volume weighted average of the total mass of VOC per volume of coating solids must be recorded. When thermal or catalytic incineration is performed, the owner shall keep records of each three-hour period during which the incinerator temperature averaged more than 28 degrees Celsius below the temperature of the most recent performance test at which destruction efficiency was determined. The owners or operators shall identify, record and submit quarterly reports of each instance in which the volume-weighted average of the total mass of VOC per

volume of coating solids exceeded the standard. If there are no exceedances reports shall be submitted semiannually.

Owners or operators are required to maintain a file of all measurements including the monitoring device, and performance testing measurements; all monitoring device calibration check adjustments and maintenance performed on these systems recorded in a permanent file.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 24 with 105 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 3,092 hours. On the average, each respondent reported approximately 4.3 times per year and 29 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $50,000. This included an annual cost of $6,000 associated with capital/startup costs and $44,000 associated with the annual operation and maintenance costs.

(10) NESHAP subpart FF: NESHAP for Benzene Emissions for Benzene Waste Operations (40 CFR part 61, subpart FF); EPA ICR Number 1541.07; OMB Number 2060–0183; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are benzene waste operations such as chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. Other affected entities are those owners and operators of hazardous waste treatment, storage, and disposal facilities (TSD) which receive wastes from the above facilities.

Abstract: The Agency has determined that the emissions from benzene waste operations cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The provisions of this subpart apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this standard applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated from the above facilities.

The calculation of total annual benzene (TAB) quantity in all aqueous waste streams determines whether a facility is subject to control requirements of the standard. A facility at or above the TAB threshold in the rule of 10 megagrams per year (Mg/yr) is required to control each benzene waste stream at the facility or demonstrate that the waste stream meets a criterion in the rule for exemption from control. A facility with a TAB below 10 Mg/yr is only subject to the rule's reporting and recordkeeping provisions, unless the facility receives a waste from offsite that must be controlled to meet the standards in which case that waste must be controlled. A facility with a TAB less than 1 Mg/yr is only subject to maintain documentation of the quantity of benzene in the waste.

Owners or operators of the affected facilities described above must make the following one-time-only notices or reports: notifications of anticipated and actual startup; notification of emission test, report following an emission test; notification of any physical/operational changes that could increase emissions, a monitoring system performance test; and certain reports regarding the monitoring system performance test(s).

Recordkeeping requirements for benzene waste operations include maintaining records that identify each waste stream at the facility subject to this subpart, and indicate whether the waste stream is controlled for benzene emissions in accordance with this standard. In addition the owner or operator must maintain the records: (1) For each waste stream not controlled for benzene emissions, (2) for each process wastewater stream not controlled for benzene emissions, (3) for each facility where process wastewater streams are controlled for benzene emissions, (4) for each facility where wastewater streams are controlled for benzene emissions. Owners or operators transferring waste offsite to another facility for treatment shall maintain documentation for each offsite waste shipment, and engineering design documentation for all control equipment installed on the waste management unit. The documentation shall be retained for the life of the control equipment.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 240 with 240 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 17,028 hours. On the average, each respondent reported approximately one time per year and 71 hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(11) NSPS subpart AAAA: Reporting and Recordkeeping Requirements for the New Source Performance Standards for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) EPA ICR 1900.02; OMB Control Number 2060–0423; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of small municipal waste combustors (MWC) units with capacities greater than 35 tons per day, but less than 250 tons per day for which commenced construction after August 30, 1999, or commenced modification, or reconstruction after June 6, 2001.

Abstract: The Agency has determined that the emissions from small municipal waste combustors cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Small MWCs emit toxic organics, metals, acid gases, carbon monoxide and fugitive ash owners. Owners or operators must conduct initial compliance tests and compliance demonstrations for all pollutants, operating parameters, and continuous monitoring systems. Annual performance tests and continuous monitoring systems (CEMS) for certain pollutants and operating parameters is also required. Owners or operators of small MWC units must submit an initial compliance report for all regulated pollutants and parameters. Once a year, owners or operators must submit an annual report that indicates the highest emission level determined during the annual test or recorded using the CEMS for all regulated pollutants. The report must also include the lowest calculated hourly carbon feed rate.

If the emission level recorded for any of these pollutants is above the emission limit for the pollutant, or if any operating parameter is outside a specified range, then the owner or operator is required to submit a semiannual report for the calendar half during which the test was conducted or data was collected. The standards include provisions that would allow less frequent reporting if certain criteria are met.

Owners or operators of small MWC units are required to keep records of certain parameters, and maintain records of employees names and dates of their initial and annual review of the site-specific operating manual parameters. Records of continuous measurements of MWC unit load, the particulate matter control device temperature, and computation of average emissions and operating parameters, as well as opacity measurements are required. Owners or

operators are also required to maintain records that identify the date, operating parameters, and opacity level exceedances, with reasons and a description of corrective action. Owners or operators are required to keep records of results of daily sulfur dioxide, nitrogen oxides, and carbon monoxide, CEMS drift tests, and quarterly accuracy assessments. Owners or operators are required to maintain records of initial performance tests and all annual performance retests for compliance with particulate matter, dioxins/furans, hydrochloric acid (HCl), cadmium, lead, and mercury limits. Owners or operators also maintain records of periodic testing for fugitive ash emissions.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 3 with 6 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 8,559 hours. On the average, each respondent reported approximately two times per year and 1,427 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $219,000. This included an annual cost of $200,000 associated with capital/startup costs and $19,000 associated with the annual operation and maintenance costs.

(12) NSPS subpart BBBB: Emission Guidelines Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion (MWC) Units (40 CFR part 60, subpart BBBB); EPA ICR Number 1901.02; OMB Control Number 2060–0424; expiration date February 28, 2003.

Affected Entities: Respondents are owners or operators of existing small MWC units. Small MWC units are units with capacities to combust greater than 35 tons per day and less than 250 tons per day of municipal solid waste.

Abstract: The Agency has determined that the emissions from small municipal waste combustion units, cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners and operators of MWCs that have retrofit schedules longer than one year are required to submit reports or notifications documenting increments of progress.

Owners or operators are required to conduct initial compliance tests and compliance demonstrations for all pollutants and parameters, as well as continuous monitoring or annual retests of all pollutants and parameters, unless the owner or operator qualifies for less frequent dioxin/furan testing. As a means of determining continuous compliance for mercury and dioxin/furan, owners or operators are required to keep records of the quarterly amount of activated carbon injected, and to calculate the average carbon injection rate for each hour of operation.

Owners or operators of small MWC units are required to submit an initial compliance report for all regulated pollutants and parameters. Once a year, owners or operators of small MWC units are required to submit an annual report for all regulated pollutants and parameters that summarizes data collected for all pollutants and parameters regulated under the standard. Owners or operators are required to submit an annual report that indicates the highest emission level determined during the annual test, or recorded using continuous emissions monitoring systems, load level, control device inlet temperature, and opacity. If the emission level recorded for any of these pollutants shows emissions above the emission limit for the pollutant, or a calculated carbon injection rate below the carbon injection rate established during the mercury or dioxin/furan annual retest, then the owner or operator is required to submit a semiannual report for the calendar half during which the test was conducted or data were collected, and the report is required to include the supporting data or test report and an explanation for the exceedances. Owners or operators are not required to submit test reports, or raw CEMS data unless a pollutant or parameter is recorded as exceeding the emission limit for the pollutant or parameter.

If three annual compliance tests in a row indicate compliance with the particulate matter (PM), dioxin/furan, hydrochloric acid (HCl), cadmium (Cd), lead (Pb), and/or mercury (Hg) emission limits, then owners or operators of small MWC units (where the aggregate plant capacity is less than 250 tons per year) may skip the annual performance test for that particular pollutant for the next two years. If the next test after skipping two years shows compliance, another two-year period may be skipped. At a minimum, performance tests for PM, dioxins/furans, HCl, Cd, Pb, and Hg are required by small MWC plants every 3 years. In all cases, annual tests for opacity and fly ash/bottom ash fugitive emissions are required and may not be skipped. In addition, a provision for less frequent dioxin/furan testing allows plants to test only one unit per year rather than all units, as is normally required, if all units at the plant achieve emission levels significantly lower than the emission limit for two consecutive years. It is believed that most units will qualify for this option.

Under the standards, owners or operators of affected units are required to keep records of the following information: (1) Employees names and dates of their initial and annual review of the site-specific operating manual; (2) emission rates and CEMS parameters for nitrogen oxides, sulfur dioxides, carbon monoxide, oxygen, carbon dioxide, and opacity; (3) continuous measurements of small MWC unit load and PM control device temperature, and computation of average emissions and operating parameters; (4) the date and operating parameters of any opacity level exceedances, with reasons and a description of corrective action; (5) results of daily SO_2, NO_X, and CO CEMS drift tests and quarterly Appendix F accuracy assessments; (6) records of initial performance tests and all annual performance retests for compliance with PM, dioxin/furan, HCl, Cd, Pb, and Hg limits; and (7) records of periodic testing for fugitive ash emissions.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was estimated to be 41 with 90 responses per year. The annual recordkeeping and reporting hour burden for this collection was estimated to be 1,297 hours. On the average each respondent reported 2.2 times per year. For each new facility, the initial notifications and performance test require approximately 14 hours. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(13) NSPS subpart D: Standards of Performance for Fossil Fuel Fired Steam Generating Units (40 CFR part 60, subpart D); EPA ICR Number 1052.07; OMB Number 2060–0026; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are fossil-fuel-fired steam generating units which are capable of combusting fossil fuel at a heat input rate of more than 73 megawatts (250 million Btu per hour).

Abstract: The Agency has determined that the emissions from fossil-fuel-fired steam generating units cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. These standards apply to emissions from each fossil-fuel-fired steam generating unit which is capable of combusting more than 73 megawatts (250 million Btu per hour) heat input of

fossil fuel. The standards limit the emissions of sulfur dioxide, particulate matter, and nitrogen oxides.

Owners or operators of the affected facilities described must make one-time-only notifications, and are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to the standards provide information on compliance with the emission limits. Quarterly reports of excess emissions are also required.

Burden Statement: In the previously approved ICR the estimated number of respondents for this information collection was 660 with 2,640 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 62,865 hours. On the average each respondent reported one time per year and four hours were spent preparing each response. In the previously approved ICR, the estimated number of respondents for this information collection was 49 with 102 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 4,190 hours. On the average, each respondent reported approximately two times per year and 41 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $9,900,000. Since there were no capital/startup costs associated with the ICR the annual reporting and recordkeeping cost was comprised entirely of annual operation and maintenance expenses.

(14) NSPS subpart Da: Standards of Performance for Electric Utility Steam Generating Units (40 CFR part 60, subpart Da); EPA ICR Number 1053.07; OMB Number 2060–0023; expiration date February 28, 2003.

Affected Entities: The standards apply to each electric utility steam generating unit which is capable of combusting more than 73 megawatts (MW) heat input of fossil fuel, for which, commencing construction, modification, or reconstruction after the date of proposal.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to electric utility steam generating units provide information on the operation of the emissions control device and compliance with the sulfur dioxide, nitrogen oxides, and particulate matter standards. Quarterly reports of excess emissions, and/or semiannual reports are required.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 129 with 494 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 28,606 hours. On the average, each respondent reported approximately 3.8 times per year and 58 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $3,095,000. This included an annual cost of $1,400,000 associated with capital/startup costs and $1,695,000 associated with the annual operation and maintenance costs.

(15) NSPS subpart Db: Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, subpart Db); EPA ICR Number 1088.10; OMB Number 2060–0072; expiration date February 28, 2003.

Affected Entities: These standards apply to industrial-commercial-institutional steam generating units that commenced construction, modification, or reconstruction after June 19, 1984, and that have a heat input capacity from fuels combusted in the unit of greater than 29 MW which is equivalent to 100 million Btu per hour.

Owners or operators of the affected facilities described must make one-time-only notifications, and are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to these standards provide information on compliance with the emission limits. Quarterly reports of excess emissions, or semiannual reports stating that there were no excess emissions, are required.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 957 with 3,016 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 575,000 hours. On the average, each respondent reported approximately 3.2 times per year and 191 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $25,955,000. This included an annual cost of $11,160,000 associated with capital/startup costs and $14,355,000 associated with the annual operation and maintenance costs.

(16) NESHAP subpart M: National Emission Standards for Hazardous Air Pollutants for Asbestos (40 CFR part 61, subpart M); EPA ICR Number 0111.10; OMB Control Number 2060–0101; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are: (1) Owners/operators of asbestos milling, manufacturing and fabricating facilities; (2) those facilities demolishing or renovating facilities; and (3) those facilities managing active or inactive waste disposal sites. The standards apply to the following operations: demolition and renovation; the disposal of asbestos waste; asbestos milling, manufacturing and fabricating; the use of asbestos on roadways; asbestos waste conversion; and the use of asbestos insulation and sprayed-on materials in construction.

Abstract: The Agency has determined that the emissions from asbestos milling, manufacturing, fabricating, demolition, roadway construction, and asbestos waste conversion cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of the affected milling, manufacturing, fabricating, waste disposal, and waste conversion facilities described must make one-time-only notifications and are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected. Recordkeeping includes the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including monitoring each potential source of asbestos emissions for visible emissions to the outside air and inspecting air cleaning devices to ensure proper operation. The reporting requirements include the initial notifications listed, the initial performance test results, and quarterly reports of instances when visible emissions are observed.

Persons conducting demolitions and renovations must notify the Agency, in advance, of the initiation of any asbestos removal work. The demolition and renovation standard requires that a representative trained in the provisions of the standard be present at the facility. Evidence that the required training has been completed is required. The provisions require that all containers of asbestos waste be labeled including the

name of the waste generator and the location of where the waste was generated. Owners or operators of demolitions and renovations are required to prepare and maintain records of each waste shipment as to its destination, the quantity of waste, and the date of shipment, and to furnish a copy of the record to disposal site owners or operators. The regulation also requires that the generators of asbestos waste attempt to reconcile instances in which a signed copy of the waste shipment record is not received from the disposal site and that the generator notify the Administrator if delivery to the disposal site cannot be confirmed.

Owners and operators of waste disposal sites are required to document all asbestos waste shipments that are received and send a copy of each record back to the generator. A record of the location and quantity of asbestos in the landfill is required as well as noting the presence and location of asbestos in the landfill property deed. Disposal site owners and operators have to report to the Administrator any discrepancies between the amount of waste designated on the waste shipment record and the amount actually received, as well as instances of improperly contained waste. An owner or operator of an operation in which asbestos-containing materials are spray-applied must notify the Administrator in advance of the spraying operation. The notice provides information on the name and address of the owner or operator, location of the spraying operation, and procedures to be followed.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was estimated to be 10,647 with 134,340 responses per year. The annual recordkeeping and reporting hour burden for this collection was estimated to be 362,159 hours. On the average each respondent reported 12.6 times per year, and 2.7 hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(17) NESHAP–MACT subpart VVV: NESHAP for Publicly Owned Treatment Works (POTWs) (40 CFR part 63, subpart VVV); EPA ICR Number 1891.03; OMB Number 2060–0428; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are POTWs that are major sources of hazardous air pollutants, become a major source after October 29, 1999, or reconstruct the treatment plant.

Abstract: The Agency has determined that the emissions from publicly owned treatment works cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

The required recordkeeping and reporting enable the Administrator to: (1) Identify new sources subject to the standards, and (2) to ensure that the POTWs affected by the standards comply with the applicable regulations. The reports are used by the Administrator to: (1) Identify new HAP emission points subject to the standards, (2) identify the emission control devices and control methodologies being applied, and (3) ensure that the emission control devices and control methodologies are being properly operated and maintained on a continuous basis.

Burden Statement: The standards require no additional control requirements for existing major sources. In the previously approved ICR, the estimated number of respondents for this information collection was estimated to be one with one response per year. The annual recordkeeping and reporting hour burden for this collection was estimated to be 41 hours. On the average each respondent reported one time per year, and 41 hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(18) NSPS subpart BB: New Source Performance Standards for Kraft Pulp Mills (40 CFR part 60, subpart BB); EPA ICR Number 1055.07; OMB Control Number 2060–0021; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are affected facilities at kraft pulp mills including digester systems, brown stock washer systems, multiple effect evaporator systems, recovery furnaces, smelt dissolving tanks, lime kilns, and condensate stripper systems that were constructed, modified or reconstructed after September 24, 1976. In pulp mills where kraft pulping is combined with neutral sulfite semi-chemical pulping, the provisions of this subpart are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. A facilities may be exempt from the total reduced sulfur (TRS) standard if the facility can demonstrate that TRS from a new, modified or reconstructed brown stock washer cannot be technically nor economically feasiblely controlled.

Abstract: The Agency has determined that total reduced sulfur (TRS) and particulate matter emissions from kraft pulp mills cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

In addition to the monitoring, recordkeeping and reporting requirements listed in the General Provisions (40 CFR part 60, subpart A), sources are required to record, at least once per shift, the following specific parameters: The opacity of the gases discharged into the atmosphere from any recovery furnace; the concentration of TRS emissions on a dry basis and the percent of oxygen by volume on a dry basis in the gases discharged into the atmosphere; for an incinerator, the combustion temperature at the point of incineration of effluent gases being emitted by the affected facilities; and for any lime kiln or melt discharge tank using a scrubber emission control device, the pressure loss of the gas stream through the control equipment and the scrubbing liquid pressure to the control equipment. Sources are also required to record on a daily basis 12-hour average TRS concentrations and oxygen concentrations (for the recovery furnace and lime kiln) for two consecutive periods of each operating. Sources must report semiannually measurements of excess emissions as defined by the standard for the applicable affected facility.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 82 with 170 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 9,959 hours. On the average, each respondent reported approximately 2.1 times per year and 59 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $2,828,000. This included an annual cost of $300,000 associated with capital/startup costs and $2,528,000 associated with the annual operation and maintenance costs.

(19) NSPS subpart HHH: New Source Performance Standards for Synthetic Fiber Production Facilities (40 CFR part 60, subpart HHH); EPA ICR Number 1156.09; OMB Control Number 2060–0059; expiration date January 31, 2003.

Affected Entities: Entities potentially affected by this rule are each solvent-spun synthetic fiber process that produces more than 500 megagrams of

fiber per year and that commenced construction or reconstruction after November 23, 1982. The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber, nor to facilities that commence modification but not reconstruction after November 23, 1982.

Abstract: The Agency has determined that volatile organic compounds emissions from synthetic fiber production facilities contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

In addition to the monitoring, recordkeeping and reporting requirements listed in the General Provisions (40 CFR part 60, subpart A), sources are required to submit the results of subsequent performance test results and any correction action taken, if they indicate that volatile organic compound (VOC) emissions exceed the standard, on a quarterly basis after the initial performance test. If no exceedances occur, sources must submit a report semiannually.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 31 with 85 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 2,696 hours. On the average, each respondent reported approximately 2.7 times per year and 32 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $228,000. This included an annual cost of $3,000 associated with capital/startup costs and $225,000 associated with the annual operation and maintenance costs.

(20) NESHAP-MACT subpart AAAA: Federal Emission Guidelines for Existing Municipal Solid Waste Landfills (40 CFR part 63, subpart AAAA); EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of existing municipal solid waste landfills that are located in any State for which a State plan has not been approved and become effective.

Abstract: The Agency has determined that the emissions from municipal solid waste landfills cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The Administrator is charged under Section 111 of the Clean Air Act (CAA) to establish procedures for each State to submit a plan that would establish standards of performance for any existing source for any air pollutant. If the State has not developed such a plan, then the Administrator may require any person who owns or operates any emission source or is subject to any requirements of the CAA, to establish and maintain reports; make reports; install, use, and maintain monitoring equipment or methods; sample emissions; and provide any other information as required.

All owners and operators of existing municipal solid waste landfills must submit an initial design capacity report. If the design capacity of an existing landfill is equal to or greater than 2,500,000 megagrams in weight and equal to or greater than 2,500,000 cubic meters in volume, the owner or operator is required to determine the facility's nonmethane organic compound (NMOC) emission rate. Based on a three-tier calculation system, the owner or operator will either install a collection and control system or perform testing at the next tier level to recalculate the annual NMOC emission rate. If the NMOC emission rate is determined to be less than 50 megagrams per year (Mg/yr), using Tier 1, Tier 2, or Tier 3 calculations, no further calculations or testing is required for that year.

For landfills required to install collection and control systems, submission of a collection and control system design plan is required. After review of the design plan and installation of the collections and control system, and initial performance test and report for the system is required. There after, annual compliance reports are required. Owners or operators are required to keep continuous monitoring records of the parameters reported in the initial performance report and records of monthly monitoring of surface methane concentration.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 3,837 with 384 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 15,110 hours. On the average, each respondent reported approximately 0.10 times per year and 39 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $890,000. This included an annual cost of $788,000 associated with capital/startup costs and $102,000 associated with the annual operation and maintenance costs.

(21) NSPS subpart JJJ: New Source Performance Standard for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ); EPA ICR Number 0997.07; and OMB Control Number 2060–0079; expiration date March 31, 2003.

Affected Entities: Entities potentially affected by this action are petroleum solvent dry cleaning dryers, washers, filters, stills and settling tanks located at petroleum dry cleaning plants.

Abstract: The Administrator has determined that volatile organic compounds (VOC) emissions from petroleum dry cleaners cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of the affected facilities must conduct a performance test to demonstrate compliance with the applicable emission limitation and retain the results of that test for two years.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was estimated to be 18 with 93 responses per year. The annual recordkeeping and reporting hour burden for this collection was estimated to be 1,483 hours. On the average, each respondent reported approximately 5.2 times per year and 16 hours were spent preparing each response. There are no capital/startup costs or operations and maintenance costs associated with continuous emission monitoring in the previous ICR; therefore, there are no capital, or operation and maintenance costs associated with this ICR.

(22) FPR subpart FFF: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR part 62, subpart FFF); EPA ICR Number 1847.03; OMB Control Number 2060–0390; expiration date March 31, 2003.

Affected Entities: Entities potentially affected by this action are Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR part 62, subpart FFF). Respondents are owners or operators of municipal waste combustors with a capacity to combust greater than 250 tons per day located in States that do not have EPA-approved plans.

Abstract: The Agency has determined that the emissions from large municipal waste combustors cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

This information collection is required as a result of a Federal Plans developed at 40 CFR part 62, subpart FFF, to implement and enforce the

emission guidelines (40 CFR part 60, subpart Cb) for large municipal waste combustors (MWCs) that were promulgated under the authority of Clean Air Act (CAA) Sections 111 and 129. Under CAA Section 129(b)(2), States were required to submit plans to the Administrator for approval by December 19, 1996, that implement and enforce the 40 CFR part 60, subpart Cb. Section 129(b)(3) requires the Administrator to promulgate a Federal Plan to implement and enforce the guidelines in those States that have not submitted an approvable plan to Administrator by December 19, 1997.

40 CFR part 60, subpart Cb requires all respondents to comply with the recordkeeping and reporting requirements at 40 CFR part 60, subpart Eb, Section 60.59b except for certain notifications regarding the siting plan, construction requirements, performance testing procedures and certifications. The primary recordkeeping and reporting requirements of subpart Eb include a materials separation plan; notification of public meeting; the retention of continuous emission monitoring data; records of exceedances; records carbon injection system data; the names of the plant operator, shift supervisors and control room operators; and performance test reports.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 56 with 112 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 58,915 hours. On the average, each respondent reported approximately two times per year and 508 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $3,218,000 which is comprised entirely of annual operation and maintenance costs. There are no capital/startup costs associated with this ICR.

Dated: June 10, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–15613 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7235–3]

Notice of Availability of Funds; Research To Develop Improved Methods and Approaches To Empower Communities To Participate More Effectively in Environmental Cleanups

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of funds.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development, National Center for Environmental Assessment (NCEA), is issuing this Request for Applications (RFA) for cooperative agreements to provide assistance conducting research to stimulate advances in the science of risk communication so that more effective methods, tools, and models can be used to empower communities to participate more effectively in environmental cleanups, especially the cleanup of contaminated sediment sites. Possible projects under this solicitation might include one or more of the following topics: tools to measure community preferences, tools to summarize complex data, methods to extract and utilize community-based knowledge, methods to assess impacts on societal/cultural practices, outreach tools for large geographic sites, and methods to evaluate the effectiveness of community involvement programs. The primary purpose of the research solicited by this document is to stimulate scientific research on the general topic of environmental risk communication and community involvement. The secondary purpose of the solicitation is to generate insights, methods, tools, and models that might be used to empower communities to participate more effectively in environmental cleanups, especially the cleanup of contaminated sediment sites. The total value of these cooperative agreement awards is estimated to range from $100,000 to $500,000 total over a period of one to three years depending on the availability of funding.

DATES: Applications must be postmarked, dated by a delivery service, or marked received by NCEA personnel by September 19, 2002.

ADDRESSES: Solicitation packages can be found on the NCEA Web site *http://www.epa.gov/ncea/*. Information about the full application process and application forms are found in the ''Application Kit for Assistance'' on the following web site: *http://www.epa.gov/ogd/AppKit/*. They also can be requested from the EPA contact person at the address and phone number below.

FOR FURTHER INFORMATION CONTACT: David Kelley, preferably by email: *kelley.dave@epa.gov*, also by mail: U.S. EPA, Mail Code 8623D, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3263; or facsimile: 202–564–2268.

Dated: June 12, 2002.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–15614 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7234–9]

National Environmental Laboratory Accreditation Conference Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of national meeting and field activities.

SUMMARY: The Environmental Protection Agency and the Florida Department of Environmental Protection are co-hosting the Eighth Annual Meeting of the National Environmental Laboratory Accreditation Conference (NELAC), a state-federal partnership with private sector participation. NELAC is expanding its scope to include accreditation standards for organizations performing sampling or conducting field analyses, which would be used to demonstrate compliance with EPA regulations. EPA strongly encourages participation from both public and private sector individuals, and organizations with expertise in environmental sampling and laboratory testing, to strengthen the development of NELAC standards. Draft standards are available on the National Environmental Laboratory Accreditation Conference website at *www.epa.gov/ttn/nelac.*

DATES: The conference will be held July 7–12, 2002. Training classes will be held on July 7th, 8th and the morning of July 9th. The opening session will convene at 12:30 pm on July 9th. All other meetings will convene between 8–9 a.m. and adjourn at 5 p.m., except Friday, July 12th, when the meeting will adjourn at 1:30 pm.

ADDRESSES: The meeting will be held at the Wyndam Harbour Island Hotel, 725 S. Harbour Island Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Conference arrangements are being

coordinated by the Florida Department of Environmental Protection in conjunction with the University of Florida. For information on registration, hotel rates, transportation, and reservations, go to the University of Florida web site at *http://www.treeo.ufl.edu/nelac/* or call Janet Touchton at the University of Florida at 352–392–9570 to receive a brochure.

Proposed Field Sampling Standards: NELAC proposes to establish consensus uniform standards for environmental sampling and other field activities. The EPA invites comments on the scope and content of sampling standards from organizations which conduct sampling as well as other interested parties. A draft proposed General Sampling Standard may be viewed at the NELAC website at: *http://www.epa.gov/ttn/nelac/propstan.html* under NELAC Files and Documents, Proposed Standards, ''NELAC 8 Proposed Changes to Chapter 7: Field Activities'', 5/21/02. The agency also invites recommendations for methods to implement a general sampling standard, as well as related field standards. Since the creation of NELAC, there has been a commitment to also establish standards for sampling and field measurement, since these activities are critical to the environmental measurement process. NELAC is committed to maintaining consistency with international standards related to laboratory accreditation. ISO 17025, promulgated by the International Organization for Standardization, contains standards for sampling as well as testing. In order to maintain consistency with the ISO standards, NELAC intends to adopt a general sampling standard. The proposed standard, mentioned above, is considered to be consistent with ISO 17025. The proposal to adopt field standards is a significant expansion of scope which potentially can involve a much larger collection of organizations. With this notice the Agency invites comments on (1) the proposal to establish such standards (2) the potential costs, and (3) the value of uniform field standards, for organizations doing sampling, their clients, data users, and other parties. The Proposed Standards will be discussed and voted on for adoption at the NELAC 8th Annual Meeting.

SUPPLEMENTARY INFORMATION: In 1992 an EPA chartered federal advisory committee recommended that a national environmental laboratory accreditation program be established. At the same time, the committee recognized the need for accreditation standards for field sampling and analysis. The committee recommended that the initial step be to establish a national laboratory accreditation program before expanding to sampling and other field activities.

EPA established the National Environmental Laboratory Accreditation Conference (NELAC) as a result of the committee's deliberations. NELAC has successfully developed and implemented standards for the laboratory community. Currently 12 state programs have accredited over 900 laboratories in 45 states.

NELAC provides the opportunity for the entire sampling and analytical community to voice their concerns, provide advice based on their professional experience, and effect positive changes to the NELAC standards. Among those who are encouraged to attend, in addition to the laboratory community, are those who deal directly with field activities, e.g., state and federal regulatory officials, engineering firms, regulated industry, samplers, and other affected parties.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–15617 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0110; FRL–7183–1]

Organophosphate Pesticides; Availability of the Revised Organophosphate Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of revisions to the cumulative risk assessment for the organophosphorous (OP) pesticides, which was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This notice starts a 30–day period during which the public is encouraged to submit comments. By allowing access and opportunity for comment on the revised risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

DATES: Comments, identified by docket ID number OPP–2002–0110, must be received by EPA on or before July 22, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0110 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining and submitting comments on the revisions to the OP pesticide cumulative risk assessment, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0110. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0110 in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket ID number OPP–2002–0110. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Action is EPA Taking in this Notice?

EPA is making available for a 30–day public comment period the revised OP cumulative risk assessment. The documents being released to the public through this notice provide information on the revisions that were made to the preliminary OP cumulative risk assessment, which was released to the public December 28, 2001 (66 FR 67249) (FRL–6816–5), through a notice in the **Federal Register**.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 4, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–15599 Filed 6–17–02; 2:44 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7235–4]

Proposed CERCLA Prospective Purchaser Agreement; Leggett & Platt Inc.; City of Sterling, Whiteside County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning portions of the former Northwestern Steel site at 121 Wallace Street, Sterling, Whiteside County, Illinois 61520 with Leggett & Platt, Inc. (L&P) and Sterling Steel Company, LLC (Sterling). The agreement is contingent on and requires L&P and Sterling to perform numerous items of remediation that will be specifically set forth in the work plan currently being developed. The work will be performed for the areas of the site that L&P is purchasing—Plants 2 and 3. The work must meet the requirements of the State of Illinois Site Remediation Program. The agreement includes a covenant not to sue the L&P under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) and sections 3008(h) and 7003 of RCRA. The agreement also includes contribution protection for L&P under section 113(f)(2), 42 U.S.C. 9613(f)(2), and removal of any liens under section 107(l) of CERCLA, 42 U.S.C. 9607(l). For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the agreement. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Thor W. Ketzback at (312) 886–7949 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before July 22, 2002.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Thor W. Ketzback, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 353–6720. Comments should reference the L&P prospective purchaser

agreement, and should be addressed to Thor W. Ketzback.

FOR FURTHER INFORMATION CONTACT: Thor W. Ketzback, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 353–6720.

Dated: May 23, 2002.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 02–15615 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7235–6]

Stoller Chemical/Pelham Phosphate Site/Pelham, GA; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Stoller Chemical/Pelham Phosphate Site (Site) located in Pelham, Georgia, with Paga Chemicals, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887. Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 31, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–15616 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 13, 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 August 19, 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 *jboley@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 *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0010.

Title: Ownership Report for Commercial Broadcast Station.

Form No.: FCC Form 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000.

Estimated Time Per Response: 1–7.5 hours.

Frequency of Response: On occasion, biennial and other reporting requirements.

Total Annual Burden: 2,750 hours.

Annual Reporting and Recordkeeping Cost Burden: $1,163,000.

Needs and Uses: Each permittee of a commercial AM, FM, TV and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM, and TV broadcast station shall file an FCC Form 323 when they file their station's license renewal applications and every two years thereafter. Each licensee with a current and unamended FCC Form 323 on file at the Commission may certify that is has reviewed its current Report and that it is accurate, in lieu of filing a new Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set forth in Commission rules and is in compliance with the Communications Act. The race/ethnicity and gender question will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities and to assess the need for measures designed to fulfill the statutory mandate to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15588 Filed 6–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1345]

Notification of Open Forum on Mitigation of Adverse Environmental Effects of WFUV(FM)'s Proposed Facility Modification on the New York Botanical Garden

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On Thursday, June 27, 2002, the Audio Division, Media Bureau (the ''Media Bureau''), will chair two open meetings to receive public comment regarding measures to mitigate the adverse environmental effects of WFUV(FM)'s proposed radio transmission tower on the nearby New York Botanical Garden (the ''Garden''). Fordham University holds a permit for the construction of a 480-foot tower at the western edge of the University's campus, a short distance from the Garden's Enid A. Haupt Conservatory. The tower is partially constructed. The Commission previously determined that this tower would have an adverse impact on the Garden, a registered national historic site. As one mitigation measure, Fordham proposes to reduce the tower's height to 380 feet at the current location, a height that has been approved by the New York City Department of Buildings.

DATES: Thursday, June 27, 2002. The Garden will host the morning session from 10 a.m. until 12 noon. Fordham will host the afternoon session from 2 until 4 p.m.

ADDRESSES: Morning session at the Garden: in the courtyard immediately adjacent to the Haupt Conservatory, 200th Street and Kazimiroff Blvd., Bronx, New York. In the event of inclement weather, the session will be held in an enclosed tent also located adjacent to the conservatory.

Afternoon session at Fordham: McGinley Center Ballroom, 2d Floor, 441 East Fordham Road, Bronx, New York.

FOR FURTHER INFORMATION CONTACT: Michael Wagner, Audio Division, Media Bureau, Federal Communications Commission, (202) 418–2775.

SUPPLEMENTARY INFORMATION: Interested persons wishing further information about or directions to the morning meeting may contact Kathy Leake, (718) 817–8972.

Interested persons wishing further information about or directions to the afternoon session may contact either Joseph Muriana, Vice-President for Government and Urban Affairs, or Ms. DeeDee Alter, each at (718) 817–3020.

A sign-up sheet will be posted at each session for those wishing to comment. Attendees are requested to arrive one half hour prior to the start of the session in order to sign up and facilitate a timely start to the meeting.

Persons or entities that have received or have requested ''Consulting Party'' status (''Consulting Parties'') in this proceeding are invited to attend the sessions. This forum is designed to provide an opportunity for members of the public to express their views on mitigation measures, including site alternatives. Consulting Parties will be permitted to sign up to speak at the sessions, but will be given the opportunity to comment on a time-available basis only.

Information about the forum will be announced on station WFUV(FM) (90.7 MHz). Information also will be posted on the website of Fordham University *(http://www.fordham.edu)* and the New York Botanical Garden *(http://www.nybg.org).*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–15589 Filed 6–19–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, June 18, 2000, meeting closed to the public. This meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE & TIME: Wednesday, June 26, 2002, meeting open to the public. This meeting has been cancelled.

DATE & TIME: Tuesday, June 25, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to U.S.C. 437g. 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–15705 Filed 6–18–02; 12:01 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Request for Public Comments Regarding Extensions to Existing OMB Clearances

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is transmitting clearance packages to the Office of Management and Budget for continued approval of the following information collections (extensions with no changes) under the provisions of the Paperwork Reduction Act of 1995, as amended: OMB No. 3072–0012 (Security for the Protection of the Public and Related Application Form FMC–131, Application for a Certificate of Financial Responsibility); OMB No. 3072–0018 (Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and FMC Form 18); OMB No. 3072–0045 (Ocean Common Carrier and Marine Terminal Operator Agreements); OMB No. 3072–0060 (Controlled Carriers); OMB No. 3072–0061 (Marine Terminal Operator Schedules and Related Form FMC–1); OMB No. 3072–0064 (Carrier Automated Tariff Systems and Related Form FMC–1); and OMB No. 3072–0065 (Service Contracts). The Commission received one comment in response to the Notice.

DATES: Comments must be submitted on or before July 22, 2002.

ADDRESSES: Send written comments to:

Office of Information and Regulatory Policy, Office of Management and Budget, New Executive Office Building, Docket Room, Rm. 10201, Washington, DC 20503. Attn: Desk Officer for the Federal Maritime Commission.

And to:

Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573.

Comments in electronic form should be sent to: *oira_docket@omb.gov* and *secretary@fmc.gov.*

FOR FURTHER INFORMATION: Send requests for copies of the current OMB clearances to: George D. Bowers,

Director, Office of Information Resources Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573. Telephone: (202) 523–5835. *George@fmc.gov.*

SUPPLEMENTARY INFORMATION: On March 7, 2002, the Federal Maritime Commission published a notice and request for comments (Notice) in the **Federal Register** regarding the Commission's request for continued approval from the Office of Management and Budget (OMB) for information collections as required by the Paperwork Reduction Act of 1995. 67 FR 10407. One comment was received in response to the Notice with sole regard to OMB No. 3072–0045, the OMB certification for the Commission's information collection regarding agreements of marine terminal operators and ocean common carriers, as required and authorized by section 46 U.S.C. app. secs. 1703–1705 and Commission regulation 46 CFR part 535. That comment is addressed below. The Commission received no comments on any of the other requests for extensions of OMB clearance.

Comments of the Ocean Carrier Working Group Agreement on OMB Approval Number 3072–0045

Summary of the Comments

The Commission received comments on this request for an extension of OMB clearance from the Ocean Carrier Working Group Agreement (OCWGA), which is made up of twelve agreements filed under the Shipping Act of 1984, whose members in turn are forty-one ocean common carriers.[1] OCWGA comments that, based upon the experience of its members, the Commission has underestimated the burden involved in complying with the monitoring report requirements for ''Class A'' agreements and urges the Commission to revise both its estimates of that burden and the reporting requirements themselves. OCWGA suspects that the disparity between its estimate and that of the FMC may be due to the omission from the FMC's estimate of time spent by the agreement secretariat in preparing the monitoring reports and to an underestimation of the time it takes carriers to complete the monitoring reports.

OCWGA asserts that the 170 person-hours per annum estimated by the Commission is too low. OCWGA estimates that the time it takes Class A agreements to collect and submit the information required on a quarterly basis by the monitoring requirements ranges from 10 person-hours per quarter to 100 person-hours per quarter, or, over the course of a year, between 40 and 400 person-hours on a per-agreement basis. The agreement secretariat obtains the information from its member carriers; OCWGA estimates that each carrier spends between 6 and 40 person-hours per quarter on the monitoring report data collection and assembly, or between 24 and 160 person-hours per annum.

Taking an average-size membership agreement made up of 7 carriers, and assuming that each carrier member of that Class A agreement spends 24 person-hours per annum on the monitoring report, in total, the members of that agreement will together spend 168 person-hours on monitoring reports annually. The agreement secretariat for that agreement, OCWGA estimates, may spend approximately 40 person-hours on the monitoring reports on an annual basis; then the agreement secretariat and its members, taken together, would spend 208 person-hours per annum on the Class A monitoring report. This estimate, 208 person-hours per annum, is approximately 20% higher than the Commission's estimate of 170 person-hours per annum. OCWGA suspects that the reason for the disparity is that the Commission neglected to estimate the time spent by an agreement secretariat, rather than just the carrier members of the agreement, in preparing the monitoring reports.

OCWGA's comments also urge the Commission to revise its current monitoring report requirements because they do not meet either: (1) the standards of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501(1), and the Shipping Act of 1984, 46 U.S.C. app. sec. 1701(2) (which both call for a minimizing of regulatory burdens on industry); or (2) the current practical requirements of the Commission. OCWGA asserts that the dated and voluminous information required to be filed in the Class A monitoring report does not meet the needs of the Commission and imposes an undue burden on the industry. Therefore, OCWGA urges the Commission to eliminate the Class A monitoring report and redesignate the current Class B monitoring report as an ''A/B monitoring report.'' OCWGA also urges the Commission specifically to delete both: (1) The ''Other Agreements'' requirement, because the Commission already has that information; and (2) the ''Port Service'' requirement, because that information is typically of questionable value.

Discussion

OCWGA's comments appear to have misconstrued the Commission's estimate as having been based on a *per-annum*, rather than on a *per-filing* basis. The estimated per filing per respondent (which also did include agreement secretariats mentioned by OCWGA) person-hour burden for preparing a single Class A monitoring report was 170 hours. OCWGA's estimate was (on a per-respondent per-filing basis) a maximum of 100 person-hours, whereas that of the Commission was 170 person-hours. Nevertheless, the Commission has increased this estimated burden as discussed below.

In April 2002, Commission staff interviewed attorneys at two law firms that handle the filing of a large percentage of the agreements filed with the Commission. They indicated that the current estimated hour burden for compiling and filing an agreement was ''too low'' and that the current estimated hour burden for a Class A monitoring report was also ''too low.''

Based on these remarks, as well as those of OCWGA in the comments summarized above, the Commission has adjusted the estimated burdens as follows. Originally, the Commission had estimated a per-filing burden for original agreement and amendment filings at 70 person-hours per filing; this was increased to 76 person-hours per filing. The estimated hour burden for Class A monitoring reports was increased from 170 to 225 hours. The second estimate represents an increase

[1] A.P. Moller-Maersk Sealand; APL Co. PTE, Ltd./American President Lines, Ltd.; Crowley Liner Services, Inc.; King Ocean Services, Ltd.; Seaboard Marine, Ltd.; Frontier Liner Services; Alianca Navegacao e Logistica Ltda.; CMA CGM, S.A.; Companhia Libra de Navegacao d/b/a Braztrans Line; CSAV d/b/a Euroatlantic Container Line and Chilean Line; Evergreen Marine Corporation (Taiwan) Ltd.; Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft KG d/b/a Columbus Line and Crowley American Transport; Lykes Lines Ltd., LLC; Mediterranean Shipping Company, S.A.; Montemar Maritima, S.A. d/b/a Pan American Independent Line; P&O Nedlloyd B.V./P&O Nedlloyd, Ltd.; Safmarine Container Lines, N.V.; Senator Lines GMbH; Zim Israel Navigation Co., Ltd.; Farrell Lines, Inc.; Italia di Navigazione, S.p.A.; The National Shipping Company of Saudi Arabia; United Arab Shipping Company (S.A.G.); Atlantic Container Line AB; Hapag-Lloyd Container Linie GMbH; Nippon Yusen Kaisha; Orient Overseas Container Line; Cosco Container Lines Company Ltd.; Hanjin Shipping Company, Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Yangming Marine Transport Corp.; Australia-New Zealand Direct Line, a division of CP Ships (U.K.), Ltd.; Contship Containerlines, a division of CP Ships (U.K.), Ltd.; Wallenius Wilhelmsen Lines AS; Compagnie Marseille Fret; Fesco Ocean Management Ltd. d/b/a Fesco Australia North America Line; Compania Chilena de Navegacion Interoceania, S.A.; South Pacific Shipping Company, Ltd. d/b/a Ecuadorian Line; and Trinity Shipping Line.

of approximately 25 percent over the Commission's original estimate.

The Commission originally created different monitoring report requirements for different classes of agreements based on market share and authority. It found that Class A agreements were those which were most likely to be of concern to the Commission and as such, the information required in those monitoring reports therefore reflects a greater level of detail than for other classes of agreements. The Commission constantly considers ways to improve its information collection and intends specifically to review and revise its monitoring report requirements. OCWGA's comments regarding specific revisions to the monitoring reports requirements will be considered at that time.

OMB Approval Requests by OMB Approval Number

1. Security for the Protection of the Public and Related Application Form FMC–131, Application for a Certificate of Financial Responsibility

OMB Approval Number: 3072–0012 (Expires November 30, 2002).

Abstract: Sections 2 and 3 of Public Law 89–777, 46 U.S.C. app. 817(d) and (e), require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United States ports and territories to (1) establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to (2) indemnify passengers in the event of nonperformance of transportation. The Commission's rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths or stateroom accommodations that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 60.

Estimated Time Per Response: The time per response ranges from .5 to 6 hours for complying with the regulations and 8 hours for completing Application Form FMC–131. The total average time for both requirements for each respondent is 34.66 person-hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 2,080 person-hours.

2. Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and FMC Form 18

OMB Approval Number: 3072–0018 (Expires August 31, 2002).

Abstract: Section 19 of the Shipping Act of 1984, 46 U.S.C. app. sec. 1718, provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR part 515, including financial responsibility forms FMC–48, FMC–67, FMC–68,and FMC–69, and its related license application form, FMC–18.

Needs and Uses: The Commission uses information obtained from Form FMC–18, as well as information contained in the Commission's files and letters of reference, to determine whether an applicant meets the requirements for a license. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

Frequency: This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

Type of Respondents: Persons desiring to obtain a license to act as an OTI.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 3,450.

Estimated Time Per Response: The time per response for completing Application Form FMC–18 averages 1.5 hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 5,175 person-hours.

3. Ocean Common Carrier and Marine Terminal Operator Agreements

OMB Approval Number: 3072–0045 (Expires August 31, 2002).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. secs. 1703–1705, requires certain classes of agreements between and among ocean common carriers and marine terminal operators to be filed with the Commission, specifies the mandatory content of those agreements, and defines the Commission's authorities and responsibilities in overseeing those agreements. Commission rules at 46 CFR part 535 set forth the form and manner for filing agreements and for the underlying commercial data necessary to evaluate agreements.

Needs and Uses: Under its pre-effectiveness review process, the Commission reviews agreement filings to determine statutory and regulatory compliance, as well as to assess any anti-competitive impact the agreement may have. After agreements become effective, the Commission continues to monitor agreement activities to ensure continued statutory and regulatory compliance. To accomplish this, the Commission continuously gathers, reviews, and interprets commercial data regarding the impact of agreements on competition, prices, and service in the U.S. foreign trades.

Frequency: The Commission has no control over how frequently agreements are entered into; this is solely a matter between the negotiating parties. When parties do reach an agreement that falls within the jurisdiction of the Commission, that agreement must be filed with the Commission. Ongoing surveillance of agreement activities is conducted through the review of minutes and quarterly monitoring reports filed by certain types of agreements the Commission has identified as having the greatest potential effects on competition.

Type of Respondents: Parties that enter into agreements subject to the Commission's oversight are ocean common carriers and marine terminal operators operating in the U.S. foreign trades.

Number of Annual Respondents: Over the last five years the Commission has averaged 360 agreement filings a year from an estimated potential universe of 682 regulated entities. Starting in 1996, certain agreements were required to file quarterly monitoring reports under

these regulations. The number of annual respondents under this program will vary according to the number of agreements subject to the reporting obligation. The current estimated potential universe of respondents subject to quarterly monitoring reports is 420. In FY 2001, agreements subject to the monitoring report requirements filed 221 reports.

Estimated Time Per Response: It is estimated that the time for preparing and filing an agreement ranges anywhere from as little as three person-hours to as much as 150 person-hours. The current estimate of the average burden per respondent is 76 person-hours. Time required for preparing monitoring reports varies according to the complexity of the filing obligation. Class C agreements have the least burden, and it is estimated to be about 20 person-hours. Class A/B agreements require more detailed data and hence a greater burden. It is estimated that Class B monitoring reports require about 130 person-hours, and Class A reports about 225 person-hours. The current estimated time per respondent under the record-keeping obligations of the regulation is five person-hours.

Total Annual Burden: The current revised annual burden on respondents is estimated at 88,970 person-hours: 85,580 person-hours as the filing burden, and 3,390 person-hours as the record-keeping burden.

4. Controlled Carriers

OMB Approval Number: 3072–0060 (Expires August 31, 2002).

Abstract: Section 9 of the Shipping Act of 1984, 46 U.S.C. app. sec. 1708, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. Commission regulations at 46 CFR part 565 establish the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Act. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers are not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: Although it is estimated that only 5 of the 14 currently-classified controlled carriers may respond in any given year, because this is a rule of general applicability, the Commission considers the number of annual respondents to be 10.

Estimated Time Per Response: The estimated time for compliance is 7 person-hours per year.

Total Annual Burden: The Commission estimates the person-hour burden required to make such notifications at 70 person-hours per year.

5. Marine Terminal Operator Schedules and Related Form FMC–1

OMB Approval Number: 3072–0061 (Expires August 31, 2002).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. app. 1707(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal, subject to section 10(d)(1), 46 U.S.C. app. 1709(d)(1), of the Act. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 186.

Estimated Time Per Response: The Commission estimates an average of five person-hours per schedule.

Total Annual Burden: The Commission estimates the total person-hour burden at 930.

6. Carrier Automated Tariff Systems and Related Form FMC–1

OMB Approval Number: 3072–0064 (Expires August 31, 2002).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. app. 1707(a), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. app. 1707(c). The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR Part 520.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 3,000.

Estimated Time Per Response: The time per response averages five person-hours per respondent for Form FMC–1 and tariff publication matters.

Total Annual Burden: The Commission estimates the total person-hour burden at 313,400 person-hours.

7. Service Contracts

OMB Approval Number: 3072–0065 (Expires August 31, 2002).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. 1707, requires service contracts, except those dealing with

bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, and their related amendments and notices to be filed confidentially with the Commission.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract it must be filed with the Commission.

Types of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other. The carrier party is responsible for filing the service contract.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 155.

Estimated Time Per Response: The time per response ranges from one to eight hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 303,953.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–15502 Filed 6–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American West Steamboat Company LLC, 2101 Fourth Avenue, Suite 1150, Seattle, WA 98121.
Vessel: EMPRESS OF THE NORTH.

Crystal Cruises, Inc., 2049 Century Park East, Suite 1400, Los Angeles, CA 90067.
Vessel: CRYSTAL SERENITY.

Delta Queen Steamboat Company, Inc., DNPS Delta Queen Steamboat Company, Inc., and American Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: AMERICAN QUEEN.

Delta Queen Steamboat Company, Inc. DNPS Delta Queen Steamboat Company, Inc., Delta Queen Steamboat, LLC, and DNPS Delta Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: DELTA QUEEN.

Delta Queen Steamboat Company, Inc., DNPS Delta Queen Steamboat Company, Inc., and Mississippi Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: MISSISSIPPI QUEEN.

Lindblad Expeditions, Inc., 720 Fifth Avenue, New York, NY 10019.
Vessels: POLARIS, SEA BIRD and SEA LION.

Mitsui O.S.K. Passenger Line, Ltd., Nippon Charter Cruise, Ltd., Mopas Cruise Line S.A., and Mitsui O.S.K. Lines, Ltd., 1–1 Toranomon, 2 Chome Minato-ku, Tokyo 105 8452, Japan.
Vessel: FUJI MARU.

Princess Cruise Lines, Ltd., P & O Cruises International Limited, and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999.
Vessels: DIAMOND PRINCESS and ISLAND PRINCESS.

Scotia Prince Cruises Limited, Prince of Fundy Cruises Ltd., Transworld Steamship Co., and International Shipping Partners, Inc., Station A, P.O. Box 4216, 468 Commercial Street, Portland, ME 04101.
Vessel: SCOTIA PRINCE.

Society Expeditions, Inc., Society Expeditions GmbH, and

Discoverer Reederei GmbH, 2001 Western Avenue, Suite 300, Seattle, WA 98121.
Vessel: WORLD DISCOVERER.

The World of ResidenSea Ltd., and ResidenSea Resorts Ltd., 5200 Blue Lagoon Drive, Suite 790, Miami, FL 33126.
Vessel: THE WORLD.

Dated: June 14, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–15504 Filed 6–19–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 App. U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Corporation, 3655 NW. 87th Avenue, Miami, FL 33178–2193.
Vessels: CARNIVAL LEGEND and CELEBRATION.

Celebrity Cruises Inc. and Constellation Inc., 1050 Caribbean Way, Miami, FL 33132.
Vessel: CONSTELLATION.

Delta Queen Steamboat Company, Inc., DNPS Delta Queen Steamboat Company, Inc., and American Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: AMERICAN QUEEN.

Delta Queen Steamboat Company, Inc., DNPS Delta Queen Steamboat Company, Inc., Delta Queen Steamboat, LLC, and DNPS Delta Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: DELTA QUEEN.

Delta Queen Steamboat Company, Inc., DNPS Delta Queen Steamboat Company, Inc., and Mississippi Queen Steamboat, LLC, 1380 Port of New Orleans Place, New Orleans, LA 70130.
Vessel: MISSISSIPPI QUEEN.

Holland America Line-Westours Inc., Holland America Line N.V., and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119.
Vessel: PRINSENDAM.

Mitsui O.S.K. Passenger Line, Ltd., Nippon Charter Cruise, Ltd., Mopas Cruise Line S.A., and Mitsui O.S.K. Lines, Ltd., 2–1 Toranomon, 2 Chome Minato-ku, Tokyo 105 8452, Japan.
Vessel: FUJI MARU.

Regal Cruises Limited, Regal Cruises Inc., Regal Enterprises Inc., and International Shipping Partners, Inc., P.O. Box 1329, 300 Regal Cruises Way, Palmetto, FL 34220.
Vessel: REGAL EMPRESS.

Scotia Prince Cruises Limited, Prince of Fundy Cruises Ltd., Transworld

Steamship Co., and International Shipping Partners, Inc., Station A, P.O. Box 4216, 468 Commercial Street, Portland, ME 04101.
Vessel: SCOTIA PRINCE.

Society Expeditions, Inc., Society Expeditions GmbH, Discoverer Reederei GmbH, and Patrician Cruises Ltd., 2001 Western Avenue, Suite 300, Seattle, WA 98121.
Vessel: WORLD DISCOVERER.

The World of ResidenSea Ltd., and ResidenSea Resorts Ltd., 5200 Blue Lagoon Drive, Suite 790, Miami, FL 33126.
Vessel: THE WORLD.

Dated: June 14, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–15503 Filed 6–19–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

National Institutes of Health; Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, National Institutes of Health, the authority under Part B, Title IV, section 409I(a) and (b) of the Public Health Service (PHS) Act, as amended by Public Law 107–109 (Best Pharmaceuticals for Children Act), to (1) award contracts to entities that have the expertise to conduct pediatric clinical trials, to enable the entities to conduct pediatric studies concerning one or more of the drugs identified in the list described in subsection (a) of section 409I of the PHS Act, as amended, and (2) to develop and publish the list of drugs described in subsection (a) of section 409I of the PHS Act, as amended.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, guidelines and regulations. In addition, I ratify and affirm any actions taken by the Director, National Institutes of Health, or subordinates which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: June 12, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–15535 Filed 6–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 02155]

Linking Chronic Disease and Environmental Data Sources; Notice of the Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to conduct research on the potential impact of environmental exposures on chronic disease outcomes. This program addresses the ''Healthy People 2010'' focus area of Environmental Health.

Measurable outcomes of the program will be in alignment with the following performance goals for ATSDR: (1) Ascertain the relationship between exposure to toxic substances and disease and (2) Build and enhance effective partnerships.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized in Sections 104(i)(1)(E), (7),(9) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)(1)(E), (7), (9) and (15)]. The Catalog of Federal Domestic Assistance number is 93.206.

C. Eligible Applicants

Assistance will be provided to official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Federally recognized Indian Tribal governments. Also eligible are State organizations, including State universities, State colleges, and State research institutions, who must establish that they meet their respective State legislature's definition of a State entity or political subdivision to be considered an eligible applicant.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund two to three awards. It is expected that the average award will be $150,000, ranging from $100,000 to $200,000. The award(s) are expected to begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Matching funds are not required for this program.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the primary recipient of ATSDR funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with these funds, however, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Equipment may be acquired only when authorized and the application should provide a justification of need to acquire equipment, the description, and the cost of purchase versus lease. At the completion of the project, the equipment must be returned to ATSDR.

Funding Priorities

Priority will be given to the proposed project that demonstrates the existence of both well documented sources of chronic disease data (e.g., population-based cancer registry, birth defects registry, or other source of chronic disease data) and existing, well documented sources of environmental data.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. Recipient Activities, and ATSDR will be responsible for the activities listed under 2. ATSDR Activities.

1 . Recipient Activities

a. Develop a research project which examines the possible relationship between environmental exposures and chronic disease by linking data sources. Provide scientific information concerning environmental exposures

and chronic disease, and develop a model for others to address the potential health impact of the exposure(s).

b. Develop a study protocol for approval before project implementation.

c. Identify possible chronic disease and environmental data sources for data linkage and identify variables critical for successful linkage. Assess geographic coverage and generalizability of data identified for linkage. Identify and address any gaps in environmental or chronic disease data and suggest methods to eliminate gaps.

d. Clearly demonstrate a partnership and collaborative effort between public health and environmental agencies, and, when appropriate, a mechanism for stakeholder involvement.

e. Collaborate with partners and other award recipients on these program activities, and meet annually to coordinate planned efforts and review progress.

f. Disseminate results to stakeholders, and publish in written format.

2. ATSDR Activities

a. Provide scientific, epidemiologic, and environmental assistance.

b. Assist with the development of the protocol and evaluation of the data linkage methods.

c. Facilitate external peer review of the protocol and final report(s).

d. Assist with data analysis and interpretation of findings.

e. Provide technical assistance to ensure a sharing of information and methodologies and for the dissemination of information to potential stakeholders.

f. Hold an annual meeting with awardee(s) to discuss issues related to the purpose of the announcement and review progress.

F. Application Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 30 pages, double-spaced, printed on one side, with one-inch margins, and unreduced font.

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

The application must be received on or before 5:00 p.m. Eastern Time July 30, 2002. Submit the application to:

Technical Information Management—PA 02155, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341.

Deadline: Applications will be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an objective review group appointed by ATSDR:

1. Study Design and Methods (30 percent)

a. Adequacy of the study design and methodology for accomplishing the stated goals and objectives.

b. The degree to which efficient and innovative approaches are proposed to address the problems.

c. The extent to which the applicant's plans and schedule proposed for accomplishing the activities to be carried out in this project are clearly stated, are realistic given the length of the funding period, and can be achieved within the proposed budget.

d. Adequacy of a plan establishing partnerships with state or local environmental agencies and relevant stakeholders.

e. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

2. Program Personnel (20 percent)

a. Applicant's technical experience and understanding (e.g., in the areas of chronic disease, environmental health, and database linkage).

b. Qualifications and time allocation of the professional staff to be assigned to this project.

c. Extent to which the management staff and their working partners are clearly described.

3. Goals and Objectives (20 percent)

The extent to which the proposed goals and objectives are clearly stated, measurable, time-phased, and achievable.

4. Understanding of the Problem (10 percent)

Responsiveness to the objectives of the cooperative agreement including:

a. The applicant's understanding of the problems related to environmental exposures and chronic disease outcome(s).

b. Relevance of the proposed program to these and related problems.

5. Dissemination of Results (10 percent)

Adequacy of methods to disseminate the study results to state and local public health officials, state and local environmental health officials, and other stakeholders.

6. Facilities and Resources (10 percent)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

7. Human Subjects (Not scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

8. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Semi-annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.
2. Financial Status Report (FSR) no more than 90 days after the end of the budget period.
3. Final financial status report and performance report, no more than 90 days after the end of the project.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program:

AR–1 Human Subjects Requirements
AR–2 Requirements of Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer Review and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–22 Research Integrity

J. Where to Obtain Additional Information

A complete copy of the announcement may be downloaded from CDC's home page on the Internet at *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Edna Green, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement 02155, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146, Telephone (770) 488–2743, E-mail address: *ecg4@cdc.gov.*

For program assistance, contact:

Wendy E. Kaye, Ph.D.,Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, Telephone: (404) 498–0102, E-mail address: *wek1@cdc.gov.* Or: Patricia Price-Green, MSPH, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, Telephone: (404) 498–0558, E-mail address: *pap5@cdc.gov.*

Dated: June 14, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15548 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–62]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Health Care Provider Survey on Genital Human Papillomavirus Infection—NEW—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is proposing to conduct a national survey of health care providers' knowledge, attitudes, and practices in caring for patients at risk for or infected with genital human papillomavirus (HPV).

Genital HPV infection is common among sexually active populations. An estimated 50 percent of sexually active adults have been infected with one or more genital HPV types, making this the most common sexually transmitted infection in the United States (Cates, 1999). Many health care providers may not be aware of data demonstrating the high prevalence of this sexually transmitted virus, the association of certain HPV types with various clinical manifestations including cervical and other anogenital cancers, or the type-specific natural history of HPV infection. To date, however, no nationally representative qualitative or quantitative surveys have measured health care providers' knowledge, attitudes, and practices about genital HPV infection.

The CDC proposes to fill that gap through a national sample survey of clinicians in 13 specialties who care for substantial numbers of sexually active patients at risk for acquiring HPV, infected with genital HPV, or that have at least one of two clinical manifestations of HPV infection, cervical neoplasia or anogenital warts. The group of clinicians includes primary care clinicians, as well as selected specialists to whom patients with genital HPV infection, cervical neoplasia, or anogenital warts may be referred for HPV diagnosis, treatment, or management. These will include 11 physician specialties, pediatrics, obstetrics/gynecology, family and general practice, internal medicine, infectious disease, oncology, gynecologic oncology, dermatology, urology, colorectal surgery; and three mid-level provider specialties, nurse practitioners, certified nurse midwives, and physician assistants.

The survey will be sent to 730 clinicians of each specialty, totaling 9,490 clinicians. An 80 percent response rate is anticipated, and 23 percent of these are expected to be ineligible for various reasons (*e.g.,* retired, deceased, no patient care), resulting in a total of 5,850 completed surveys. The survey will provide baseline information on practicing clinicians' knowledge, attitudes and practices concerning patients at risk for or infected with HPV. The survey findings will be used to inform CDC initiatives and

recommendations for HPV control including appropriate practices for HPV testing, referral and clinical management, counseling, patient education, sex partner services, and clinician training and education in these areas. The information gathered from the survey will also provide a valuable knowledge base to guide the development and implementation of interventions to improve the prevention, control, and management of genital HPV infection in the U.S.

Data collection will involve a mail survey of a stratified random sample of practicing clinicians in 13 specialties. A reminder postcard will follow the survey mailing after one week, a second mailing to non-respondents at four weeks, a third mailing to non-respondents at seven weeks, and a final mailing to non-respondents at ten weeks. A study specific computerized tracking and reporting system will monitor all phases of survey mailings. Receipt of the completed survey or a refusal will be logged into this computerized tracking system to ensure that respondents who return the survey or decline participation will not be contacted with reminders. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Office Managers	1742	1	2/60	58
Clinicians	5850	1	20/60	1950
Total				2035

Dated: June 13, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–15496 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–38–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: CDC/ATSDR Health Message Development and Testing System—New—Office of the Director, Office of Communication (OD/OC), Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention (CDC) protects people's health and safety by preventing and controlling diseases and injuries; promotes healthy living through strong partnerships with local, national and international organizations, and enhances health decisions by providing credible information on critical health issues.

Members of the public and health practitioners at all levels require up-to-date, credible information about health and safety in order to make rational decisions. To help support this crucial decision making, CDC has continued to increase and apply its preeminent expertise in the disciplines of public health surveillance, epidemiology, statistical analysis, laboratory investigation and analysis, behavioral risk reduction, technology transfer, prevention research, social marketing, and health communication. CDC applies the science that underpins those disciplines to develop and disseminate credible and practical health information to meet the diverse needs of its primary clients, the people of the United States. Such information affects the health and well-being of people across all stages of life by making our food supply safe, identifying harmful behaviors, and improving our environment.

CDC, and it's sister agency, the Agency for Toxic Substances and Disease Registry (ATSDR), in order to fulfill their mission and mandates, must frequently communicate urgent and sensitive health messages with the general public, members of the public with certain diseases or disabling conditions, and those at a greater risk of exposure to disease or injury causing agents. CDC/ATSDR makes this crucial health information available through many channels including books, periodicals, and monographs; internet Web sites; health and safety guidelines; reports from investigations and emergency responses; public health monitoring and statistics; travel advisories; answers to public inquiries; and health education campaigns.

In addition to serving the public, CDC/ATSDR delivers health information that enables health providers to make critical decisions. For instance, the practicing medical and dental communities and the nation's health care providers are target audiences for numerous official CDC recommendations concerning the diagnosis and treatment of disease, immunization schedules, infection control, and clinical prevention practices. CDC/ATSDR offers technical assistance and training to health professionals as well.

In order to ensure that the public and other key audiences, like health care providers, understand the information, are motivated to take action, and are not offended or react negatively to the messages, it is critical to test messages and materials prior to their production and release. Currently, each CDC program developing health messages is required to submit its message development and testing activities for individual OMB review. Many CDC programs have extremely short deadlines for developing and producing health messages. Some deadlines are imposed by Congress, and others are necessitated by the time-sensitive nature of the work. Many programs cannot accommodate the time required for OMB approval and, therefore, skip the message testing step all together, or resort to testing specific portions of messages with nine or fewer individuals. The science of health communication does not support these programmatic practices. In fact, these undesirable alternatives weaken CDC/ATSDR position as a research-based public health agency providing credible health information that people can count on and use.

CDC may achieve a greater level of efficacy if it can use three routine health message development and testing methods: (1) Central Location Intercept Interviews (i.e. ''Shopping mall'' interviews); (2) Customer Satisfaction Phone Interviews; and (3) Web-enabled research. Virtually every Center, Institute and Office (CIO) at CDC could achieve a higher level of confidence that health messages were understandable and would provoke no unintended consequences if they were empowered to use these methods efficiently. The CDC Office of Communication therefore requests approval for implementation of a Health Message Development and Testing System that will conduct approximately 64 message testing activities per year for each of three years. A message testing activity is defined as a one-time use of a method to provide direction for a specific health communication program.

For example, if the diabetes program wanted to test messages with Central Location Intercept Interview and Customer Satisfaction Phone Interviews, these activities would be counted as two separate testing activities. If all 64 testing activities were implemented, total respondent burden per year is estimated at 3,200 hours.

While the methods of message development and testing are standard, the instruments and outcomes are unique to the health topic and audience the health message is being developed on and for. This health message development and testing system will allow a timely mechanism for developing and testing health messages on a wide variety of public health topics to ensure that the appropriate message is delivered and received by the American public. This request presents methodology, background information, justification for the process, and sample questionnaires and questions. The estimated annual burden for this data collection is 3,167 hours.

Data collection	Number of activities per year	Number of respondents per activity	Number of responses per respondent	Average burden per response (in hours)
Intercept, touch-screen, & internet interviews	60	100	1	30/60
Web-enabled panel survey	1	1000	1	10/60

Dated: June 14, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–15549 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02191]

Expansion of HIV/AIDS/TB Care and Prevention Activities Among People with HIV/AIDS in the Republic of Uganda; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to strengthen the capacity for providing basic Human Immunodeficiency Virus/Tuberculosis (HIV/AIDS/TB) care and prevention services for people with HIV/AIDS in the Republic of Uganda.

The purpose of this program is to strengthen TB treatment and prevention, scale-up cotrimoxazole prophylaxis and expand other HIV/AIDS diagnostic, care and prevention programs. Also, the program will support the expansion of basic HIV/AIDS care activities in multiple locations in support of CDC Uganda's country strategy.

This program will enhance Uganda's capacity to provide comprehensive HIV/AIDS care and prevention services. Renovations and other infrastructure needs related to the provision of above services will be supported.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Global AIDS Program (GAP): Working with other countries, USAID, international, and U.S. government agencies, reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated two million by 2005.

B. Eligible Applicants

Assistance will be provided only to Ugandan non-governmental organizations with more than five years of experience in the implementation of community HIV/AIDS care programs for populations in multiple rural locations in Uganda. The applicants should have at least two years experience in implementing comprehensive HIV/AIDS care programs for people with AIDS that include psycho-social support, TB care, and prevention of opportunistic infections using Potriomoxazole.

CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in many countries. CDC has established partnerships with the Uganda Ministry of Health, the Uganda AIDS Commission and a wide range of local and international non-governmental organizations in discovering and applying effective interventions to prevent HIV infection and associated opportunistic illnesses associated with HIV/AIDS.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $350,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about August 30, 2002 and will be made for a 12-month budget period within a project period of three years. Funding estimates may change.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

No matching funds are required for this program announcement.

D. Use of Funds

Funds may only be utilized to implement HIV/AIDS/TB care and prevention activities as described in the goals, objectives, and activities of the submitted and funded program.

The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program headquarters.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must

perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Needle Exchange

No funds appropriated under this Act shall be used to carry out any program of distribution sterile needles or syringes for the hypodermic injection of any illegal drug.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

F. Recipient Activities

a. Identify staffing needs; hire and train staff.

b. Identify and acquire programmatic needs including spacing, furnishings, fittings, equipment, and computers.

c. Establish maintenance contracts for program facilities, equipment, and fittings.

d. Carry out training needs assessment for medical and counseling staff if needed.

e. Identify and if necessary subcontract refresher training for all relevant staff in the specific areas identified.

f. Acquire medications, and other clinical and laboratory supplies through normal sources.

g. Develop and implement, customized monitoring and evaluation plans, for each program component.

h. Provide training in new content areas through apprenticeships and other skills development methodologies between treatment sites.

i. Procure, supply, and maintain centers with materials required for clinical activities.

j. Develop and establish a regular distribution system for cotrimoxazole and TB drugs and other supplies.

k. Schedule regular supervisory site visits for clinical activities.

l. Develop training materials including treatment and counseling protocols.

m. Develop a data management plan and provide training for all relevant staff.

n. Initiate collaborations with National TB and Leprosy Program, Ministry of Health and other care institutions.

o. Establish administrative and management systems for the program.

p. Prepare and submit periodic progress and financial reports.

G. CDC Activities

a. Monitor project and budget performance.

b. Approve the selection of key personnel to be involved in the activities performed under this cooperative agreement.

c. Provide technical assistance in the design and implementation of monitoring and evaluation plans and other programmatic areas as needed.

d. Assist in the planning for data management and analysis.

e. Participate in training activities as needed.

f. Provide technical and programmatic oversight to the program.

g. Collaborate with recipient in developing presentations or manuscripts as needed.

H. Application Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with once-inch margins, and unreduced fonts.

Each activity for which funds are requested should consist of, at a minimum, a plan, objectives, methods, evaluation and budget provided. A summary budget by line item should be provided.

I. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Content
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 p.m. Eastern Standard Time July 17, 2002, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of the announcement.

Deadline applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Standard Time on the deadline date. Applicants sending applications commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to:

1. Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or

2. Significant weather delays or natural disasters,

CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

J. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Program Capacity (25 percent)

The proposal should demonstrate capacity and experience needed to implement a project of this magnitude and scope including infrastructure, staffing levels and laboratory capacity.

2. Technical and programmatic approach (25 percent)

The extent to which the applications proposal demonstrates an understanding of how to develop, implement, monitor and evaluate a care program of this complexity.

3. Program Plan (20 percent)

The proposal should demonstrate capacity and plans to rapidly roll out this program to multiple sites in the country.

4. Personnel (15 percent)

The extent to which professional personnel involved in this project are qualified. Provide evidence of experience in working with HIV/AIDS and specifically in the management of opportunistic infections in HIV/AIDS.

5. Understanding of the problem (15 percent)

The extent in which the applicant describes a clear, concise understanding of the HIV/AIDS epidemic in Uganda, and specifically addresses the gaps in the clinical management of people with HIV/AIDS.

6. Budget. (reviewed, but not scored)

The extent to which the itemized budget for conducting the project is reasonable and well justified.

K. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies:

1. Annual progress report (The progress report will include a data requirement that demonstrates measures of effectiveness).
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Awardee is required to obtain an annual audit of these CDC funds (program specific audit by a U.S. based audit firm with international branches and current licensure/authority in country, and in accordance with the international accounting standards of equivalent standards approved in writing by CDC).

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review by the office of management and budget (OMB) under the paperwork reduction act. A fiscal recipient capability assessment may be required with the potential awardee, prior or post award, in order to review the business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to both the program contact in Uganda and Grants Management Specialist identified in the ''Where to Obtain Additional Information'', section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement. Some of the more complex requirements have additional information provided below:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–6 Patient Care
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–14 Accounting System Requirements

L. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. section 2421], as amended. The Catalog of Federal Domestic Assistance number is 93.118.

M. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: *dpr7@cdc.gov.*

For program technical assistance, contact: Jonathan Mermin, MD, MPH, GAP, Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, PO Box 49, Entebbe, Uganda, Telephone: +256–410320776, E-mail: *jhm@cdc.gov.*

Dated: June 2, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02153]

REACH 2010 Demonstration Programs; American Indian/Alaska Native Core Capacity Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for cooperative agreements for Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) and American Indian/Alaska Native (AI/AN) Core Capacity. This program addresses the ''Healthy People 2010'' focus areas of maternal, infant, and child health; diabetes; heart disease and stroke; HIV; immunization and infectious Disease; and cancer.

The Centers for Disease Control and Prevention is issuing this program announcement in an effort to simplify and streamline the grant pre-award and post-award administrative process, provide increased flexibility in the use of funds, measure performance related to each grantee's stated objectives and identify and establish the long-term goals of the REACH 2010 and AI/AN Core Capacity programs through stated performance measures. Some examples of the benefits of the streamlined process are: elimination of separate documents (continuation application and semi-annual progress report) to issue a continuation award; consistency in reporting expectations; and increased flexibility within approved budget categories.

Existing grantees under program announcement numbers 00121, 01123, 01132, and US002 will have their grant project periods extended to FY 2007 upon receipt of a technically acceptable application.

The purpose of this program is to support demonstrations projects for

racial and ethnic minority populations at increased risk for infant mortality, diabetes, cardiovascular diseases, HIV infection/AIDS, deficits in breast and cervical cancer screening and management, or deficits in child and/or adult immunization rates to develop, implement, and evaluate innovative community level intervention demonstrations that could be effective in eliminating health disparities.

The collective goal of all demonstrations is to advance knowledge of and increase the effectiveness of future efforts to eliminate racial and ethnic health disparities.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion: To support prevention research to develop sustainable and transferable community-based behavioral interventions.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301(a)and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Section 241 (a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.945.

C. Eligible Applicants

Assistance will only be provided to grantees currently receiving CDC funds under program announcements 00121 and 01123 REACH 2010 Phase II, 01132 entitled AI/AN Core Capacity Building Programs, US002 entitled REACH 2010 for the Elderly, and who are the Central Coordinating Organization (CCO) with direct fiduciary responsibility over the administration and management of the project.

Applications received from applicants that do not meet the CCO requirement will not be considered for an award under this program announcement. All applications received from current grant recipients under program announcement 01121, 01123, 01132 and US002 will be funded pending approval of a technically acceptable application. No other applications are solicited.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, or any other form.

D. Availability of Funds

Approximately $31,000,000 is available in FY 2002 to fund approximately 40 awards. Approximately $28,000,000 million is available to fund approximately 31 existing REACH 2010 grantees under Program Announcement numbers 00121 and 01123. Approximately $1,500,000 is available to fund five existing American Indian/Alaska Native grantees under Program Announcement number 01132. Approximately $1,000,000 is available to fund four existing REACH 2010 Elderly grantees under Program Announcement number US002. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to five years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may not be used for research involving human subjects until Protection of Human Subjects Assurance/Certification is approved. Funds for research activities involving human subjects will be restricted until appropriate requirements are in place.

Funds may be used for the six health priority areas only. Funds may not be used to support direct patient medical care, facilities construction, or to supplant or duplicate existing funding.

Although applicants may contract with other organizations under these cooperative agreements, recipients must perform a substantial portion of the activities (including program management and operations) for which funds are requested.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. Recipient Activities a. and c. apply to REACH 2010 applicants only, the remaining recipient activities apply to both REACH 2010 and REACH 2010 Elderly applicants. REACH 2010/REACH 2010 ELDERLY—PHASE II

1. Recipient Activities

a. Implement the Community Action Plan (CAP) that addresses the selected health priority area(s) for the target population. The Grantee must target one or more specific racial or ethnic minority communities that is African American, American Indian or Alaska Native, Hispanic American, Asian American, or Pacific Islander. Initiate actions to assure the interventions are administered effectively, appropriately and in a timely manner. Document how the CAP was modified to address contingencies encountered during the developmental process. [REACH 2010 Only]

b. Conduct ongoing evaluations that will document innovative strategies; monitor coalition activities, community, and environmental changes; and assess the effects of the intervention.

c. Establish data systems to collect data necessary to monitor and fully capture the effects of all project activities. [REACH 2010 Only]

d. Maintain a coalition that develops and sustains linkages and collaborations with local, State, and national partners.

e. Collaborate with academic or other appropriate institutions in the collection, analysis, and interpretation of the data.

f. Establish mechanisms with other public and/or private groups to maintain financial support for the program at the conclusion of Federal support.

g. Participate in conferences and workshops to inform and educate others regarding the experiences and lessons learned from the project and collaborate with appropriate partners to publish the results of the project to the public health community.

h. Participate in up to three yearly CDC workshops for technical assistance, planning, evaluation and other essential programmatic issues.

2. CDC Activities

a. Provide consultation and technical assistance in the planning and evaluation of program activities.

b. Provide up-to-date scientific information on the basic epidemiology of the priority area(s), recommendations on promising intervention strategies, and other pertinent data and information needs for the specified priority area(s), including prevention measures and program strategies.

c. Assist in the collection and analysis of data and evaluation of program progress.

d. Assist recipients in collaborating with State and local health departments, community planning groups, foundations and other funding institutions, and other potential partners.

e. Foster the transfer of successful prevention interventions and program models through convening meetings of grantees, workshops, conferences, and communications with project officers.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all

cooperating institutions participating in the research project.

g. Monitor recipient compliance with the protection of human research subjects requirement.

American Indian/Alaska Native Core Capacity

1. Recipient Activities for Core Capacity Building Programs.

a. Develop/enhance scientific capacity in epidemiology, statistics, surveillance, and data analysis from new or existing data systems (e.g., vital statistics, hospital discharges, Survey of AI/AN, Behavioral Risk Factor Surveillance System [BRFSS], etc.) to correctly identify the AI/AN population(s) and existing health disparity and to monitor the effectiveness of public health interventions targeting these groups. Scientific capacity should include, but not be limited to, efforts to determine:

(1) Disease trends, including age of onset of disease, age at death, etc.

(2) Geographic distribution of related health priority area disparities.

(3) Behavioral, social, or ecological risk factors related to the occurrence of disease.

(4) Ways to integrate systems to provide comprehensive data needed for assessing and monitoring the health of populations and program outcomes. Monitoring and program evaluation are considered essential components of building scientific capacity. Scientific capacity may also extend to developing access to outside databases, such as medical care and access to laboratory capacity consistent with the overall direction of the program.

b. Develop and implement a Community Capacity Plan (CCP), which includes specific objectives for building capacity to reduce disparities in health outcomes for selected health priority area(s)and related risk factors.

The plan should consider culturally appropriate behavioral, policy, and community approaches to reducing morbidity and mortality for the selected health priority area(s).

The CCP should include, but not be limited to, understanding the context, causes, and solutions for the health disparity; community needs assessment to identify and develop training and technical assistance; forming partnerships and engaging in community planning; accumulating resources; plans to develop and implement a culturally appropriate intervention(s) believed to bring about desired effects; planning community and systems changes that alter the environmental context within which individuals and groups behave; and documenting changes in knowledge, attitudes, beliefs, or behaviors among influential individuals or groups, with an intent of diffusing similar changes to a broader community population.

c. Design and implement an evaluation plan to track and measure process and progress in developing a core capacity program. The plan should address measures considered critical to determine the readiness or ability of the AI/AN Community and its members to take action aimed at protective behaviors or changing risk, transforming community conditions and systems so that a supportive context exists to sustain behavior changes over time. In addition, the plan should include time-specific objectives which account for the major activities of the CCP, the means of tracking and measuring the collaborative work with partners, and any other relevant process measures. Time lines, objectives, and other supporting documentation should be included in the evaluation plan.

2. CDC Activities

a. In collaboration with the recipient, provide appropriate training on developing prevention strategies (*e.g.,* building scientific capacity, collaboration and partnerships, implementing guidelines and model programs on disease prevention, *etc.*), which prepare tribes to mobilize and engage in prevention initiatives for the health priority area(s) selected.

b. Provide technical assistance through conference calls, resource material, training, and updated information, as needed. Facilitate communications locally, regionally, and nationally regarding resources and other opportunities involving capacity building activities.

c. Participate in the evaluation of activities and initiatives.

F. Application Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them when describing your program plan. In developing this plan, applicants must describe a community-based program within at least one of the six following health priority areas: (1) infant mortality, (2) diabetes, (3) cardiovascular diseases, (4) HIV infection/AIDS, (5) deficits in breast and cervical cancer screening and management, or (6) deficits in child and/or adult immunizations, that specifically focuses on a geographically defined racial or ethnic minority community that is African American, American Indian, Alaska Native, Hispanic American, Asian American, or Pacific Islander.

The narrative should be no more than 31 double-spaced pages, printed on one side, with one-inch margins, and 12 point font. The 31 page narrative does not include budget, appended pages, or items placed in appended pages (resumes, agency descriptions, etc.). The narrative should include:

REACH 2010/REACH 2010 Elderly

1. One Page Abstract

Describe (a) the existing Central Coordinating Organization; and members of the coalition that meet the requirements from Phase I; (b) target racial/ethnic minority population(s) to be served, and (c) the health priority area(s) to be addressed.

2. Background and Need

Based on accomplishments from Phase I activities, describe how data and community input were coordinated and used to document the level of health disparity among the target population and the extent of the disparity. Using local data collected, provide adequate documentation of the level of health disparity among the target population and the extent of the disparity including any data in support of the priority area that defines the degree of disparity in terms of mortality or morbidity or other measures appropriate to the priority area(s), such as risk conditions and social determinants of health. Provide a brief summary of the population size of the racial or ethnic group(s) and the total population of the catchment area of the applicant and its partners, and the geographic boundaries in which the applicant will operate.

It has been calculated that a minimum of 3,000 persons with the disease or health priority condition per community will be necessary to find statistically significant results between baseline and completion of intervention. Since many of the target populations will have considerably smaller sample sizes, for the purpose of this announcement, a target population size of 3,000 is desirable but not mandatory. Applicants are encouraged to include as large a population as possible in order to ensure statistically significant results once the intervention is completed. All sources of data and information must be referenced.

3. Description and Justification of Community Action Plan (CAP)

Provide a clear CAP that addresses the following:

a. Justification/Rationale for the CAP, including identification of the intervention strategy, theoretical and empirical rationale that the intervention will have the desired effect on the disparity identified, and/or if the intervention selected is based on any research conducted during Phase I.

b. A time line detailing initiation and completion of all activities in the intervention strategy.

c. A description of methods that will be used for ongoing program documentation and feedback to the program.

d. Description of how community members and other stakeholders were included in the development of the CAP and how they will be involved in the implementation of the CAP.

e. An explanation of how the intervention strategies relate to the activities of agencies/organizations outside of the coalition that might also effect the outcome in the targeted community.

f. Measurable impact objectives leading to the desired long-term outcome objectives.

g. Appropriateness and thoroughness of the data collection for proposed activities.

h. Resources needed to carry out proposed activities in the intervention strategy.

i. The proposed plan for the inclusion of women, ethnic, and racial minorities in research and proposed justification when representation is limited or absent.

4. Ability To Implement the Community Action Plan (CAP)

This should include:

a. A description of the members of the coalition, community members and other stakeholders and how each relates to implementation of the CAP.

b. A description of how and who will provide resources (e.g., financial, in-kind or other) commensurate with roles described in ''a.''

c. Examples of accomplishments that occurred during Phase I as a result of working with the coalition, community members, and other stakeholders.

d. The potential for the CAP to leverage additional public/private resources to support the overall prevention effort.

e. The potential for the CAP to assure their ability to sustain the effort.

5. Evaluation Plan

The evaluation plan should provide a description of the evaluation and monitoring process that the applicant will use to track and measure progress in Phase II. Describe who will be conducting and managing the evaluation plan. Describe how data will be collected, analyzed, used and disseminated to improve the program.

Items covered in the evaluation plan should address at minimum the following stages: (a) Capacity building, (b) targeted action, (c) community system change and change among change agents, and (d) widespread risk/protective behavior changes.

6. Management Plan

Briefly describe how the program will be managed effectively, including staff, their qualifications, and organizational structure. This section should also describe the Memoranda of Agreement, of which a copy should be provided in the appendix. In accordance with Phase I, coalitions (including the CCO) must have at minimum a community-based organization and three other organizations, of which at least one must be:

REACH 2010:

a. local or state health department.

b. university or research organization.

REACH 2010 Elderly:

a. state and/or area agency on aging.

b. local or state health department.

c. national and/or local minority aging organizations.

d. Indian tribal organizations and national Indian Organizations.

e. university or research organization.

The applicant must be able to show strong representation by the minority community in the coalition.

7. Budget

Provide a detailed line-item budget and narrative justification for all operating expenses consistent with and clearly related to the proposed objectives and planned activities of this cooperative agreement. Applicants should budget for out of state travel to attend up to three CDC workshops/conferences during the budget year for technical assistance, evaluation, and other essential programmatic issues.

8. Human Subjects

Adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

American Indian/Alaska Native Core Capacity

The application should include the following:

1. One Page Abstract

Describe (a) the applicant's tribe, organization or consortia, (b) target racial/ethnic minority population(s) to be served, and (c) the health priority area(s) to be addressed.

2. Introduction—Applicant Description

a. Describe the applicant's tribe, organization or consortia, including purpose or mission (if applicable), years of existence (if applicable), and experience in representing the health-related interests of the represented tribe(s).

b. Describe the represented tribe(s), including:

(1) The total population size of the tribe(s) represented.

(2) The represented tribe's geographical locations, their proximity to you and how you plan to reach the tribe(s).

c. Applicants should describe their experience in community development, including, but not limited to:

(1) Current and past experience in providing leadership in the development of health-related programs, training programs or health promotion campaigns.

(2) Current and past experience related to one or more of the health priority area(s) or public health disease prevention and control programs, including descriptions of activities and initiatives developed and implemented.

(3) Current and past experience in networking and in building partnerships and alliances with other organizations.

(4) Ability to provide support, outreach, and technical assistance on health-related matters to the represented tribes.

d. Submit a letter of commitment from the represented tribe's leadership, which indicates the tribe's willingness to participate in the program, including a copy of the signed original in the Appendix.

3. Need To Address Health Priority Area(s)

Describe the specific community's health problem(s) and need for building capacity to address the selected health priority area(s) among the represented tribe(s). Discuss data needs and how the applicant will assist the tribe(s) in addressing these identified needs. The information provided should describe the following:

a. The extent to which the tribe(s) is impacted by the health priority area(s), including discussion of prevalence rates and any variations in prevalence among represented tribe(s), morbidity and/or mortality, and other evidence of the health disparity.

b. The need to strengthen existing data and add new data.

c. The need for disease prevention and control strategies that are culturally appropriate for their populations, including discussion of the challenges, limitations and/or opportunities for implementing effective prevention programs.

d. The need to develop a comprehensive and sustainable CCP among the represented tribe(s).

4. Community Capacity Plan

Submit a comprehensive and detailed CCP that is realistic and achievable over the project period with objectives that are specific, measurable, achievable, and time-phased. The CCP should clearly address the following:

a. A description of how the applicant will conduct and use results of a community needs assessment to develop local or regional, culturally competent training and technical assistance programs to increase the skill-level of tribes and partners in areas such as epidemiologic investigative methods, surveillance, public health policy, and other relevant topics as identified through the needs assessment process.

b. A description of how the applicant will identify and develop culturally-competent intervention strategies, designed to enhance program efforts to reduce the selected health disparity. Strategies should focus on public policy and community approaches, but may include interventions that alter the context within which individuals and groups behave, increase awareness of the disease burden and risk factors, and promote healthy behaviors to reduce the selected disparity.

c. A description of who will be the target of selected activities and how each proposed activity will be achieved.

d. A description of proposed linkages with appropriate partners (e.g., tribal, state, local health departments, and other public or private organizations) in carrying out the proposed activities in the CCP.

e. A description of how the applicant will include affected community members in the development and implementation of the CCP.

f. A description of how the applicant will communicate and disseminate information and guidance to the represented tribes and their memberships (e.g., newsletters, conferences, and meeting minutes).

g. A time line detailing initiation and completion of all activities in the CCP for the three-year project period.

5. Management Plan

a. Provide a description of how the applicant will manage the project to accomplish all proposed activities.

b. Provide a description of how the applicant proposes to staff the project. Provide job descriptions and indicate if they are existing or proposed positions. Staffing should include the commitment of at least one full-time staff member to provide direction for the proposed activities. Demonstrate that the staff member(s) have the professional background, experience, and organizational support needed to fulfill the proposed responsibilities. Where possible, identify staff responsible for completing each activity.

c. Describe the letters of commitment from the represented tribe(s) leadership which indicates the tribe's willingness to participate in the program. Be sure to include the signed original in the Appendix.

d. Submit a copy of the applicant's organizational chart and describe the existing structure and how it supports the development of the proposed CCP for the health priority area(s) selected.

6. Evaluation

a. Applicants should describe how they plan to measure the implementation and progression of various capacity building activities in achieving the objectives during the project period (e.g., understanding the context, causes, and solutions for health disparities; transforming community conditions and systems so that a supportive context exists to form and maintain an effective infrastructure; accumulating resources needed to implement the CCP, etc.).

b. Describe how the applicant will document success in building capacity for the tribe(s) (e.g., surveys conducted, group(s) formed, number of trainings conducted, level of difficulty of the training and their rationale, evidence of acquired skills through application, and the impact on program objectives).

c. Describe how the applicant will assess the quantity and quality of networking efforts (e.g., number of planning meetings or meeting with leadership, the degree of collaboration with leadership and other disease prevention and control programs, and the degree of collaboration with other organizations).

7. Budget and Accompanying Justification

Provide a detailed budget and line-item justification that is consistent with the stated objectives and planned activities. To the extent possible, applicants are encouraged to include budget items for the following:

a. Travel for a minimum of one or two persons to attend up to one national conference on health promotion and disease prevention related to the selected health priority area(s).

b. Up to two trips to Atlanta, GA, for a minimum of one or two persons, to attend training and technical assistance workshops.

G. Submission and Deadline

Submit the original and two copies of PHS form 5161–1. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo.forminfo.htm.*

The application must be received on or before 5 p.m. July 27, 2002. Submit the application to:

Technical Information Management-PA02153, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be reviewed by CDC staff utilizing the Technical Acceptability Review (TAR) process which is a non-competitive process.

REACH 2010/REACH 2010 Eldery

1. Description and Justification of the Community Action Plan (CAP): (35 Points) [REACH 2010 Only]

a. The extent to which the applicant provides a justification/rationale for the CAP, including identification of the intervention strategy, theoretical and empirical rationale that the activity/intervention will have the desired effect on the disparity identified, and/or if the intervention selected is based on any research conducted during Phase I. [REACH 2010 Only]

b. Extent to which the applicant provides a time line detailing initiation and completion of all activities in the intervention strategy. [REACH 2010 Only]

c. Extent to which the applicant describes methods that will be used for on-going program documentation and feedback to the program.

d. Extent to which the applicant demonstrates how community members and other stakeholders were included in the development of the CAP and how they will be involved in the implementation of the CAP. [REACH 2010 Only]

e. Extent to which the applicant explains how the intervention strategies relate to the activities of agencies/organizations outside the coalition that might also effect the outcome in the targeted community.

f. Extent to which the applicant presents reasonable measurable impact objectives leading to the desired long-term outcome objectives.

g. Extent to which the data collected for the proposed activities is appropriate and thorough. [REACH 2010 only]

h. Adequacy of resources needed to carry out activities in the intervention strategy.

i. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial minorities in research and proposed justification when representation is limited or absent. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Ability to Implement the Community Action Plan: (30 Points) [REACH 2010 Only]

a. Extent to which the applicant describes members of the coalition, community members and other stakeholders and how each relates to implementation of the CAP. [REACH 2010 Only]

b. Extent to which the applicant describes how and who will provide resources (e.g., financial, in-kind, or other) commensurate with roles described in ''a.''

c. Extent to which the applicant provides examples of accomplishments that occurred during Phase I as a result of working with the coalition, community members, and other stakeholders.

d. Extent to which the applicant demonstrates the potential for the CAP to leverage additional public/private resources to support overall prevention effort. [REACH 2010 Only]

e. Extent to which the applicant demonstrates the potential for the CAP to assure sustainability of the effort.

3. Evaluation Plan (15 Points)

a. The extent to which the applicant provides a description of the evaluation and monitoring process that the applicant will use to track and measure progress in Phase II.

b. Extent to which the applicant describes who will be conducting and managing the evaluation plan.

c. Extent to which the applicant describes how data will be collected, analyzed, used and disseminated to improve the program.

4. Background and Need: (10 Points)

a. The extent to which the applicant, based on accomplishments from Phase I activities, describes how data and community input were coordinated and used to document the level of health disparity among the target population and the extent of the disparity.

b. The extent to which the applicant, using data collected locally, provides adequate documentation of the level of health disparity among the target population and the extent of the disparity. Provide any data in support of the priority area that defines the degree of disparity in terms of mortality, morbidity, or other measures appropriate to the priority area(s) such as risk conditions and social determinants of health.

[REACH 2010 Only]

c. The extent to which the applicant describes the population size of the racial or ethnic group(s) and the total population of the catchment area of the applicant and its partners, and the geographic boundaries in which the applicant will operate. All sources of data and information must be referenced.

5. Management Plan (10 Points)

Extent to which the applicant adequately describes how the program will be managed effectively, including staffing and their qualifications and organizational structure. This section should also describe the Memoranda of Agreement of which the signed original should be provided in the appendix. In accordance with Phase I, Coalition (including the CCO) must have at a minimum a community-based organization and three other organizations, of which at least one must be:

REACH 2010

a. local or state health department
b. university or research organization

REACH 2010 Elderly:

a. state and/or area agency on aging
b. local or state health department
c. national and/or local minority aging organizations
d. Indian tribal organizations and national Indian Organizations
e. university or research organization

The applicant must be able to show strong representation by the minority community in the coalition.

6. Budget: (Not Scored)

Extent to which a line-item budget is reasonable, clearly justified, and is consistent with the purposes and objectives of the cooperative agreement.

7. Human Subjects: (Not Scored)

The applicant should adequately address the requirements of Title 45, CFR Part 46 for the protection of human subjects.

American Indian/Alaska Native Core Capacity

1. Community Capacity Plan (25 points) **REACH 2010 Only

a. The extent to which CCP is realistic and the extent to which the objectives are specific, measurable, achievable, relevant, time-phased, and likely to be accomplished during the three-year budget period.

b. Extent to which a community needs assessment will be conducted and used to develop culturally-competent training and technical assistance programs to increase the skill level of tribes and partners in areas such as epidemiologic investigative methods, surveillance, public health policy, and other relevant topics as identified through the needs assessment process and organizational involvement in program activities.

c. Extent to which the applicant identifies culturally competent intervention strategies designed to enhance program efforts to reduce the selected health disparity.

d. Extent to which the applicant describes who the program will target and how each proposed activity will be achieved.

e. Extent to which the applicant describes proposed linkages with appropriate partners (e.g., tribal, state,

local health departments, and other public or private organizations) in carrying out the Community Capacity Plan.

f. Extent to which the applicant describes how affected community members will be included in the development and implementation of the CCP.

g. Extent to which the applicant describes how communication and dissemination of information and guidance will be conducted with the represented tribe(s) and their memberships (e.g., newsletters, conferences, and meeting minutes).

h. Extent to which the applicant provides time lines for initiation and completion of all proposed activities for the three-year period.

2. Management Plan (25 points)

a. Extent to which the applicant describes how the project will be managed to accomplish all proposed activities.

b. Extent to which the applicant provides a description of proposed staffing for the project, including providing job descriptions and indicating if they are existing or proposed positions. Staffing should include the commitment of at least one full-time staff member to provide direction for the proposed activities. Demonstrate that the staff member(s) have the professional background, experience, and organizational support needed to fulfill the proposed responsibilities. Where possible, identifying staff responsible for completing each activity.

c. Extent to which the applicant describes the letters of commitment from the represented tribe leadership which indicates the tribe's willingness to participate in the program. Inclusion of signed originals should be provided in the Appendix.

d. Extent to which the applicant submits a copy of the applicant's organizational chart, and describes the existing structure and how it supports the development of the proposed CCP for the health priority area(s) selected.

3. Need To Address Health Priority Area(s) (20 points)

The extent to which the applicant documents the need for building capacity to address the selected health priority area(s) for an AI/AN population, including:

a. The extent to which the tribe(s) is impacted by the health priority area(s), including discussion of prevalence rates and any variations in prevalence among represented tribe(s), morbidity and/or mortality, and other evidence of the health disparity.

b. The need to strengthen existing data and add new data.

c. The need for disease prevention and control strategies that are culturally appropriate for their populations, including discussion of the challenges, limitations and/or other opportunities for implementing effective prevention programs.

d. The need to develop a comprehensive and sustainable CCP among the represented tribe(s).

4. Introduction—Applicant Description (15 points)

a. The extent to which the applicant clearly describes the tribe, organization or consortia, including purpose or mission (if applicable), years of existence (if applicable), and experience in representing the health-related interests of the represented tribe(s).

b. The extent to which the applicant describes the population size of the total tribe(s) represented, geographic location(s) and proximity to the applicant (if applicable).

c. The extent of the applicant's capacity and ability to conduct the activities as evidenced by the:

(1) Current and past experience in providing leadership in the development of health-related programs, training programs or health promotion campaigns.

(2) Current and past experience related to one or more of the health priority area(s) or public health disease prevention and control programs, including descriptions of activities and initiatives developed and implemented.

(3) Current and past experience in networking and in building partnerships and alliances with other organizations.

(4) Ability to provide support, outreach, and technical assistance on health-related matters to the represented tribes.

5. Evaluation (15 points)

a. The extent to which the applicant describes how they plan to measure the implementation and progression of various capacity building activities in achieving the objectives during the three-year project period (e.g., understanding the context, causes, and solutions for health disparities; transforming community conditions and systems so that a supportive context exists to form and maintain an effective infrastructure; accumulating resources needed to implement the Community Capacity Plan, etc.).

b. Extent to which the applicant documents success in building capacity for the tribe(s) (e.g., number of training conducted, level of difficulty of the training and their rationale, evidence of acquired skills through application, and the impact on program objectives).

c. Extent to which the applicant describes the quantity and quality of networking efforts (e.g., number of planning meetings or meeting with leadership, the degree of collaboration with leadership and other disease prevention and control programs, and the degree of collaboration with other organizations).

6. Budget and Accompanying Justification (Not Scored)

The extent to which the applicant provides a detailed and clear budget consistent with the stated objectives and work plan.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus three copies of:

1. Semi-annual progress reports. The first report is due by April 30, 2003, and subsequent reports will be due on the 30th of April each year through April 30, 2006. The second report is due 90 days after the end of the budget period. The semi-annual progress report and accompanying budget and budget justification will be used to process your continuation award. Semi-annual progress reports should include the following information:

a. A succinct description of the program accomplishments/narrative and progress made in meeting each program objective during the first six months of the budget period (June 30 through December 31) and should consist of no more than 50 pages.

b. The reason for not meeting established program goals and strategies to be implemented to achieve unmet objectives.

c. A one-year line item budget and budget justification.

d. For all proposed contracts, provide the name of contractor, period of performance, method of selection, method of accountability, scope of work, and itemized budget and budget justification. If the information is not available when the application is submitted, please indicate TO BE DETERMINED until the information is available. When the information becomes available, it should be submitted to the CDC Procurement and Grants Management Office contact identified in this program announcement. The semiannual progress report will be used as evidence of the Program's attainment of goals and objectives.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Fiscal Reporting Requirements

a. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a United States based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

b. A Fiscal Recipient Capability Assessment may be required, pre or post award, with potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. funds.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

AR–1 Human Subjects Requirements (if applicable)
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research (if applicable)
AR–4 HIV/AIDS Confidentiality Provisions (if applicable)
AR–5 HIV Program Review Panel Requirements (if applicable)
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
**AR–15 Proof of Non-Profit Status
**American Indian/Alaska Native Core Capacity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sylvia Dawson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 00121, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341–4146, Telephone number: 770–488–2771, E-mail address: snd8@cdc.gov.

For program technical assistance, contact: Letitia Presley-Cantrell, Health Education Specialist, Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), 4770 Buford Hwy, NE, Mailstop K–30, Atlanta, Georgia 30341, Telephone: (770) 488–5426, E-mail Address: *LRP0@cdc.gov.*

Dated: June 14, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15547 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02183]

Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities; Part A: Building Capacity for Monitoring STD and TB Prevalence; Part B: Enhanced Activities for Monitoring STD and TB Prevalence in Existing Sites; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for monitoring prevalence of sexually transmitted diseases (STDs) and tuberculosis (TB) infection in corrections facilities. This program addresses the ''Healthy People 2010'' focus area of Sexually Transmitted Diseases (STDs). Measurable outcomes of the program will be in alignment with one or more of the following performance goals for National Center for HIV, STD and TB Prevention:

(1) Reduce the incidence of primary and secondary syphilis.

(2) Reduce the incidence of congenital syphilis.

(3) Eliminate tuberculosis in the United States.

This program has two Parts. The purpose of Part A—Building Capacity for Monitoring STD and TB Prevalence is: (1) To develop systems for collecting and reporting STD and TB screening data in persons entering jails and juvenile detention facilities; and (2) to develop methods utilizing these data to help guide STD and TB prevention and intervention activities.

The purpose of Part B—Enhanced Activities for Monitoring STD and TB Prevalence in Existing Sites is: (1) To enhance existing systems for collecting and reporting STD and TB screening data in persons entering jails and juvenile detention facilities; and (2) to develop, refine and identify the programmatic benefit of epidemiologic methods utilizing these data for prevention and intervention activity planning.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317E and 318 of the Public Health Service Act (42 U.S.C. sections 247b–6 and 247c). The Catalog of Federal Domestic Assistance number is 93.978.

C. Eligible Applicants

Part A

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States. Project areas awarded funds in FY 1999, FY 2000, or FY 2001 under Program Announcement 99000, ''Comprehensive STD Prevention System (CSPS), Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities' are not eligible for funding under Part A.

Part B

Only project areas awarded funds in FY 1999, FY 2000, or FY 2001 under Program Announcement 99000, ''Comprehensive STD Prevention System (CSPS), Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities,'' (i.e., Alabama, Arizona, Arkansas, Louisiana, Massachusetts, Missouri, North Carolina, Oregon, San Francisco, Rhode Island, Wisconsin) are eligible to apply for funds under Part B.

D. Availability of Funds

Part A

Approximately $125,000 is available in FY 2002 to fund two to four awards.

It is expected that the average award will be $50,000, ranging from $30,000 to $70,000. It is expected that the awards will begin on or before September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Part B

Approximately $75,000 is available in FY 2002 to fund one to three awards. It is expected that the average award will be $30,000, ranging from $20,000 to $50,000. It is expected that the awards will begin on or before September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Part A and B

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, data quality and timely submission, analyses performed and uses of data for providing epidemiologic guidance to STD and TB prevention and intervention activities, and the availability of funds.

Use of Funds

Part A

Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities (i.e., improve the collection, management, and reporting of data). Funds may not be used to provide direct medical care.

Part B

Funds may be used to support personnel and services that are related to project activities (i.e., enhance the collection, management, reporting, and analysis of data). Funds may not be used to provide direct medical care.

Recipient Financial Participation

Grantees will be required to provide matching funds at a ratio of 1:2 (i.e., $1 of new state or local, public or private resources for each $2 of federal resources awarded). New resources may include newly identified funds or newly identified in-kind resources.

Funding Preference

Funding preference may be given to achieve geographical diversity.

E. Program Requirements (Part A and B)

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

Part A

1. Recipient Activities

a. Design and implement a surveillance system that will address the study objectives in Section A by implementing a monitoring system for STDs and TB among persons entering corrections facilities.

b. Collect data on at least 75 men per week and 25 women per week. If a single facility does not have this many entrants per week, multiple facilities may participate so as to provide the required sample size. Jail, juvenile, and prison facilities are eligible to participate. Both male and female inmates must be included in the project.

c. Collect data that pertains to the first routine medical intake for men and women. Ideally, the intake should occur at the point of entry into the criminal justice system, but if not, it should occur before any medical care or treatment is provided. The intake should occur within 14 days of admission.

d. Collect the following demographic and STD-related variables: Sex, age, race/ethnicity, zip code or census tract of residence, date of admission, symptoms (men only), and STD laboratory results. In addition, the following TB-related variables for each person tested must be collected: Country of birth, history of TB, prior Purified Protein Derivative (PPD) status, PPD result, and for those positive, chest x-ray findings and use of Isoniazid (INH) prophylaxis.

e. Submit data in line-listed format quarterly to CDC.

f. Analyze data in a manner that helps provide epidemiologic guidance to STD and TB prevention and intervention activities. Jail and juvenile chlamydia and/or gonorrhea screening data should be shared with the appropriate Regional Infertility Prevention Program Advisory Committee.

g. Attendance for one to two project staff members at an annual principal investigator meeting is required.

h. Participation in monthly conference calls is required.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the project.

b. Conduct one site visit to each funded project for technical assistance.

c. Assist in designing a data management system and designing data analyses to help guide STD and TB prevention and intervention activities.

Part B

1. Recipient Activities

Applicants should have a proven history of having successfully implemented and sustained STD and TB prevalence data collection in a correctional facility as illustrated by addressing the following:

a. Design and implement a surveillance system that will address the study objectives in section A by implementing a monitoring system for STDs and TB among persons entering corrections facilities.

b. Collect data on at least 75 men per week and 25 women per week. If a single facility does not have this many entrants per week, multiple facilities may participate so as to provide the required sample size. Jail, juvenile, and prison facilities are eligible to participate. Both male and female inmates must be included in the project.

c. Collect data that pertains to the first routine medical intake for men and women. Ideally, the intake should occur at the point of entry into the criminal justice system, but if not, it should occur before any medical care or treatment is provided. The intake should occur within 14 days of admission.

d. Collect the following demographic and STD-related variables: Sex, age, race/ethnicity, zip code or census tract of residence, date of admission, symptoms (men only), and STD laboratory results. In addition, the following TB-related variables for each person tested are being collected: country of birth, history of TB, prior PPD status, PPD results, and for those positive, chest x-ray findings and use of INH prophylaxis. Additional variables collected for local use should be described.

e. Submit data in line-listed format quarterly to CDC.

f. Analyze data in a manner that helps provide epidemiologic guidance to STD and TB prevention and intervention activities. Jail and juvenile chlamydia and/or gonorrhea screening data should be shared with the appropriate Regional Infertility Prevention Program Advisory Committee.

g. Attendance for one to two project staff members at an annual principal investigator meeting is required.

h. Participation in monthly conference calls is required.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the project.

b. Conduct one site visit to each funded project for technical assistance.

c. Assist in designing a data management system and designing data analyses to help guide STD and TB prevention and intervention activities.

F. Application Content (Part A and B)

Letter of Intent (LOI)

An LOI is required from potential applicants. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and unreduced font. The LOI should include the following: Program Announcement number 01283, name, address, and telephone number of a contact person and whether you intend to apply for Part A or Part B. The LOIs will be used to assist CDC in planning the application review process.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your proposal. The narrative should be no more than ten double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

The narrative should consist of, at minimum, a plan, objectives, methods, evaluation, and budget. Applicants may submit for more than one site for these activities, but the maximum amount of Federal funds awarded to each grantee will be limited to $70,000 (Part A) and $50,000 (Part B).

Letter of Support

Provide evidence of support from the corrections facility by attaching a letter in support of the proposal.

G. Submission and Deadline (Part A and B)

Letter of Intent (LOI)

On or before July 12, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application packages must be submitted in the following order:

Cover letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certification
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

Applications must be submitted in hard copy form.

The application must be received on or before July 31, 2002. Submit the application to: Technical Information Management—PA02183, Procurement and Grants Office, Centers for Disease Control and Infection, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 P.M. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

Part A

1. *Plan:* The degree to which the applicant describes the project plan and indicates a time frame for project activities. The extent to which the plan addresses each of the program requirements listed below. (20 points)

The application should include:

a. A description of the extent of collaboration between the health department and corrections facility for the purpose of implementing routine STD and TB screening and data collection as evidenced by a letter of support from the corrections facility.

b. A description of who would be offered STD and TB services and which services would be offered.

c. A description of changes, if any, that would be made to the current system, with respect to medical services provided, data collected, data management.

d. A description of the proposed data analyses and the extent to which these analyses will help provide epidemiologic guidance to STD and TB prevention and intervention activities.

e. The degree to which the applicant adequately addresses the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed activities. (5 points) This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the project is adequate to measure differences when warranted.

4. A statement as to whether the plans include the process of establishing partnerships with communities and recognition of mutual benefits.

2. *Objectives:* The degree to which the applicant describes how the project proposes to develop systems for collecting and reporting STD and TB screening data in persons entering jails and juvenile detention facilities and to develop methods utilizing these data to help guide STD and TB prevention and intervention activities. (20 points)

The application should include:

a. A description that addresses the method by which and the extent to which STD/TB prevalence data or other data collected in conjunction with STD/TB data will be used to help provide epidemiologic guidance and otherwise inform STD and TB programmatic prevention and intervention activities.

b. Expertise of project staff to analyze data and to develop future analytic plans. Also include a plan for

dissemination of findings to local public health agencies, corrections officials, and Regional Infertility Prevention Program Advisory Committees for use in providing guidance to STD and TB control prevention and intervention activities.

c. The extent to which the number of men and women per week for whom data will be submitted exceeds the required 75 men and 25 women per week at the participating jails.

3. *Methods:* The degree to which the methods described for implementing and evaluating data collection and analyses are appropriate. (20 points)

The application should include:

a. A description of participating corrections facilities: Include daily census, intakes per week for men and women (include breakdown by age group and race/ethnicity, if available), average length of stay, and where inmates come from (area of draw, referral patterns).

b. A description that includes the extent to which all core STD data elements (presence of genital ulcer, urethral discharge in men only, syphilis test results, stage of syphilis, gonorrhea results, chlamydia results, HIV results, pregnancy test results) and TB data elements (country of birth, history of TB, prior PPD status, PPD results, and for those positive, chest x-ray findings and use of INH prophylaxis) will be collected.

c. A description of the extent of medical services at intake: Describe medical services provided at intake, including how many days after admission services are provided, and whether medical history, physical exam, and lab testing are completed. State whether inmates are asked about STD or TB symptoms routinely, if all receive STD tests (and which STD tests are routinely conducted) and tuberculin skin tests (TST), and what follow-up care is provided for STD and TST positive persons on site.

d. A description of data management: Describe the management of STD and TB data routinely collected at intake. Describe what data are recorded and where. Explain what computerized data systems, if any, are in place and describe what computerized system will be used for this project.

e. A description and explanation of the methods that will be used to determine the percentage of eligible detainees that are tested.

4. *Evaluation Plan:* The degree to which the applicant provides a plan for evaluating the accuracy and completeness of the data provided by the corrections facility that is appropriate and comprehensive. The application should include a description and extent to which a plan for evaluating how these data will be used to help provide epidemiologic guidance to STD and TB prevention and intervention activities. (20 points)

5. *Sustainability of the project:* The degree to which project activities will be integrated with existing STD and TB surveillance activities and will be continued without this source of funding. Please explain why successful activities developed by this proposal can be sustained past the duration of the project period and what will ensure that this happens. (15 points)

6. *Budget:* The degree to which the budget is reasonable, clearly justified and consistent with the intent of the announcement. The matching funds requirement is not scored, however it is reflected in the evaluation criteria (criteria number 5) related to the sustainability of the program. (not scored)

7. *Human Subjects:* The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (not scored)

Part B

1. *Objectives:* The degree to which the applicant describes how the project proposes to enhance existing systems for collecting and reporting STD and TB screening data in persons entering jails and juvenile detention facilities and to develop and refine epidemiologic methods utilizing these data for prevention and intervention activity planning. (30 points)

The application should include:

a. A description that includes a plan for using the STD/TB prevalence data or other data collected as part of this project to help provide epidemiologic guidance and otherwise inform STD and TB programmatic prevention and intervention activities and for demonstrating the programmatic benefit of having such data available.

b. A description of the current ability of staff to analyze data and of future analytic plans. Also a plan for dissemination of findings to local public health agencies, corrections officials, and Regional Infertility Prevention Program Advisory Committees for use in providing guidance to STD and TB control prevention and intervention activities.

c. The extent to which the number of men and women per week for whom data are submitted exceeds the required 75 men and 25 women per week at the participating jails.

2. *Methods:* The degree to which the applicant describes methods for implementing and evaluating the data collection and analyses that are appropriate. (20 points)

The application should include:

a. A description of current and new (if applicable) participating corrections facilities: Include daily census, intakes per week for men and women (include breakdown by age group and race/ethnicity, if available), average length of stay, and where inmates come from (area of draw, referral patterns).

b. The extent to which medical services are provided at intake: Describe medical services provided at intake, including how many days after admission services are provided, and whether medical history, physical exam, and lab testing are completed. State whether inmates are asked about STD or TB symptoms routinely, if all receive STD tests (and which STD tests are routinely conducted) and TST, and what follow up care is provided for STD and TST positive persons on site.

c. A description of the data management plan: Describe the management of STD and TB data routinely collected at intake. Describe what data are recorded and where.

d. The extent to which STD/TB prevalence data or other data collected in conjunction with these data are being, or will be, used to help provide epidemiologic guidance to STD and TB prevention and intervention activities.

e. A description of what new data and/or methods will be used in future activities should also be included.

f. A description and explanation of the methods that are used to determine the percentage of eligible detainees that are tested.

3. *Plan:* The degree to which the applicant describes the current and future project plans and indicates a time frame for new project activities. The plan should address each of the program requirements listed below. (15 points)

The application should include:

a. The extent of collaboration between the health department and corrections facility for the purpose of conducting routine STD and TB screening and data collection as evidenced by a letter of support from the corrections facility or facilities.

b. A description of currently offered STD and TB services and what new services would be offered.

c. A description that includes the extent to which all core STD data elements (presence of genital ulcer, urethral discharge men only, syphilis test results, stage of syphilis, gonorrhea results, chlamydia results, HIV results, pregnancy test results) and TB data elements (country of birth, history of TB, prior PPD status, PPD results, and

for those positive, chest x-ray findings and use of INH prophylaxis) are currently collected and plans for future collection of these data elements or plans for collecting other variables to be used in local analyses.

d. The degree to which the applicant adequately addresses the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed activities. (5 points) This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the project is adequate to measure differences when warranted.

4. A statement as to whether the plans include the process of establishing partnerships with communities and recognition of mutual benefits.

4. *Sustainability of the project:* The degree to which project activities have been integrated with existing STD and TB surveillance activities and will be continued without this source of funding. The degree to which the applicant explains why successful activities developed by this proposal can be sustained past the duration of the project period and what will ensure that this happens. (15 points)

5. *Evaluation Plan:* The degree to which the applicant's plan for evaluating the accuracy and completeness of the data provided by the corrections facility is appropriate and comprehensive. The application should include a description of the extent of current and future evaluations with regard to how the data is used currently and how the data will be used to help provide epidemiologic guidance to STD and TB prevention and intervention activities. (15 points)

6. *Budget:* The degree to which the budget is reasonable, clearly justified and consistent with the intent of the announcement. The matching funds requirement is not scored, however it is reflected in the evaluation criteria (criteria number 4) related to the sustainability of the program. (not scored)

7. *Human Subjects:* The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. (not scored)

I. Other Requirements (Part A and B)

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no or than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–14 Accounting System Requirements
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC Home Page Internet address *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Jesse L. Robertson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, ≤ Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000 Mailstop E–15, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2747, E-mail Address: *jtr4@cdc.gov.*

For program technical assistance, contact:

Richard Kahn, MS, Epidemiology and Surveillance Branch, Division of STD Prevention, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Mailstop E–02, Atlanta, GA 30333, Telephone Number: (404) 639–8956, E-mail Address: *rhk0@cdc.gov,*

or

Joe Posid, MPH, Division of TB Elimination, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Mailstop E–27, Atlanta, GA, 30333, Telephone Number: (404) 639–1855, E-mail Address: *jmp2@cdc.gov.*

Dated: June 14, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15543 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02145]

Coalition Capacity Building for Teen Pregnancy Prevention; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2002 funds for a cooperative agreement program for Coalition Capacity Building for Teen Pregnancy Prevention. This program addresses the ''Healthy People 2010'' focus areas of Education and Community-Based Programs, Family Planning, Maternal, Infant, and Child Health, HIV, and Sexually Transmitted Diseases (STDs).

The purpose of this program announcement is to assist recipients to build capacity through the application of science-based principles to prevent teen pregnancy and promote adolescent reproductive health, including abstinence, and the prevention of STDs and HIV. This will be accomplished through capacity building, including program evaluation.

This program announcement contains two components:

1. Increasing Capacity in Teen Pregnancy Prevention through National Organizations

2. Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions

The focus of the Increasing Capacity in Teen Pregnancy Prevention through National Organizations component is to assist national organizations to develop a nationwide strategic plan, and provide technical assistance to State and local organizations to implement, translate, and disseminate science-based programs that prevent teen pregnancy and promote adolescent reproductive health, including abstinence and the prevention STDs and HIV, thereby increasing the

adaptation of science-based interventions.

The focus of the Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions component is to strengthen the ability of State and city teen pregnancy prevention coalitions to select, implement, and evaluate science-based programs that address local needs.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. section 241(a) and 247b (k) (2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

C. Eligible Applicants

For the component Increasing Capacity in Teen Pregnancy Prevention through National Organizations, an eligible applicant is a national nonprofit, non-governmental organization proposing to serve coalitions that have a documented history of providing teen pregnancy prevention training and capacity building. Faith-based organizations are eligible to apply for funding under this program announcement.

National organizations are uniquely qualified to plan and develop a nationwide strategy to prevent teen pregnancy and promote adolescent reproductive health, and to provide technical assistance to State and local coalitions.

Applicants must meet the following criteria:

a. Have a currently valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status.

b. Have a documented five year record of providing teen pregnancy prevention capacity-building assistance (i.e., materials development, training, technical consultation, or technical service) to community coalitions in multiple States.

c. Have the specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate regionally or nationally (i.e., multi-state) within the United States or its territories.

For the component Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions, applications may be submitted by State or city coalitions working in teen pregnancy prevention from cities with populations of 500,000 or more (based on 2000 census figures).

Because the numbers of teen pregnancies are higher in many large urban areas, eligibility is limited to cities larger than 500,000. State or city-based coalitions are in the unique position to improve State and city teen pregnancy prevention coalitions and to assist in the selection, implementation, and evaluation of science-based programs that address local needs. These organizations are also uniquely positioned to represent the community and be recognized as the agency responsible for the health of the State or city.

Note to all applicants: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form.

D. Availability of Funds

For the component Increasing Capacity in Teen Pregnancy Prevention through National Organizations, approximately $500,000 is available in FY 2002 to fund approximately one to three awards. It is expected that the average award will be $165,000, ranging from $100,000 to $500,000.

For the component Increasing Capacity in Teen Pregnancy Prevention through State and City Coalitions, approximately $800,000 is available in FY 2002 to fund approximately three to eight awards. It is expected that the average award will be $100,000, ranging from $80,000 to $180,000.

CDC expects that the awards will begin on or about August 31, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as shown by required reports, and the availability of funds.

Use of Funds

a. You may use funds to:

(1) Support personnel

(2) Purchase equipment, supplies and services directly related to project activities

b. You may not use funds to:

(1) Supplant State or local health department funds

(2) Provide direct services

E. Program Requirements

In conducting activities to achieve the purpose of this program, you will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

Increasing Capacity in Teen Pregnancy Prevention Through National Organizations

1. Recipient Activities

a. Convene an expert panel of researchers and evaluators to develop a strategic plan to increase the use of science-based interventions in national, State, and local programs to prevent teen pregnancy and promote adolescent reproductive health.

b. Provide technical assistance to State and local organizations, especially the coalitions funded through Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions of this announcement, to increase the use of science-based interventions.

c. Disseminate science-based practices and findings through meetings, publications, technical assistance to State and local organizations, and other means.

d. Collaborate with CDC on program development, implementation, evaluation, and the dissemination of findings.

2. CDC Activities for Increasing Capacity in Teen Pregnancy Prevention Through National Organizations

a. Assist national researchers and evaluators to develop a national strategic plan.

b. Assist recipients to develop and disseminate publications.

c. Provide technical assistance to recipients on methods to prevent teen pregnancy and promote adolescent reproductive health.

Increasing Capacity in Teen Pregnancy Prevention Through State and Local Coalitions

1. Recipient Activities

a. Review current scientific literature on teen pregnancy prevention and youth development.

b. Through rigorous scientific evaluation, identify programs and program elements that have been shown to be effective in preventing teen pregnancy.

c. Collaborate with other funded recipients to share approaches.

d. Collaborate with national organizations funded through the Increasing Capacity in Teen Pregnancy Prevention through National Organizations component of this announcement to provide assistance with the dissemination of science-based approaches.

e. Assess the status of the coalition, to determine technical assistance needs regarding science-based approaches to prevent teen pregnancy.

f. Provide technical assistance to:

(1) Ensure that the identified community is involved in planning.

(2) Assess community needs and assets related to teen pregnancy prevention.

(3) Select science-based interventions to prevent teen pregnancy that meet the identified needs.

(4) Ensure quality implementation of selected interventions.

(5) Design and implement quality evaluation, both process and outcome, that will ensure program improvement and accountability.

(6) Analyze and translate findings into documents that may be disseminated through scientific journals, monographs, toolkits, media, internet or other means.

(7) Use data to improve programs and policies.

g. Track impact of technical assistance through progress of recipient activities.

h. Be willing to collaborate with CDC on program development, implementation, and evaluation, and the dissemination of the findings.

2. CDC Activities for Increasing Capacity in Teen Pregnancy Prevention Through State and Local Coalitions

a. Analyze, translate and disseminate findings through publications, meetings, and other means.

b. Assist in the coordination of activities between national, State, and city organizations funded through the Increasing Capacity in Teen Pregnancy Prevention through National Organizations and Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions of this announcement.

c. Provide programmatic consultation, technical assistance, and training to recipients.

d. Facilitate communication between funded organizations from the Increasing Capacity in Teen Pregnancy Prevention through National Organizations and Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions components of this announcement.

F. Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them when writing your narrative. Be sure to include all information listed in the program announcement as required, including the attachments.

The narrative should be no more than 15 double-spaced pages, printed on one side, with one-inch margins and unreduced font. It should be stapled together in the upper left hand corner. Do not include materials that are not requested. Materials not requested will be discarded.

Narrative for Increasing Capacity in Teen Pregnancy Prevention Through National Organizations

1. Capacity

a. Provide a publication list showing your expertise in teen pregnancy prevention.

b. Provide evidence of a five-year record of providing organizational capacity-building assistance to State or city teen pregnancy prevention coalitions or similar organizations. Such evidence should consist of the following:

(1) Mission Statement

(2) Bylaws

(3) Description of past and current activities and accomplishments

(4) Proof of 501(c)3 status

c. Provide conference agendas for national and regional meetings specifically sponsored by your organization, addressing teen pregnancy prevention.

d. Include awards received for leadership in teen pregnancy prevention.

e. Include letters of support demonstrating your relationships with State coalitions addressing teen pregnancy prevention and your leadership in teen pregnancy prevention.

f. Describe the technical expertise of your staff in teen pregnancy prevention.

g. Describe results of similar efforts that used the skills of providing technical assistance to other agencies, disseminating findings, and convening expert panels.

2. Operational Plan

a. Identify overall goals for the three-year project that use your organization's strengths and meet the goal of increasing the implementation and evaluation of science-based interventions.

b. Support the goals with objectives for the 12-month budget period that are specific, measurable and realistic.

c. Describe how the project will be implemented.

d. Identify activities that are likely to achieve each objective for the budget period.

e. Describe an appropriate management and staffing plan as indicated by Curriculum Vitae (CVs), job descriptions and organizational charts.

f. Provide a realistic timeline for activities.

g. Indicate willingness to collaborate with CDC and other national organizations.

3. Evaluation

a. Provide an evaluation plan which will define process and outcome evaluation measures that:

(1) Demonstrate progress in meeting objectives.

(2) Provide objective and quantitative evidence of effectiveness of approach.

4. Budget

Provide a clearly detailed and justified line item budget and narrative that is consistent with the intended use of funds.

5. Human Subjects

Address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

Narrative for Increasing Capacity in Teen Pregnancy Prevention Through State and Local Coalitions

1. Organizational Capacity

a. Describe your organization's leadership role in teen pregnancy prevention.

b. Provide evidence of a five year record as a coalition with the ability to work innovatively with communities. Such evidence should consist of the following:

(1) Coalition mission statement

(2) Roster of members

(3) Bylaws

(4) Description of past and current activities and accomplishments

(5) Proof of 501 (c)(3) or State government status

(6) CVs demonstrating the technical expertise of staff in teen pregnancy prevention. Indicate which staff position will have the lead responsibility for project.

(7) Letters of support from coalition members, community agencies, or other community leaders.

2. Operational Plan

a. Identify overall goals for the three-year project that use the organization's strengths and increase the implementation and evaluation of science-based interventions.

b. Support the goals with objectives that are specific, measurable and realistic for the 12-month budget period.

c. Describe how the plan will be implemented.

d. Discuss the evaluation capacity of the coalition.

e. Propose potential community partners to meet any gaps in evaluation capacity.

f. Identify activities that are likely to achieve each objective for the budget period.

g. Describe appropriate management and staffing plan as indicated by CVs, job descriptions and organizational charts.

h. Provide a realistic timeline for activities.

i. Indicate willingness to collaborate with CDC and other national organizations.

3. Evaluation

a. Describe an evaluation plan that will:

(1) Document progress in meeting objectives.

(2) Provide evidence of effectiveness of approach.

4. Budget

Provide a clearly detailed and justified line item budget and narrative that is consistent with the intended use of funds.

5. Human Subjects

Address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

G. Submission and Deadline

Submit original and two copies of CDC form 1246 (OMB Number 0920–0428).

Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

The application must be received on or before 5:00 p.m. Eastern Time July 23, 2002. Submit the application to: Technical Information Management—PA02145, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline

Applications shall be considered as meeting the deadline if they are received on or before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, consider the application as having been received by the deadline.Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

Evaluation Criteria for Increasing Capacity in Teen Pregnancy Prevention Through National Organizations:

1. Operational Plan (45 points)

The extent to which:

a. The overall goals for the project period use the organization's strengths and meet the goal of increasing the implementation and evaluation of science-based interventions.

b. The goals with objectives for the 12-month budget period are specific, measurable and realistic.

c. Implementation plans are clear and appropriate.

d. Activities are likely to achieve each objective for the budget period.

e. Management and staffing plan as indicated by CVs, job descriptions and organizational charts are appropriate.

f. Timeline for activities is realistic.

g. Applicant states willingness to collaborate with CDC and other national organizations.

2. Capacity (35 points)

The extent to which the applicant documents its status as a national leader in teen pregnancy prevention as shown by:

a. A publication list showing expertise in teen pregnancy prevention.

b. Mission statement, bylaws, and a description of past and current activities and accomplishments.

c. Conference agendas for national and regional meetings specifically sponsored by the organization, addressing teen pregnancy prevention.

d. Awards for leadership in teen pregnancy prevention received by the organization.

e. Letters of support demonstrating appropriate relationships with State coalitions addressing teen pregnancy prevention and its leadership in teen pregnancy prevention.

f. CVs demonstrating the technical expertise of staff in teen pregnancy prevention.

g. Descriptions and results of other similar efforts that used the same skills of providing technical assistance to other agencies, disseminating results and convening expert panels.

3. Evaluation (20 points)

The extent to which the applicant defines process and outcome evaluation measures that:

a. Demonstrate progress in meeting objectives.

b. Provide evidence of effectiveness of approach to reduce teen pregnancy.

4. Budget (not scored)

The extent to which the budget is detailed, itemized, reasonable, clearly justified, and consistent with the intended use of funds.

5. Protection of Human Subjects (not Scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

Evaluation Criteria for Increasing Capacity in Teen Pregnancy Prevention through State and Local Coalitions:

1. Operational Plan (45 points)

The extent to which:

a. The overall goals for the three-year project period use the organization's strengths and meet the goal of increasing the implementation and evaluation of science-based interventions.

b. Goals with objectives for the 12-month budget period are specific, measurable and realistic.

c. The plan is likely to meet proposed objectives.

d. Evaluation capacity of the coalition is described. Potential community partners to meet any gaps in evaluation capacity are appropriate.

e. Activities are likely to achieve each objective for the budget period.

f. Appropriate management and staffing plan as indicated by CVs, job descriptions and organizational charts are appropriate.

g. A realistic timeline for activities is provided.

h. Applicant states willingness to collaborate with CDC and other national organizations.

2. Capacity (35 points)

The extent to which the applicant documents its leadership role in teen pregnancy prevention, evidence of five-year record as a coalition, and ability to work innovatively with communities as shown by:

a. Coalition mission statement, roster of members, bylaws and description of past and current activities and accomplishments.

b. CVs demonstrating the technical expertise of staff in teen pregnancy prevention and indicating which staff position will have the lead responsibility for project.

c. Letters of support from coalition members, community agencies or other community leaders.

3. Evaluation (20 points)

The extent to which the applicant proposes process and outcome evaluation measures that:

a. Demonstrate progress in meeting objectives.

b. Provide evidence of effectiveness of approach.

4. Budget (not scored)

The extent to which the budget is detailed, itemized, reasonable, clearly justified, and consistent with the intended use of funds.

5. Protection of Human Subjects (not scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements for all programs Provide CDC with original plus two copies of:

1. Semi-annual progress reports. The first report is due April 15, 2003. Subsequent semi-annual reports will be due on the 28th of February each year through February 28, 2006.

Continuation Application Guidance

The April 15th semi-annual progress report and accompanying budget and budget justification will be used to process your continuation award. Semi-annual progress reports should include the following information outlined in the requirements under items (a) through (e):

a. A succinct description of the program accomplishments/narrative and progress made in meeting each program objective during the first six months of the budget period (August 31 through February 28). It should consist of no more than 20 pages.

b. The reason for not meeting established program goals and strategies to be implemented to achieve unmet objectives (see performance measures below for each program area).

c. A description of any new objectives including the expected impact on the overall burden of teenage pregnancy.

d. A one year line item budget and budget justification.

e. For all proposed contracts, provide the name of contractor, period of performance, method of selection, method of accountability, scope of work, and itemized budget and budget justification. If the information is not available when the application is submitted, please indicate ''TO BE DETERMINED'' until the information is available. When the information becomes available, it should be submitted to the CDC Procurement and Grants Management Office contact identified in this program announcement. Document and report the number of training programs offered and the number of people trained.

2. Annual progress reports. The annual report is due no more than 90 days after the end of the budget period (August 31, 2003) and should consist of the same information outlined for the semi-annual progress report in (a) through (c) above.

3. Financial status reports, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, due no more than 90 days after the end of the project period.

Performance Measures for Increasing Capacity in Teen Pregnancy Prevention Through National Organizations

1. Evidence of a national strategic plan to prevent teen pregnancy developed in partnership with CDC and other national organizations, focusing on teen pregnancy prevention, nationally recognized researchers, and evaluators.

2. Evidence of dissemination of information about science-based teen pregnancy prevention programs to organizations working with youth on the national, State and local levels. Dissemination can be achieved through meetings, papers, video conferences, websites, reports and other innovative methods.

Performance Measures for Increasing Capacity in Teen Pregnancy Prevention Through State and Local Coalitions

1. Evidence of targeted technical assistance in science-based teen pregnancy prevention provided to coalition members and other targeted organizations.

2. Evidence of dissemination of information on science-based approaches to teen pregnancy prevention including evaluation through documentation of technical assistance, presentations, papers, reports and other innovative methods.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to both components.

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–7 Executive Order 12372 Review

AR–8 Public Health System Reporting Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–15 Proof of Non-Profit Status

AR–21 Small, Minority, Women-Owned Businesses

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: LaKasa Wyatt, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2728, E-mail address: *lwyatt@cdc.gov.*

For program technical assistance contact: Mary Schauer, MSPH, Health Scientist, Division of Reproductive Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE MS K–22, Atlanta GA 30341, Telephone number: 770–488–6306, E-mail address: *mes9@cdc.gov.*

Dated: June 14, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–15544 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Government-Owned Inventions for Licensing

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.), In accordance with 35 U.S.C. 207, to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 1600 Clifton Road, Atlanta, GA 30333, telephone (770) 488–8611; facsimile (770) 488–8615; or email *tto@cdc.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

A Candidate DNA Vaccine Expressing West Nile Premembrane and Envelope Proteins Protects Mouse and Horse from Virus Challenge (CDC Ref. # I–001–01/0), U.S. Patent SN: 09/826,115

Monoclonal Antibodies against Fungi and Methods for Their Use (CDC Ref. # I–002–01/0), U.S. Patent SN 60/311,458

Work Force Information Zone—Web Portal (CDC Ref. #: I–004–01/0)

Isocyanate Derivatizing Agent and Methods of Production and Use (CDC Ref. #: I–005–97/1), U.S. Patent SN:09/700,155

Multicoupon Biofilm CFSTR (CDC Ref. #: I–006–01/0)

Wearable Kneel-Sit Support Device (CDC Ref. #: I–007–01/0), U.S. Patent SN: 60/300,315

Colorimetric Artemisinin and Artemisinin Derivatives Assay and Assay Kit (CDC Ref. #: I–008–01/0), U.S. Patent SN: 60/334,387

Methods for the Prevention and Treatment of Diseases Caused by an Inflammatory Response (CDC Ref. #: I–009–98/1), U.S. Patent SN: 09/889,317

Quartz Application Package (QUARTZ–PACK) (CDC Ref. #: I–010–01/0)

Pulse-field Gel Electrophoresis (PFGE) Pattern from Two Salmonella Branderup Strains (CDC Ref. #: I–011–01/0)

Radio Frequency Safety System to Protect Workers from Caught-In Injury (CDC Ref. #: I–014–01/0)

DNA Expression Vectors and Methods of Use (CDC Ref. #: I–015–01/0), PCT/US01/06795

Anti-sense Oligonucleotide Silencing Technique to Prevent beryllium Sensitization and Disease (CDC Ref. #: I–016–01/0)

Method and Apparatus for Load Rate Monitoring (CDC Ref. #: I–016–98/1), U.S. Patent SN: 09/673,599

Rock Bolt with Strain Detection and Compact Data Logger (CDC Ref. #: I–017–01/0)

Mobile Load Handling Apparatus (CDC Ref. #: I–018–01/0)

Methods and Reagents for Molecular Detection of HIV–1 Groups M, N and O (CDC Ref. #: I–020–98/1)

sigE-induced Mycobacterium tuberculosis Vaccine (CDC Ref. #: I–024–01/0)

Sup T–1 Derived Cell Lines Which Affect the HIV Life Cycle from Normal Sup T–1 cells (CDC Ref. #: I–025–01/0)

Macroaggregated Albumin-Polyethyleneimine (MAA–PEI) Lung-Targeted Delivery of RSV DNA Vaccines (CDC Ref. #: I–026–01/0)

The Submicrometer Aerosol Monitor (SAM) (CDC Ref. #: I–027–01/0 [combined under I–033–01/0])

The Development of DNA Probes for the Identification and Diagnosis of Infections Caused by Dimorphic Fungi (CDC Ref. #: I–030–01/0)

An Electric Power Line Contact Alarm for Mobile Equipment (CDC Ref. #: I–032–01/0)

The Combination Respirable Dust and Sub-micrometer Particle Monitor (CDC Ref. #: I–033–01/0 (combined with I–027–01/0 under I–033–01/0))

Recombinant P37/FlaA As a Diagnostic Reagent (CDC Ref. #: I–046–00/0)

Recombinant P37/FlaA as a Diagnostic Reagent (CDC Ref. #: I–046–00/1)

Dated: June 12, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–15542 Filed 6–19–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1856/1893]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification in the Medicare/Medicaid Program to Provide Outpatient Physical Therapy and/or Speech-Language Pathology and the Outpatient Physical Therapy and/or Speech-Language Pathology Survey Report Form and Supporting Regulations in 42 CFR 485.701–485.729; *Form No.:* CMS–1856/1893 (OMB# 0938–00065); *Use:* The form CMS–1856 is utilized as an application to be completed by suppliers of OPT/SP services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met as an OPT/SP supplier. It is used by the CMS Regional Offices (ROs) to enter the new supplier into the Online Survey, Certification and Reporting System (OSCAR). The survey report form CMS–1893 is an instrument used by the State survey agency to record data collected during an on-site survey of a supplier of OPT/SP services to determine compliance with the

applicable conditions of participation and to report this information to the Federal Government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the OSCAR system at the CMS ROs. The form includes basic information on compliance (*i.e.,* met, not met, explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 1,700; *Total Annual Responses:* 255; *Total Annual Hours:* 446.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15528 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–222]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Independent Rural Health Center/Freestanding Federally Qualified Health Center Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* CMS–222 (OMB#0938–0107); *Use:* The independent rural health clinic/freestanding federally qualified health center cost report is the cost report to be used by the mentioned clinics/centers to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Not-for-Profit institutions, business or other for-profit, and State, local or tribal government; *Number of Respondents:* 3,000; *Total Annual Responses:* 3,000; *Total Annual Hours Requested:* 150,000. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–222, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15529 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2552–96]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital and Health Care Complex Cost Report and Supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* CMS–2552–96 (OMB 0938–0050); *Use:* Form CMS–2552–96 is the form used by hospitals participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; not-for-profit institutions, and State, Local, or Tribal Gov.; *Number of Respondents:* 6,010; *Total Annual Responses:* 6,010; *Total Annual Hours:* 3,980,522.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–2552, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 13, 2002.

Julie Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15530 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–142]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA–1005–IFC, PPS for Hospital Outpatient Services and Supporting Regulations Contained in 42 CFR 482.12, 488.18, 489.20 and 489.24; *Document No.:* CMS–R–142 (OMB# 0938–0667); *Use:* The Information Collection Requirements contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA–1005–IFC, contains requirements for hospitals to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. CMS uses this information to help assure compliance with this mandate and protect the public. This information is not contained elsewhere in regulations. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Individuals or households, not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 5,600; *Total Annual Responses:* 5,600; *Total Annual Hours Requested:* 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–142, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15531 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedure and Criteria and Supporting Regulations in 42 CFR 412.106; *Form No.:* CMS–R–194 (OMB #0938–0691); *Use:* Regulation sets up an alternative process for hospitals that choose to have their disproportionate share adjustment statistics calculated based on their cost reporting periods rather than the Federal fiscal year. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours Requested:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–194, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 12, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15532 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–254]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* National Medicare Education Program (NMEP) Community Survey of Medicare Beneficiaries; *Form No.:* CMS–R–254 (OMB# 0938–0738); *Use:* A survey of Medicare beneficiaries in six communities will be conducted in January and February 2003. A random, representative sample of Medicare beneficiaries will be selected using CMS administrative data. This approach will gather information on changes in: awareness of Medicare+Choice expansions and options; knowledge about Medicare and Medicare+Choice options; where beneficiaries go to find more information; and whether they are aware of many information resources available to them; and satisfaction with their information/knowledge.; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 2400; *Total Annual Responses:* 2400; *Total Annual Hours:* 600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 6, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15533 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR 486.104, 486.106, and 406.110; *Form No.:* CMS–R–43 (OMB# 0938–0338); *Use:* This information is needed to determine if portable X-ray; *Frequency:* Recordkeeping (Disclosure); *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 645; *Total Annual Responses:* 645; *Total Annual Hours:* 1,612.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 6, 2002.

John P. Burke III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–15534 Filed 6–19–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–2002–12]

Request for Applications Under the Office of Community Services' Fiscal Year 2002 Community Food and Nutrition Program—Nationwide Initiative

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Community Food and Nutrition Program (CFNP)—Nationwide Initiative.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), invites eligible entities to submit competitive grant applications for the award of one cooperative agreement for the Community Food and Nutrition Program (CFNP)—Nationwide Initiative pursuant to the Secretary's discretionary authority under section 681 of the Community Services Block Grant Act, as amended (Sec. 42 U.S.C. 9922). This Program Announcement contains forms and instructions for submitting an application. The awarding of the cooperative agreement under this Program Announcement is subject to the availability of funds for support of this activity.

DATES: To be considered for funding, applications must be *received* on or before August 5, 2002. Applications received after that date will not be accepted for consideration. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: The OCS Operations Center at 1–800–281–9519 for referral to the appropriate contact person in OCS for programmatic questions or send an e-mail to: *OCS@lcgnet.com* or contact Catherine Rivers at (202) 401–5252.

For a copy of this announcement, Contact: OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, 1–800–281–9519

In addition, this announcement is accessible on the OCS Web site for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm*

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.571. The title is Community Food and Nutrition Program—Nationwide Initiative.

SUPPLEMENTARY INFORMATION: This Program Announcement consists of seven parts plus attachments:

Part I: Background Information

A. Legislative Authority
B. Program Purpose
C. Project Goals
D. Form of Award
E. Definition of Terms

Part II: Program Objectives and Requirements

A. Project Requirements
B. Program Priority Areas
C. Eligible Applicants
D. Availability of Funds and Grant Amounts
E. Mobilization of Resources
F. Project and Budget Periods
G. Indirect Costs
H. Program Beneficiaries
I. Number of Projects in Application
J. Multiple Submittal
K. Sub-Contracting or Delegating Projects

Part III: The Project Description, Program Proposal Elements and Review Criteria

A. Purpose
B. Project Summary/Abstract
C. Objectives and Need for Assistance
D. Results or Benefits Expected
E. Approach
F. Organizational Profiles
G. Budget and Budget Justification
H. Evaluation Criteria

Part IV: Application Procedures

A. Application Development/Availability of Forms
B. Application Submission
C. Intergovernmental Review
D. Initial OCS Screening
E. Consideration of Applications

Part V: Instructions for Completing Forms SF–424

A. SF–424—Application for Federal Assistance (attachment B)
B. SF–424A—Budget Information—Non-Construction Programs (attachment C)
C. SF–424B—Assurances—Non-Construction Programs (attachment D)

Part VI: Contents of Application and Receipt Process

A. Contents of Application
B. Application Format
C. Acknowledgment of Receipt

Part VII: Post Award Information and Reporting Requirements

A. Notification of Grant Award
B. Reporting Requirements
C. Audit Requirements
D. Prohibitions and Requirements with Regard to Lobbying
E. Applicable Federal Regulations

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collected information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

A person is not required to respond to an information request from an agency unless a currently valid OMB control number is displayed.

Part I. Background Information

A. Legislative Authority

The Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, (The Act) (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), Community Food and Nutrition Programs. The Act authorizes the Secretary to award grants on a competitive basis to eligible entities for community-based, local and statewide and national programs including programs benefitting Indians (as defined in 42 USC 9911) and migrant and seasonal farm workers. Grant funds are provided to: (1) Coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) to assist low-income communities in identifying potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) to develop innovative approaches at the national, State and local level to meet the nutrition needs of low-income individuals.

B. Program Purpose

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of all individuals, including low-income persons, through improved preventive health care and promotion of personal responsibility.

DHHS also recognizes that improving the health and nutrition status of low-income persons can also be improved by access to healthy, nutritious foods. The DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to

identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

C. Project Goals

The goal of the Community Food and Nutrition Program (CFNP)—Nationwide Initiative is to identify the characteristics, practices and needs of current grantees, as well as the barriers they face in achieving project goals. Specific attention will be given to (1) ensuring compliance with the legislative mandates of the CFNP, (2) identifying needs that may be unique to a particular geographic area or community, (3) identifying projects beneficial to children, (4) identifying ''best practices'' within the grantee community, (5) developing a CFNP database for use and maintenance by the Office of Community Services, and (6) collecting, reviewing and analyzing program data submitted by the network of CFNP grantees nationwide.

D. Form of Award

The Office of Community Services plans to support the Community Food and Nutrition Program—Nationwide Initiative through a Cooperative Agreement. A Cooperative Agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding federal office and the recipient during the performance of the contemplated project.

The Office of Community Services (OCS) and the successful applicant will function as partners sharing responsibility for the design, coordination, and implementation of the project. OCS Staff will be the Administration of Children and Families (ACF) individuals primarily responsible for efforts under this cooperative agreement. In addition, ACF regional office staff may work closely with OCS and the applicant in planning and implementing the proposed work plan of the project. The purpose of the cooperative agreement is to ensure cooperation and coordination between OCS and the grantee.

The Office of Community Services will outline a plan of interaction with the grantee for implementation under the cooperative agreement. The respective responsibilities of the Office of Community Services and the successful applicant will be identified and incorporated into the Cooperative Agreement during pre-award negotiations. The OCS responsibilities will not change the project requirements found in this Announcement.

The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to implementation of the project.

E. Definition of Terms

For purposes of this Program Announcement, the following definitions apply:

Budget period: The interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Cooperative Agreement: An award instrument of financial assistance when substantial involvement is anticipated between the awarding federal office and the grant recipient during the performance of the contemplated project.

Displaced worker: An individual who is actively pursuing employment but has been unemployed for six months or longer.

Eligible entity: State and local governments, as well as Indian tribes, and public and private nonprofit agencies/organizations including Community Action Agencies. (See Part II). Faith-based organizations are eligible to apply for these grants.

Empowerment Zones and Enterprise Communities: Those communities designated as such by the Secretary of Agriculture or the Secretary of Housing and Urban Development.

Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

Innovative project: One that departs from, or significantly modifies, past program practices and tests a new approach.

Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Program income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project period: The total time for which a project is approved for support, including any approved extensions.

Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Self-sufficiency: A condition where an individual or family does not need, and is not eligible to receive, assistance under the Temporary Assistance for Needy Families (TANF) program under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act).

Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Part II. Program Objectives and Requirements

The Office of Community Services (OCS) invites qualified entities to submit competing grant applications for the award of one Cooperative Agreement for the Community Food and Nutrition Program (CFNP)—Nationwide Initiative. The CFNP—Nationwide Initiative is a national research project to study the impact of current CFNP projects on low-income communities, families, and children nationwide. The results of the study will enable OCS (1) to improve the quality of service OCS provides to the network of CFN, and (2) assess the program's impact on improving the health and nutritional well being of low-income families, children and individuals nationwide.

The duties and responsibilities of the applicant and ACF/OCS in fulfilling the Agreement during each phase will include the following:

The Applicant—Role and Responsibilities

The successful applicant shall be responsible for the following:

1. In collaboration with OCS, design, coordinate, and implement the project.
2. Attend a 2–3 day meeting in Washington, DC to discuss and finalize the major goals and objectives of the overall project, the fiscal year work plans, and exchange and share information on strategies for achieving the goals and objectives of the project.
3. Establish subordinate objectives to guide the focus of their research based upon the needs assessed in the major objectives.
4. Development a CFNP database for use and maintenance by OCS.

ACF/OCS—Role and Responsibilities

The grantor agency, ACF/OCS, shall be responsible for the following:

1. Throughout the term of the Agreement, provide the time and expertise of OCS to help the applicant implement the goals and objectives of the project. Specifically, OCS will organize periodic consultations and teleconferences to review planned activities, to share information, and to promote nationwide coordination.

2. Provide to the applicant a complete listing of current CFNP grantees.

3. Organize a 2–3 day meeting in Washington, DC to discuss and finalize the major goals and objectives of the overall project, the fiscal year work plans, and to exchange program information, and to share information on strategies for achieving the goals and objectives of the project.

4. Throughout the term of this Agreement, review and comment on quarterly progress reports and other relevant materials prior to their finalization.

5. Throughout the term of this Agreement, make available to the applicant program information and/or products from OCS activities that are available and relevant to the project.

6. Throughout the term of this Agreement, promote the involvement of the applicant in meetings, conferences, and other initiatives to strengthen their knowledge and resource base for providing effective assistance to OCS and CFNP grantees.

A. Project Requirements

In order to successfully compete under this Announcement, the applicant should:

1. Outline a plan of interaction with OCS for implementation under a cooperative agreement including, as appropriate, activities involving OCS Headquarter's agency staff;

2. Describe the needs to be addressed under the Nationwide Initiative and provide information on the specific services your organization has provided and currently provides and what need(s) and information would be provided as the selected grantee.

3. Present the technical approach and the specific work plans for the provision of assistance to the network of CFNP grantees that is nationwide in scope and that includes a plan for continued contact with the field; direct mailings; a plan for the implementation and effective use of electronic communication capability with the network; and a plan for the development and use of a network of experts for the provision of direct training and consultation, including fees for service, if necessary.

4. Describe the efforts that would be initiated to coordinate the CFNP-Nationwide Initiative with national food and nutrition advocacy groups and organizations, other related national resource centers and clearinghouses, and Federal, State, Indian Tribe and Migrant and Seasonal Farmworker agencies; identify the agencies/organizations and how the initiation of coordination with them will enhance the CFNP—Nationwide Initiative activities and avoid a duplication of efforts;

5. Provide a plan describing the manner in which the applicant would design and implement special projects relating to policy issues, training curricula, service delivery models, or other aspects of service; related to improving the health and nutritional status of low-income families and individuals;

6. Provide a plan and schedule to collect and disseminate data from the nationwide network of CFNP grantees on project outcomes;

7. Provide a plan and schedule for evaluating and reporting on the effectiveness of the project 6 months after the effective date of the grant;

8. Describe the proposed staff with appropriate definition of each expertise; and

9. Describe the administrative and organizational structure, the management plan, and the cost structure within which the project will operate; describe the administrative, operational and organizational relationships to be developed and established within the CFNP network of grantees that will constitute a national network. Charts depicting these structures and the ensuing relationships must be included.

Additionally, in carrying out such activities, the project funded under this program should: (a) Be designed and intended to provide support to a nationwide network of food and nutrition providers who provide not only nutrition benefits but also the benefits of disease prevention, to a targeted low-income group of people; (b) Provide outreach and public education to this network of other nutritional services available to them under the various Federally-assisted programs; (c) Carry out targeted communications and social marketing to improve communication among this network of grantees; and (d) Consult with and/or inform the national arms of local offices that administer other food programs such as Women, Infants, and Children (WIC) and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in planning grant applications.

The Office of Community Services views this program as a capacity building program, rather than a service delivery program.

B. Program Priority Areas

The Community Food and Nutrition Program has two Program Priority Areas for Fiscal Year 2002: Priority Area 1.0, General Projects, which is covered under a separate Program Announcement published in the **Federal Register** on May 7, 2002, and Priority Area 2.0, Nationwide Initiative, under which OCS will accept applications as described below.

1. General Projects—Priority Area 1.0

The applicants selected to operate CFNP general projects were asked in their application to describe the target area and population to be served and discuss the nature and extent of the problem to be solved. The application was required to contain a detailed and specific work program that is sound and feasible. Projects funded under Priority Area 1.0 are required to produce lasting and measurable results that fulfill the purposes of the CFNP. The OCS grant funds awarded, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Grantees are required to certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). Failure to certify that only beneficiaries that meet the DHHS Poverty Income Guidelines may result in the application not being considered for funding.

2. Nationwide Initiative—Priority Area 2.0

The Community Food and Nutrition Program—Nationwide Initiative is a national research project to study the impact of current CFNP projects on low-income communities, families, and children nationwide. The applicant selected to manage the Nationwide Initiative will be responsible for performing this task in coordination with the Office of Community Services.

C. Eligible Applicants

Eligible applicants are State and local governments, Indian tribes, and public and private nonprofit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. The Office of Community Services encourages Historically Black Colleges

and Universities, minority institutions and faith-based organizations to submit applications. Eligible applicants with programs benefitting Native Americans and migrant or seasonal farmworkers are also encouraged to submit applications.

Any nonprofit organization submitting an application must submit proof of its nonprofit status in its application at the time of submission. The nonprofit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by providing a copy of the currently valid IRS tax exemption certificate or by providing a copy of the articles of incorporation bearing the seal of the State certifying non-profit status according to criteria for the State in which the corporation or association is domiciled.

Faith-based organizations are eligible to apply for these Community Food and Nutrition Program—Nationwide Initiative funds.

D. Availability of Funds and Grant Amounts

1. Fiscal Year 2002 Funding

The funds available for the cooperative agreement under the Community Food and Nutrition Program (CFNP)—Nationwide Initiative in Fiscal Year 2002 are:

Nationwide Initiative—Priority Area 2.0—$300,000*

2. Grant Amounts

No individual grant application will be considered for an amount in excess of $300,000 for applications submitted under the CFN— Nationwide Initiative.

E. Mobilization of Resources

The Office of Community Services would like to mobilize as many resources as possible to enhance the Cooperative Agreement funded under the CFNP—Nationwide Initiative. OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

F. Project and Budget Periods

This announcement is inviting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

G. Indirect Costs

Indirect costs consistent with approved indirect cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

H. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: *http://www.access.gpo.gov/su_docs/aces/aces140.html*

You may also access the DHHS Poverty Guidelines direct at the following web address: *http://aspe.os.dhhs.gov/poverty/02poverty.htm*

No other government agency or privately defined poverty guidelines are applicable to determining low-income eligibility for this OCS program.

I. Number of Projects in Application

An application may contain only one proposed project and this project must address the basic criteria found in Parts II and III of this Program Announcement. Applications not complying with these requirements will not be funded.

J. Multiple Submittal

There is no limit to the number of applications that can be submitted by an eligible applicant as long as each application is for a different project. However, no applicant will receive more than the one cooperative agreement.

K. Sub-Contracting or Delegating Projects

The Office of Community Services will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part III. The Project Description, Program Proposal Elements and Review Criteria

A. Purpose

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

B. Project Summary/Abstract

Provide a summary of the project description (one page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

*All grant awards are subject to the availability of appropriated funds.

D. Results or Benefits Expected

Identify the results anticipated and the benefits to be derived. For example, describe the population to be served by the Community Food and Nutrition Program—Nationwide Initiative. Explain the ways in which the project will be used to reach your client base and how it will benefit low-income participants, including whether it may aid some participants in moving towards self-sufficiency.

E. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget (OMB) might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, or the currently valid IRS tax exemption certificate, or the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled which certifies that the organization has met the state's criteria as a nonprofit organization.

G. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits, unless treated as part of an approved indirect cost rate.
Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: ''Equipment'' means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

(**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in, or excluded from, acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition of equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. part 403(11) (currently set at $100,000.) Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Non-Federal Resources

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

H. Evaluation Criteria

Proposal Elements and Review Criteria for Applications

Each application which passes the initial screening described in Part IV, Section D of this Program Announcement will be assessed and scored by three independent reviewers. Each reviewer will give a numerical score for each application. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

The competitive review of proposals will be based on the degree to which applicants:

(1) Adhere to the requirements in PART II and (2) incorporate each of the Elements and Sub-Elements below into their proposals, so as to describe convincingly a project that will develop new food and nutrition services/activities to benefit low-income households including displaced workers, elderly people, children, and the working poor.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding Project Summaries, Budget Justifications and Appendices) exceeding 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed. Applicants should prepare and assemble their project descriptions using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

Project descriptions are evaluated on the basis of substance, not length. Pages should be numbered consecutively and a table of contents should be included for easy reference. Applicants are reminded that the overall Project Narrative must not exceed 30 pages.

When writing their Project Narratives, applicants should respond to the review criteria using the same sequential order.

Criteria for Review and Evaluation of Applications Submitted Under this Program Announcement

Note: The review criteria both reiterate and explain in greater detail the information requirements contained in Part II of this Announcement.

Evaluation Criterion 1: Objectives and Need for Assistance

Element I. Description of Target Population and Analysis of Needs/Priorities (0 to 10 Points)

Sub-Element I(a) Description of Target Population. (0 to 4 Points)

In addressing this criterion, the applicant should describe the target area and population to be served, including specific details on any minority population(s) to be served.

Sub-Element I(b) Analysis of Needs/Priorities (0 to 6 Points)

In addressing the above criterion, the applicant should discuss the nature and extent of the problem(s) and/or need(s), including specific information on minority population(s).

Evaluation Criterion 2: Approach I

Element II. Adequacy of Work Program (0 to 25 Points)

Sub-Element II(a). Realistic Quarterly Time Lines (0 to 10 Points)

Applicant should provide realistic quarterly projections of the activities to be carried out including the projected number of beneficiaries to be served each quarter.

Sub-Element II(b). Detailed Work Plan (0–15)

Applicant must insure that activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs.

In addressing this criterion, the applicant should address the basic criteria and other mandated activities found in Part II and should include:

(1) Project priorities, and rationale for selecting them, which relate to the specific nutritional problem(s) and/or need(s) of the target population identified under Criterion I;

(2) Goals and objectives that speak to the(se) problem(s) and/or need(s); and

(3) Project activities that, if successfully carried out, can reasonably be expected to result in achieving these goals and objectives.

Evaluation Criterion 3: Results or Benefits Expected

Element III. Significant and Beneficial Impact (0–25 Points)

Sub-Element III(a). Improvement in Nutrition Services to Low-Income People (0 to 10 Points)

Applicants shall address how they propose to significantly improve or increase nutrition services to low-income people and indicate how such improvements or increases are quantified.

Sub-Element III(b). Promotional Health and Social Service Activities

Included in Nutrition Services (0 to 10 Points)

Applicant incorporates into the project awareness of broader health and social services activities for low-income people along with nutritional services. The goal being to launch a nationwide campaign to promote healthy communities.

Sub-Element III(c). Commitment of Resources (0 to 5 Points)

Applicant indicates that the project will significantly leverage or mobilize other community resources. These resources are detailed and quantified.

In addressing the above criterion, the applicant must include quantitative data for items (a), (b), and (c), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in Part II and the problems and/or needs described under Criterion I.

Evaluation Criterion 4: Approach II

Element IV. Coordination/Services Integration (0 to 15 Points)

Sub-Element IV(a). Coordinated Community-Based Planning (0 to 10 Points)

Application demonstrates evidence of coordinated community-based planning in its development, including strategies in the work program to collaborate with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example: (1) Unite funding streams at the local level to increase program outreach and effectiveness; (2) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients; or (3) bring project participants into direct interaction with holistic family development resources in the community where needed.

Sub-Element IV(b). Native American and Migrant and Seasonal Farmworker Empowerment Consideration (0 to 5 Points)

Special consideration will be given to applicants who can demonstrate that they have experience working with Native American and Migrant and Seasonal Farmworker organizations. Applicants should document their involvement in preparing and planned implementation of services to these unique communities to achieve both economic and human development in an integrated manner.

Evaluation Criterion 5: Organizational Profiles

Element V. Organizational Experience and Administrative Capability (0 to 20 Points)

Sub-Element V(a). Organizational Experience in Program Area (0–5 Points)

The applicant should document the organization's capability and relevant experience in developing and operating programs which deal with poverty and health and nutrition problems similar to those to be addressed by the proposed project. Documentation provided should indicate that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations proposing training and technical assistance should have detailed competence in the program area and expertise in training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Sub-Element V(b). Management History (0–10 Points)

Applicants must demonstrate their ability to implement sound and effective management practices. If they have been recipients of other Federal or other governmental grants, they must also document their compliance with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement from a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

Sub-Element V(c). Staff Skills, Resources and Responsibilities (0–5 Points)

The application should adequately describe the experience and skills of the proposed Project Director, showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to successfully implement the project. If the key staff person has not yet been identified, the application contains a comprehensive position description indicating that the responsibilities to be assigned to the project director are relevant to successfully implement the project. The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to carry out the work plan successfully.

In addressing the above criterion, the applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely project implementation and oversight and that the assigned responsibilities of the staff are appropriate to the tasks identified.

Evaluation Criterion 6: Budget and Budget Justification

Element VI. Appropriateness of Budget (0 to 5 Points)

Every application must include a Budget Justification, placed after the budget forms SF 424 and 424A, explaining the sources and uses of project funds. The budget is adequate and administrative costs are appropriate to the services proposed.

Part IV. Application Procedures

A. Application Development/ Availability of Forms

To be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the guidelines set out in Part III. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through K contain all standard forms necessary to apply for awards under this OCS program. These attachments and Parts V and VI of this Announcement contain all the general instructions required for submitting applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this announcement. In addition, this Announcement is accessible on the Internet through the OCS Web site for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm* under ''Funding Opportunities.''

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, the Certification Regarding environmental tobacco smoke, and debarment regulations set forth in Attachments E, J, and F.

Part III contains instructions for the substance and development of the project narrative. Part V contains instructions for completing application forms. Part VI, Section A, describes the contents and format of the application as a whole.

B. Application Submission

1. Number of Copies Required. One signed original application and two

copies must be submitted at the time of initial submission. (OMB 0970–0139). Two additional optional copies would be appreciated to facilitate the processing of applications.

2. Closing Date. The closing date for submitting applications is August 5, 2002. Applications received after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Community Food and Nutrition Program Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Attention: Application for Community Food and Nutrition Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the application is received on or before the deadline time and date. Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. to 4:30 p.m. EST at the U.S. Department of Health and Human Services, Administration for Children and Families, Community Food and Nutrition Program Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''Attention: Application for Community Food and Nutrition Program''. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late Applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of Deadlines. ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc) occur, or when there are widespread disruptions of the mail service, or in other rare cases. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 27 jurisdictions do not need to take action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate ''not applicable'' if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 4th floor West, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G to this Announcement. You may also find this list at the following web address: *http://www/whitehouse.gov/omb/grants/spoc.html*

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was received by the closing date and submitted in accordance with the instructions in this Announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applicants except as noted:

(1) The application must contain a signed Standard Form 424 Application for Federal Assistance'' (SF–424), Attachment B, a budget (SF–424A), Attachment C, and signed ''Assurances'' (SF 424B), Attachment D, completed according to instructions published in Part V and Attachments A, B, and C of this Program Announcement. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicant must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be no more than 30 letter-size pages, numbered consecutively , and typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (c.p.i.) or equivalent. Applications with project narratives (excluding Project Summaries and appendices) of more than 30 letter-size pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding.

The budget narrative, charts, exhibits, resumes, position descriptions, letters of support or commitment are not counted against this page limit and should be in the Appendix. It is strongly recommended that applicants adopt for their program project narratives the sequence and content described in Part III, Section I.

(3) Application must contain documentation of the applicant's tax

exempt status as required under PART II, Section C.

Applicants are strongly encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal. [See Part E]

E. Consideration of Applications

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of requirements set forth in Parts II and III. These review criteria were designed to assess the quality of a proposed project and determine the likelihood of its success. The review criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the program elements and review criteria within the context of this Program Announcement.

Reviewers' scores will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to: The timely and proper completion by applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Applicants may omit from the application the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

Part V. Instructions for Completing Forms SF–424

All application forms are now available on the ACF website for downloading at: *http://www.acf.dhhs.gov/programs/ofs/forms.htm*

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B .C. and D) as modified by the instructions set forth in PART III. above, and the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. (Note: The Budget detail and Narrative Budget Justification should follow the SF 424 and 424A, and are not counted as part of the Project Narrative.)

A. SF–424—Application for Federal Assistance (Attachment B)

Where the applicant is a previous DHHS grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant is an Indian Tribe enter ''K'' in the box. If applicant is a non-profit organization enter ''N'' in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.571. The title is ''Community Food and Nutrition Program (CFNP)—Nationwide Initiative.''

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations: Use Priority Area 2.0 for the Nationwide Intiative.

Item 13. Proposed Project Dates—Show 36-month project period (See Part II). In addition, the project start date must begin on or before September 30, 2002; the ending date should be calculated on the basis of a 36-month project period.

Item 14. Congressional District of Applicant/Project—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. Estimated Funding—Item 15a. Show the total amount requested for the entire project period; Item 15b–e. For each line item, show both cash and third party in-kind contributions for the total project period; Item 15f. Show the estimated amount of program income for the total project period; Item 15g. Enter the sum of all the line items.

B. SF–424A—Budget Information—Non-Construction Programs (Attachment C)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS Community Food and Nutrition Program—Nationwide Initiative funds only, and Non-Federal will include funds mobilized from all other sources—applicant, state, local, and other. Federal funds other than those requested from the Community Food and Nutrition Program—Nationwide Initiative should be included in Non-Federal entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal mobilized funds.

Section A—Budget Summary

Lines 1–4
Column (a) Line 1—Enter OCS CFNP
Column (b) Line 1—Enter 93.571
Columns (c) and (d)—Not Applicable
Columns (e), (f) and (g)—Line 1—Enter appropriate amounts needed to support the project for the entire project period.
Line 5
Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in

the Code of Federal Regulations (CFR), Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-Federal share.

Note: Local transportation and consultant travel costs are entered on Line 6h.

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. Equipment means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000.

[**Note:** If an applicant's current rate agreement was based on another definition for equipment, such as ''tangible personal property $500 or more,'' the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.]

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its sub-grantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies (office, classroom, medical, etc.). Include equipment costing less than $5,000 per item.

Line 6f

Contractual—Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual); fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use training costs including tuition and stipends; training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot also be budgeted or charged as direct costs to the grant. Indirect costs consistent with approved indirect cost rate agreements are allowable. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (see SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

This documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.

Column (b)—Enter the amount of cash or donations to be made by the applicant.

Column (c)—Enter the State contribution.

Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13

Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12-month budget period.

Line 14

Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—Assurances Non-Construction Programs (Attachment D)

All applicants must sign and return the ''Assurances'' with the application.

Part VI. Contents of Application and Receipt Process

A. Contents of Application

Each CFNP application must include all of the following, in the order listed below:

1. Table of Contents
2. An abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population, and the major elements of the work plan.
3. A completed Standard Form 424 that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally. (Attachment B)
4. Budget Information-Non-Construction Programs (SF–424A) (Attachment C);
5. A narrative budget justification for each object class category required under Section B, SF–424A.
6. Certification and Assurances Required: Applicants requesting financial assistance for a non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications (See Attachment D).

Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their application (See Attachment H).

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-federal funds for lobbying activities in connection with receiving assistance under this announcement shall compete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications (See Attachment H).

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications (See Attachment E).

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment F)

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. (See Attachment J)

7. A Project Narrative of no more than 30 pages consisting of the Elements described in Part III of this announcement set forth in the order therein presented and preceded by a consecutively numbered table of contents.

The total number of pages for the narrative portion of the application package must not exceed 30 pages (See Part IV.D.2 for pages that do not count against the 30-page limit).

8. Appendices—proof of nonprofit tax-exempt status as outlined in Part II, Section C; Single Point of Contact comments, if applicable, and resumes and position descriptions. Pages should be numbered sequentially throughout, including appendices, beginning with the Abstract as page 1.

B. Application Format

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ × 11 inch paper only. Applicants must not include colored, oversized or folded materials. Applicants should not include organizational brochures or other promotional materials, slides, films, clips, etc. Such material will be discarded if included. Applications must be bound or enclosed in loose-leaf binder notebooks. Preferably, applications should be two-holed

punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip.

C. Acknowledgment of Receipt

All applicants will receive an acknowledgment with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgment. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgment is not received within three weeks after the deadline date, please notify the OCS Operations Center at 1–800–281–9519.

Part VII. Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award.

B. Reporting Requirements

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) as well as a final progress and financial report.

C. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR part 74 (non-profit organizations) or part 92 (governmental entities) which require audits under OMB Circular A–133.

D. Prohibitions and Requirements With Regard to Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or sub-grantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or sub-grantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

E. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Community Food and Nutrition Program.

Dated: June 9, 2002.

Clarence H. Carter,

Director, Office of Community Services.

List of Attachments

A. 2002 Poverty Income Guidelines
For updates see: *http://aspe.os.dhhs.gov/poverty/02poverty.htm*
B. Standard Form 424, Application for Federal Assistance
C. Standard Form 424A, Budget Information—Non-Construction Programs
D. Standard Form 424B, Assurances—Non-Construction Programs
E. Certification Regarding Drug-Free Workplace Requirements
F. Certification Regarding Debarment, Suspension and Other Responsibility Matters
G. Intergovernmental Review State Single Point Of Contact (SPOC) List
H. Certification Regarding Lobbying and Disclosure of Lobbying Activities, Standard Form LLL
I. Applicant's Checklist
J. Certification Regarding Environmental Tobacco Smoke
K. DHHS Regulations Applying to All Applicants/Grantees Under the Community Food and Nutrition Program (CFNP)

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ATTACHMENT A

Size of family unit	Poverty guideline
2002 Poverty Guidelines for the 48 Contiguous States and the District of Columbia [1]	
1	$8,860
2	11,940
3	15,020
4	18,100
5	21,180
6	24,260
7	27,340
8	30,420
2001 Poverty Guidelines for Alaska [2]	
1	$11,080
2	14,930
3	18,780
4	22,630
5	26,480
6	30,330
7	34,180
8	38,030
2001 Poverty Guidelines for Hawaii [3]	
1	$10,200
2	13,740
3	17,280
4	20,820
5	24,360
6	27,900
7	31,440
8	34,180

[1] For family units with more than 8 members, add $3,080 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

[2] For family units with more than 8 members, add $3,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

[3] For family units with more than 8 members, add $3,540 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

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Attachment B, page 1

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes **If "Yes," attach an explanation.** ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4180–01–C

Attachment B, page 2

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do no return your completed form to the Office of Management and Budget.

Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C, page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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Attachment C, page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

BILLING CODE 4184–01–C

Attachment C, Page 3

Instruction for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement, the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Attachment C, Page 4

Instructions for the SF–424A (continued)

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e), When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (Provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D, Page 1

OMB Approval No. 0348–0042

Assurances—Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0042), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681 1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. WIll comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333) regarding labor standards for federally-assisted construction subagreememts.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance will Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identiication and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit organizations.''

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

_____

Signature of Authorized Certifying Official

Title _____

Applicant Organization _____

Date Submitted _____

Attachment E, Page 1

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Section 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal

agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplace in question (see paragraph five).

Attachment E, Page 2

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which

reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this cause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F, Page 3

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is proving the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition go other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediately written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason for changed circumstances.

4. The terms covered transaction, debarred suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this change, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitted this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A. participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Attachment F, Page 4

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transactions, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue

available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is prepared debarred, suspended, proposal for debarment, declared ineligible, or voluntarily excluded from participation in its transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G

Intergovernmental Review (SPOC List)

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal developmemt. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those State that have a home page for their designated entity, a direct link has been provided below.

State that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

Contact information for Federal agencies that award grants can be found in Appendix IV of the Catalog of Federal Domestic Assistance.

Arkansas

Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
Fax: (501) 682–5206
tlcopeland@dfa.state.ar.us

California

Grants Coordination
State Clearinghouse
Office of Planning and Research
P.O. Box 3044, Room 222
Sacramento, California 95812–3044
Telephone: (916) 445–0613
Fax: (916) 323–3018
state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins
Executive Department
Office of the Budget
540 S. Dupont Highway, 3rd Floor
Dover, Delaware 19901
Telephone: (302) 739–3323
Fax: (302) 739–5661
chopkins@state.de.us

District of Columbia

Luisa Montero-Diaz
Office of Partnerships and Grants Development
Executive Office of the Mayor
District of Columbia Government
441 4th Street, NW, Suite 530 South
Washington, DC 20001
Telephone: (202) 727–8900
Fax: (202) 727–1652
opgd.eom@dc.gov

Attachment G, Page 2

Florida

Jasmin Raffington
Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
Fax: (850) 414–0479
clearinghuse@dca.state.fl.us

Georgia

Georgia State Clearinghouse
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: (404) 656–3855
Fax: (404) 656–7901
gach@mail.opb.state.ga.us

Illinois

Virginia Bova
Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randoloph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
Fax: (312) 814–8485
vbofa@commerce.state.il.us

Iowa

Steven R. McCann
Division of Community and Rural Development
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
Fax: (515) 242–4809
steve.mccann@ided.state.ia.us

Kentucky

Ron Cook
Department for Local Government
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Telephone: (502) 573–2382
Fax: (502) 573–2512
ron.cook@mail.state.ky.us

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (207) 287–3261 (207) 287–1461 (direct)
Fax: (207) 287–6489
joyce.benson@state.me.us

Maryland

Linda Janey
Manager, Clearhouse and Plan Review Unit
Maryland Office of Planning
301 West Preston Street—Room 1104
Baltimore, Maryland 21201–2305
Telephone: (410) 767–4490
Fax: (410) 767–4480
linda@mail.op.state.md.us

Michigan

Richard Pfaff
Southeast Michigan Council of Governments
535 Griswold, Suite 300
Detroit, Michigan 48226
Telephone: (313) 961–4266
Fax: (313) 961–4869
pfaff@semcog.org

Mississippi

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
1301 Woolfolk Building, Suite E
501 North West Street
Jackson, Mississippi 39201
Telephone: (601) 359–6762
Fax: (601) 359–6758

Missouri

Angela Boessen
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Truman Building, Room 840
Jefferson City, Missouri 65102
Telephone: (573) 751–4834
Fax: (573) 522–4395
igr@mail.oa.state.mo.us

Nevada

Heather Elliott
Department of Administration
State Clearinghouse
209 E. Musser Street, Room 200
Carson City, Nevada 89701
Telephone: (775) 684–0209
Fax: (775) 684–0260
helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor
Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process
Mike Blake
2½ Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271–2155
Fax: (603) 271–1728
jtaylor@osp.state.nh.us

New Mexico

Ken Hughes
Local Government Division
Room 201 Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827–4370
Fax: (505) 827–4948
khughes@dfa.state.nm.us

North Carolina

Jeanette Furney
Department of Administration
1302 Mail Service Center
Raleigh, North Carolina 27699–1302
Telephone: (919) 807–2323
Fax: (919) 733–9571
jeanette.furney@ncmail.net

North Dakota

Jim Boyd

Division of Community Services
600 East Boulevard Ave, Dept 105
Bismarck, North Dakota 58505–0170
Telephone: (701) 328–2094
Fax: (701) 328–2308
jboyd@state.nd.us

Rhode Island

Kevin Nelson
Department of Administration
Statewide Planning Program
One Capitol Hill
Providence, Rhode Island 02908–5870
Telephone: (401) 222–2093
Fax: (401) 222–2083
knelson@doa.state.ri.us

South Carolina

Omeagia Burgess
Budget and Control Board
Office of State Budget
1122 Ladies Street, 12th Floor
Columbia, South Carolina 29201
Telephone: (803) 734–0494
Fax: (803) 734–0645
aburgess@budget.state.sc.us

Texas

Denise S. Francis
Director, State Grants Team
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 305–9415
Fax: (512) 936–2681
dfrancis@governor.state.tx.us

Utah

Carolyn Wright
Utah State Clearinghouse
Governor's Office of Planning and Budget
State Capitol, Room 114
Salt Lake City, Utah 84114
Telephone: (801) 538–1535
Fax: (801) 538–1547
cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director
Community Development Division
West Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
Telephone: (304) 558–4010
Fax: (304) 558–3248
fcutlip@wvdo.org

Wisconsin

Jeff Smith
Section Chief, Federal/State Relations
Wisconsin Department of Administration
101 East Wilson Street—6th Floor
P.O. Box 7868
Madison, Wisconsin 53707
Telephone: (608) 266–0267
Fax: (608) 267–6931
jeffrey.smith@doa.state.wi.us

American Samoa

Pat M. Galea'i
Federal Grants/Programs Coordinator
Office of Federal Programs
Office of the Governor/Department of Commerce
American Samoa Government
Pago Pago, American Samoa 96799
Telephone: (684) 633–5155
Fax: (684) 633–4195
pmgaleai@samoatelco.com

Guam

Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone: 011–671–472–2285
Fax: 011–472–2825
jer@ns.gov.gu

Puerto Rico

Jose Caballero/Mayra Silva
Puerto Rico Planning Board
Federal Proposals Review Office
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940–1119
Telephone: (787) 723–6190
Fax: (787) 722–6783

North Mariana Islands

Ms. Jacoba T. Seman
Federal Programs Center
Office of Management and Budget
Office of the Governor
Saipon, MP 96950
Telephone: (670) 664–2289
Fax: (670) 664–2272
omb.jseman@saipan.com

Virgin Islands

Ira Mills
Director, Office of Management and Budget
#41 Norre Gade Emancipation Garden Station, Second Floor
Saint Thomas, Virgin Islands 00802
Telephone: (340) 774–0750
Fax: (340) 776–0069
Irmills@usvi.org

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW., Washington, DC 20503.

Please note: Inquiries about obtaining a Federal grant should not be sent to the OMB e-mail or postal address shown above. The best source for this information is the CFDA.

Attachment H, Page 1

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____
Title _____
Organization _____

BILLING CODE 4184–01–M

Attachment H, page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Attachment H, Page 3

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency.) Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4184–01–M

APPLICANT'S CHECKLIST

Attachment I

This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements--Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information--Non-Construction Programs (SF 424A) or Budget Information--Construction Programs (SF 424C) was completed?			
Assurances-- Non-Construction Programs (SF 424B) or Assurances--Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS

FRONT MATTER			STANDARD APPLICATION FORMS			PROJECT DESCRIPTION	DISCLOSURES CERTIFICATIONS			END MATTER
COVER LETTER	Table of Contents	Project Abstract (executive summary)	SF 424	SF 424A or SF 424C	SF 424B or SF 424D	Project Descrip-tion	Certification regarding lobbying	Disclosure of lobbying activities	other Assurances and Certs	appendix resumes, letters of support, maps, etc.

BILLING CODE 4184-01-C

Attachment J

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

DHHS Regulations Applying to All Applicants/Grantees Under the Community Food and Nutrition Program—Nationwide Initiative

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process

Part 74—Administration of Grants (grants and subgrants to entities)

Part 75—Informal Grant Appeal Procedures

Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act Of 1964

Part 81—Practice and Procedures for Hearings Under Part 80 of this Title

Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act

Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance

Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services

Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance

Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance

Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (*Federal Register*, March 11, 1988)

Part 93—New Restrictions on Lobbying

Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 02–15391 Filed 6–19–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0264]

Cooperative Agreement to Support the National Center for Natural Products Research (NCNPR), University of Mississippi; Intent to Supplement—RFA-CFSAN-02-5 (CFDA No. 93.103)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to receive and consider a noncompetitive supplement to the cooperative agreement with the University of Mississippi (UM) to support the National Center for Natural Products Research (NCNPR), which is located on UM's Campus at Oxford, MS, for up to $1 million per annum (direct plus indirect cost). The funds will provide additional support to the UM's NCNPR for the purpose of promoting more efficient development and dissemination of natural products research and science and will complement the diverse activities of both the public and private sectors that may become collaborators.

DATES: Submit the application by July 22, 2002. If this date falls on a weekend, it will be extended to Monday. If this date falls on a holiday, it will be extended to the following weekday.

ADDRESSES: An application form is available from and should be submitted to: Rosemary Springer, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182, e-mail rspringe@oc.fda.gov. If the application is hand carried or commercially delivered, it should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20857. Application forms can also be found at http://www.nih.gov/grants/fund/phs398/forms_toc.html. FDA is unable to receive applications electronically. Do not send the application to the National Institutes of Health, Center for Scientific Research (CSR).

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (see **ADDRESSES**).

Regarding the programmatic aspects: Jeanne I. Rader, Center for food Safety and Applied Nutrition (HFS–840), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1786 e-mail: jrader@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION: FDA's authority to enter into grants and cooperative agreements is detailed under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national effort to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a hard copy of the ''Healthy People 2010'' objectives, volumes I and II, for $70 ($87.50 foreign) S/N 017–000–00550, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CDX—ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign). This publication is available as well on the Internet at http://www.health.gov/healthypeople. Internet reviewers should proceed to ''Publications.''

I. Restricted Eligibility

On May 3, 2001 (66 FR 22236), FDA announced that a single source application for a cooperative agreement to support the NCNPR at the UM at Oxford, MS would be accepted. Supplemental funding referenced herein will provide for the implementation and enhancement of activities associated

with the NCNPR projects described and authorized under the original award FD–U–002071–01 dated September 28, 2001.

II. Availability of Funds

FDA anticipates providing supplemental funding, during the project period, subject to the availability of fiscal year (FY) funding, in an amount up to $1 million per annum (direct and indirect costs).

The original cooperative agreement was approved for 5 years of funding and currently has 4 years of noncompetitive support remaining, which is contingent upon the availability of FY appropriations and successful performance. FDA anticipates that supplemental funding of the cooperative agreement will commence on or before September 30, 2002.

III. Background

Congress amended the Federal Food, Drug, and Cosmetic Act (the act) with the passage of the Dietary Supplement Health and Education Act of 1994, to create a regulatory framework for dietary supplements under food provisions of the act. FDA has primary responsibility for ensuring that appropriate regulatory actions are taken against marketed products that: (1) Present an unreasonable or significant risk of illness or injury when used according to label directions or under ordinary conditions of use, or (2) bear labeling that is false or misleading.

In the **Federal Register** of May 3, 2001, FDA published a request for a single source application for a cooperative agreement to support the National Center for Natural Products Research, University of Mississippi. FDA awarded the cooperative agreement to the UM–NCNPR on September 28, 2001, following the review of the application by an ad hoc panel of experts and subsequent approval by the National Advisory Environmental Health Sciences Council in September 2001.

The cooperative agreement between the UM–NCNPR and FDA was established to create a partnership that allows for more efficient use of research resources that identify and analyze specific components in ingredients, including botanical ingredients, thereby enhancing overall public health by ensuring that dietary supplements are safe and their labeling is truthful and not misleading. It also provides opportunities to address important national and international problems in natural products research.

The unique needs for research in support of dietary supplements, with a specific emphasis on the safety of botanical ingredients, has been one of the key reasons for maintaining a strong research program with UM–NCNPR. UM–NCNPR has been determined to be the only institution with the unique capability of providing a broad range of highly relevant scientific expertise and facilities that are physically co-located and singularly dedicated to natural products research. The UM is a comprehensive research institution with numerous academic programs relevant to natural products which can help to ensure that market products are safe for the American public. NCNPR has the unique capability to bring together diverse scientific expertise on bioactive natural products research from: (1) The UM faculty in the School of Pharmacy including researchers in the Departments of Pharmacognosy, Medicinal Chemistry, Pharmaceutics, Pharmacology and the Research Institute of Pharmaceutical Sciences; (2) research scientists in the U.S. Department of Agriculture/Agricultural Research Service's (USDA/ARS) National Products Utilization Research Unit who are physically co-located and programmatically integrated in the NCNPR; and (3) its close academic links and historical collaborations with agriculture and botanical programs and facilities at the UM system. UM–NCNPR's ability to successfully and uniquely collaborate with FDA is also enhanced by its repository of several thousand natural product extracts and its long history of successful basic and applied multidisciplinary research to discover and develop natural products for use as bioactive ingredients in dietary supplements and pharmaceuticals, and for improving the quality and safety of dietary supplements.

Additionally, research in UM–NCNPR is focused on using state-of-the-art knowledge and technology to discover bioactive natural products, develop novel technologies or processes that facilitate the discovery of bioactive natural products, and provide research-based information on plant-derived products with health applications. These programs, facilities, and expertise working in conjunction with FDA scientists are essential for supporting the needs to ensure that sound science is available for ensuring the safety and truthfulness of labeling of marketed dietary supplement products.

Finally, the large number of established collaborations among UM–NCNPR scientists and other government agencies, academic organizations, and research institutions further enhance the collaboration in the area of natural products research. The primary focus of the FDA and UM-NCNPR collaboration is to support and benefit the public health by promoting more efficient development and dissemination of natural products research and science and to complement the diverse activities of both the public and private sector that may become collaborators.

IV. Purpose

Supplemental funding to FDA's current cooperative agreement will provide the UM–NCNPR with the necessary resources to further conduct research related to the goals of the Dietary Supplement Health and Education Act and to leverage additional resources for natural products research for the benefit of the public health. These resources would:

1. Expand the activities related to the coordination of scientific workshops and conferences, authenticated reference materials, literature reviews, and sharing of technical information;
2. Augment and enhance overall research by sharing complementary resources with the collaborators by allowing FDA scientists to conduct collaborative research that addresses health issues and emerging health concerns that would improve the overall safety of natural products; and
3. Develop additional (new) activities including activities related to investigation of in vitro testing of botanical dietary ingredients.

Innovative activities made possible by supplemental funding will complement existing efforts under FDA's current cooperative agreement with the UM–NCNPR and will provide public health officials at all levels with sound public health information to support policy decisions and enhanced capabilities to communicate with their stakeholders.

V. Substantive Involvement by FDA

All terms and conditions of the current award shall remain in full force and effect for the supplemental awards.

VI. Review Procedure

The application submitted by the UM–NCNPR will undergo a noncompetitive, dual peer review. The application will be reviewed for scientific and technical merit by a panel of experts based on the following evaluation criteria: (1) Responsiveness to RFA, (2) adequacy of plan, (3) timeliness of program implementation, (4) adequacies and availability of research facilities, (5) ability to conduct proprietary research, (6) experience and conclusions, and (7) reasonableness of proposed budget.

If the application is recommended for approval, then it will be presented to the National Advisory Environmental Health Sciences Council.

VII. Reporting Requirement

All terms and conditions of the current award shall remain in full force and effect for the supplemental awards.

VIII. Mechanism of Support

Support will be in the form of supplements to FDA's cooperative agreement with the UM–NCNPR. This agreement will be subject to all policies and requirements that govern the research grant program of the PHS, including provisions of 42 CFR part 52 and 45 CFR part 74.

IX. Legend

Data and information included in the application, if identified by the applicant as trade secret or confidential commercial information, will be given confidential treatment as trade secret or confidential commercial information to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Dated: June 12, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–15492 Filed 6–19–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–C–2D]

FY 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Grants Programs for Fiscal Year 2002; Notice of Extension of Application Deadline

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs; notice of extension of application deadline.

SUMMARY: On March 26, 2002, HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. This notice extends the application due date for applicants in Charles, Dorchester and Calvert counties, Maryland (designated as disaster areas as the result of tornados) and in McDowell, Mercer, Mingo, Logan and Wyoming counties, West Virginia (designated as disaster areas as the result of severe storms, flooding, and landslides) who are seeking funding under the Continuum of Care Homeless Assistance Programs-Supportive Housing Program (SHP), Shelter Plus Care (S+C), Section 8 Moderate Rehabilitation Room Occupancy Program for Homeless Individuals (SRO).

DATES: The application due date for the Continuum of Care Homeless Assistance Programs—Supportive Housing Program (SHP), Shelter Plus Care (S+C), and Section 8 Moderate Rehabilitation Room Occupancy Program for Homeless Individuals (SRO) programs for applicants located in the Federally designated disaster areas has been extended to July 19, 2002. For all other applicants for this funding, the due date remains June 21, 2002.

FOR FURTHER INFORMATION CONTACT: For the programs affected by this notice, please contact the office or individual listed under the **FOR FURTHER INFORMATION** heading in the individual program section of the SuperNOFA, published on March 26, 2002 at 67 FR13826.

SUPPLEMENTARY INFORMATION: On March 26, 2002 (67 FR 13826), HUD published its Fiscal Year (FY) 2002 Super Notice of Funding Availability (SuperNOFA) for HUD's discretionary grant programs. The FY 2002 SuperNOFA announced the availability of approximately $2.2 billion in HUD program funds covering 41 grant categories within programs operated and administered by HUD offices. This notice published in today's **Federal Register** extends the application due date for the Continuum of Care Homeless Assistance Programs-Supportive Housing Program (SHP), Shelter Plus Care (S+C), and Section 8 Moderate Rehabilitation Room Occupancy Program for Homeless Individuals (SRO) programs for applicants located in counties declared disaster areas by the Federal Emergency Management Agency (FEMA) declarations FEMA–1409–DR and FR–1410–DR. Specifically, these declarations cover Charles, Dorchester and Calvert counties, Maryland and McDowell, Mercer, Mingo, Logan and Wyoming counties, West Virginia. Any additional counties designated as federal disaster areas under FEMA–1409–DR or FR–1410–DR will be posted on HUD's web page (www.hud.gov) and published by Federal Emergency Management Agency (FEMA) in the **Federal Register**. For all other applicants for this funding, the application due date of June 21, 2002 remains unchanged.

Dated: June 17, 2002.

Donna M. Abbenante,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 02–15645 Filed 6–17–02; 4:31 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Drought Management Plan for Operation of the Kerr Hydroelectric Project, Flathead Lake, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent and public scoping meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed drought management plan relating to operation of the Kerr Hydroelectric Project, Flathead Lake, Montana. This notice also announces public meetings to determine the scope of issues to be addressed in the EIS.

The purpose of this notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

DATES: Meeting Dates—

1. July 9, 2002, from 6:30 p.m. to 9:30 p.m., Kalispell, Montana.
2. July 10, 2002, from 6:30 p.m. to 9:30 p.m., Charlo, Montana.

Comment Dates: Comments on the scope and implementation of this proposal must be received before July 26, 2002.

ADDRESSES: Mail or hand deliver written comments to Jeffery Loman, Chief, Division of Natural Resources, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–3061, 1849 C Street NW., Washington, DC 20240. You may also fax comments to Chief, Division of Natural Resources, (202) 219–0006 or (202) 219–1255.

The first meeting will be held at the West Coast Outlaw Hotel, 1701 Highway 93 South, Kalispell, Montana.

The second meeting will be held at the Nine Pipes Lodge, 4100 Highway 93, Charlo, Montana.

FOR FURTHER INFORMATION CONTACT: Jeffery Loman, Chief, Division of Natural Resources, Office of Trust Responsibilities, Bureau of Indian

Affairs, MS: 3061, 1849 C St., NW., Washington, DC 20240, (202) 208–7373.

SUPPLEMENTARY INFORMATION: Flathead Lake is the largest natural fresh water lake in the western United States. It is home to the Confederated Salish and Kootenai Tribes of the Flathead Nation, whose Reservation encompasses an area including approximately the southern half of Flathead Lake. Flathead Lake is regulated by the operation of Kerr Dam, located at River Mile 72.0 at Polson, Montana. The Kerr Dam and Hydroelectric Project is located inside the exterior boundaries of the Flathead Indian Reservation and operates under a joint license issued by FERC on July 17, 1985 to PPL Montana, LLC, successor-in-interest to the Montana Power Company, and the Confederated Salish and Kootenai Tribes. The license has been amended several times since initial issuance.

Section 4(e) of the Federal Power Act authorizes the Secretary of the Interior to include conditions in hydropower licenses for the protection and utilization of Indian reservations. Under this authority, the Secretary of the Interior required that certain articles be included in the Kerr Project license for the protection and utilization of the Flathead Indian Reservation. Among these license articles are Article 56, which requires minimum instream flow rates for the protection of fisheries and other resources in the Lower Flathead River below Kerr Dam and Article 60, which requires the development and implementation of a drought management plan.

In addition, as set forth in Article 43, the Kerr Project is currently operated for flood control according to a 1962 Memorandum of Understanding, as amended, between PPL Montana, LLC, successor-in-interest to the Montana Power Company, and the U.S. Army Corps of Engineers.

During low water years, conflicts may occur between the minimum instream flow requirements of Article 56 and these flood control requirements. The drought management plan required by Article 60 is to resolve such potential conflicts.

The proposed action is to meet the requirements of Article 60 of the Kerr Hydroelectric Project license, issued by the Federal Energy Regulatory Commission (FERC). Article 60 calls for the development and implementation of a drought management plan by the licensees in consultation with the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, Bureau of Indian Affairs and Montana Department of Environmental Quality. Article 60 also requires that the drought management plan include a re-evaluation and adjustment of flood control requirements and other provisions necessary for compliance with lower Flathead River minimum instream flow mandates. PPL Montana, LLC, current operator of the Kerr Project, submitted a proposed drought management plan to the Secretary of the Interior on March 4, 2002. Under Article 60, the Secretary of the Interior has the authority to reject, modify, or otherwise alter the proposed drought management plan.

The Bureau of Indian Affairs has been delegated the responsibility to serve as the Lead Agency for National Environmental Policy Act compliance in connection with the proposed drought management plan. Issues to be addressed in the environmental analysis include, but are not limited to, hydroelectric power production, recreation, tourism, irrigation and farming, treaty-protected fisheries, biological resources, wildlife habitat, and Indian traditional and cultural properties and resources.

Alternatives to the proposed drought management plan to be examined in the EIS may include a variety of measures, such as adjustments to flood control rule curves, implementation of advanced climate prediction initiatives, and deviation from minimum instream flow requirements. The range of environmental issues and alternatives will be further developed based upon comments received during the scoping process.

Authority

This notice is published in accordance with section 1501.7, Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and the Department of the Interior Manual (516 DM 1.6) and is within the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: June 17, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–15628 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–5M–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–02–5101–ER–F330; (N–74943)]

Notice of Realty Action; Notice of Availability of Draft Amendment and Draft Environmental Impact Statement; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** May 31, 2002 (67 FR 38145) which announced the availability of the Draft Toquop Disposal Amendment to the Caliente Management Framework Plan and Draft Environmental Impact Statement for the Toquop Energy Project, located in Lincoln, Clark, and Washoe Counties. The **Federal Register** Notice of Realty Action, Notice of Availability, included public meeting dates and locations. The July 9 and July 10 meeting locations were incorrect.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, Team Lead, Bureau of Land Management, Ely Field Office, HC 33 Box 33500, Ely, NV 89301–9408.

Correction

In the **Federal Register** May 31, 2002 (67 FR 38145) on page 38146, in the first column correct the **DATES** caption to read:

DATES: The DEIS will be made available to the public on May 31, 2002. Copies of the DEIS will be mailed to individuals, agencies, or companies who previously requested copies. Mailed comments on the DEIS must be postmarked by August 29, 2002. Written comments on the document should be addressed to Gene A. Kolkman, District Manager, Bureau of Land Management, Ely Field Office, HC 33, Box 33500, Ely, NV 89301–9408.

Oral and/or written comments may also be presented at four scheduled public meetings to be held at the following locations.

—Monday, July 8, 2002, from 7 p.m. to 9 p.m.; City Hall, 100 Depot Avenue, Caliente, Nevada

—Tuesday, July 9, 2002, from 7 p.m. to 9 p.m.; Las Vegas BLM Field Office, 4701 Torrey Pines Drive, Las Vegas, Nevada

—Wednesday, July 10, 2002, from 7 p.m. to 9 p.m.; City Hall, 10 E. Mesquite Boulevard, Mesquite, Nevada

—Thursday, July 11, 2002, from 7 p.m. to 9 p.m.; Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada

Dated: June 4, 2002.

Gene A. Kolkman,

Ely Field Manager.

[FR Doc. 02–14619 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES 02–18]

American River Pump Station Project, Placer County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation) and the Placer County Water Agency (PCWA) have prepared a Final EIS/EIR for the American River Pump Station Project.

The proposed project would develop a pump station and related facilities on the North Fork American River near Auburn, California. The project would allow PCWA to convey its Middle Fork Project water entitlement to the Auburn Ravine tunnel to meet demands within its service area, eliminate safety concerns associated with the Auburn Dam construction bypass tunnel, restore the dewatered portion of the North Fork American River at the Auburn Dam construction site, and provide public river access in the project area. Both facilities and diversion-related impacts are addressed in the Draft EIS/EIR.

Notice of the Draft EIS/EIR was published in the **Federal Register** on September 13, 2001 (66 FR 47685). The public hearing was held on October 11, 2001. The written comment period ended December 13, 2001. The Final EIS/EIR contains responses to all comments received and changes made to the text of the Draft EIS/EIR as a result of those comments.

DATES: Reclamation will not make a decision on the proposed action until 30 days after release of the Final EIS/EIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Copies of the Final EIS/EIR in hard copy or on CD may be requested from Ms. Carol Brown, Surface Water Resources, Inc., at (916) 563–6360. The document can also be viewed on Reclamation's web page at *http://www.mp.usbr.gov/F_projects.html.*

See Supplementary Information section for locations where copies of the Final EIS/EIR are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick Hall, Reclamation, at (916) 989–7279, TDD (916) 989–7285, or e-mail *rhall@mp.usbr.gov;* or Mr. Brent Smith, PCWA, at (530) 823–4886.

SUPPLEMENTARY INFORMATION: Copies of the Final EIS/EIR are available for public inspection and review at the following locations:

- Auburn-Placer County Library, 350 Nevada Street, Auburn, CA 95603
- El Dorado County Main Library, 345 Fair Lane, Placerville, CA 95667
- Georgetown Divide Public Utility District, 6425 Main Street, Georgetown, CA 95634
- Lincoln Library, 590 5th Street, Lincoln, CA 95648
- Loomis Branch Library, 6050 Library Drive, Loomis, CA 95650
- Penryn Library, 2215 Rippey Road, Penryn, CA 95663
- Placer County Water Agency, 144 Ferguson Road, Auburn, CA 95604
- Rocklin Library, 5460 5th, Rocklin, CA 95677
- Sacramento Public Library, 828 I Street, Sacramento, CA 95814
- Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225, telephone: (303) 445–2072
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898, telephone (916) 978–5100
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses available for public disclosure in their entirety.

Dated: June 3, 2002.

Kirk C. Rodgers,

Regional Director.

[FR Doc. 02–15525 Filed 6–19–02; 8:45 am]

BILLING CODE 4310–MN–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–429 and 731–TA–1011 (Preliminary)]

Certain Cooked, Peeled, and Individually Quick Frozen Coldwater Pink Shrimp From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–429 (Preliminary) and antidumping investigation No. 731–TA–1011 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 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 Canada of certain cooked, peeled, and individually quick frozen coldwater pink shrimp,[1] imported under statistical reporting numbers 0306.13.0040, 1605.20.1010, and 1605.20.1030 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Canada and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by July 29, 2002. The Commission's views are due at Commerce within five business days thereafter, or by August 5, 2002.

For further information concerning the conduct of these investigations and rules of general application, consult the

[1] For purposes of these investigations, certain cooked, peeled, and individually quick frozen coldwater pink shrimp is defined as such shrimp of sizes 250/350 and 350/500 count per pound.

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: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), 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 these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on June 13, 2002, by the Oregon Trawl Commission, Astoria, OR; the Shrimp Producers Marketing Cooperative, Newport, OR; the Fishermen's Marketing Association, Eureka, CA; the Coos Bay Trawlers Association, Coos Bay, OR; and Bay Ocean Seafood Co., Garibaldi, OR.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations 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 countervailing duty and 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 these investigations 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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, 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 these investigations for 9:30 a.m. on July 3, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than June 27, 2002, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations 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 July 9, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigations. 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 investigations must be served on all other parties to the investigations (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: These investigations are 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: June 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–15552 Filed 6–19–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–748 (Review)]

Gas Turbo-Compressor Systems From Japan

AGENCY: International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 2002 to determine whether revocation of the antidumping duty order on gas turbo-compressor systems from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On June 12, 2002, the Department of Commerce published notice that it was revoking the order effective June 16, 2002 because ''no domestic interested party responded to the sunset review notice of initiation by the applicable deadline'' (67 FR 40270). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: June 16, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained 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*).

Authority: This review is being terminated under authority of title VII of the Tariff Act

of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: June 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–15553 Filed 6–19–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on May 14, 2002, a proposed amended consent decree in *United States* v. *Neville Land Company, et al.,* Civ. Action No. 97–1683, was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States is seeking response costs and injunctive relief to require environmental cleanup pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') 42 U.S.C. 9601 *et seq.,* in connection with the Ohio River Park Superfund Site (''Site'') on Neville Island, Allegheny County, Pennsylvania. The proposed decree will require defendants to perform the remedy selected by U.S. EPA for contaminated groundwater at the site. The decree will also require defendants to pay $35,839 in partial reimbursement of the United States' past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and transmitted by one of the following methods: (1) Via U.S. Mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, c/o Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should reference *United States* v. *Neville Land Company, et al.,* D.J. Ref. No. 90–11–3–1723.

The proposed consent decree may be examined at the Office of the United States Attorney, 633 United States Post Office and Courthouse, Pittsburgh, PA 15219, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of $22.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. Exhibits to the consent decree may be obtained for an additional charge.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–15523 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 26, 2001, and published in the **Federal Register** on December 20, 2001, (66 FR 65744), Cedarburg Pharmaceuticals LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II

The firm will manufacture these controlled substances for another firm.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cedarburg Pharmaceuticals, LLC to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15565 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 21, 2001, and published in the **Federal Register** on January 8, 2002, (67 FR 922), Cerilliant Corporation, 14050 Summit Drive #121, P.O. Box 80189, Austin, Texas 78708–0189, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine (9056)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II

Drug	Schedule
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cerilliant Corporation to import the above listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02-15563 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 1, 2002, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm is importing the phenylacetone to manufacture dextroamphetamine sulfate.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15567 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 8, 2001, Medeva Pharmaceuticals CA, Inc., which has changed its name to Celltech Manufacturing CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substances listed in Schedule II.

The firm plans to manufacture the listed controlled substance to make finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 19, 2002.

Dated: June 10, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15570 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 24, 2002, National Center for Development of Natural Products, The University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The firm plans to bulk manufacture for product development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 19, 2002.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15568 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 21, 2001, and published in the **Federal Register** on January 8, 2002, (67 FR 920), OraSure Technologies, Inc., Lehigh University, Seeley G. Mudd-Bldg. 6, Bethlehem, Pennsylvania 18015, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alphamethadol (9605)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to bulk manufacture the listed controlled substances to be used in-house to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of OraSure Technologies, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated OraSure Technologies, Inc. to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administration, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15562 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 22, 2002, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Poppy Straw (9650)	II

The firm plans to import the listed controlled substances for the manufacture of bulk pharmaceutical controlled substances and non-controlled substance flavor extract.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 22, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.34(a) , (b), (c), (d), (e), and (f) are satisfied.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–6]

Vincent J. Scolaro, D.O.; Grant of Restricted Registration

By order dated October 23, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Vincent J. Scolaro, D.O. (Respondent), seeking to deny his application for a DEA Certificate of Registration as a practitioner, pursuant to 21 U.S.C. 823(f), because granting the application would be inconsistent with the public interest.

The Respondent, through counsel, timely filed a request for a hearing on the allegations raised by the Order to Show Cause. The requested hearing was held in Jacksonville, Florida, on February 27, 2001. At the hearing, both

parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument. Neither party filed exceptions to Judge Randall's opinion, and on September 7, 2001, Judge Randall transmitted the record of these proceedings to the Deputy Administrator for his final decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact, conclusions of law, and decision of the Administrative Law Judge. His adoption is in no way diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

Prior to medical school, the Respondent received a Bachelors degree in chemistry from Eckerd College in St. Petersburg, Florida, in 1984. The Respondent received his Doctorate in Osteopathic Medicine from Southeastern College in North Miami Beach, Florida, in 1988. The Respondent's medical education included training in the use and prescribing of controlled substances. Subsequent to medical school, the Respondent completed an internship in Family Medicine and a residency through Southeastern College of Osteopathic Medicine. After his residency, the Respondent relocated, started practicing with another physician, and then entered solo practice.

Currently, the Respondent is board certified in Family Medicine. For board certification, the Respondent was required to complete a family practice residency and to pass oral and written examination. Board certified physicians also face higher requirements for continuing medical education and must reapply every three years.

By DEA Form 224, dated March 6, 2000, the Respondent applied for a DEA registration as a practitioner to handle controlled substances in schedules II through V. On his application, the Respondent answered that he had been convicted of a crime in connection with controlled substances under state or federal law. He also disclosed that he had surrendered or had a federal controlled substance registration revoked, suspended, restricted, or denied. Furthermore, the Respondent indicated that he had had a state professional license or a controlled substance registration revoked, suspended, denied, restricted, or placed on probation.

In the Respondent's written application, he succinctly and accurately described the dates and circumstances that surrounded the judgment against him and the surrender of his DEA registration and of his state license.

The Respondent was investigated by a DEA Diversion Investigator (D/I) and by a Special Agent (S/A) of the Florida Department of Law Enforcement. The record shows both individuals have various training, education, and experience relating to drug law enforcement, and were competent to testify as to the investigation of the Respondent.

In January 1998, a pharmacist working for Walgreen's in Deltona, Florida, contacted the D/I. The pharmacist told the D/I that the Respondent was picking up prescriptions, using fraudulent names. In light of DEA intelligence that the Respondent was getting fraudulent prescriptions, the D/I visited the Walgreen's pharmacy and obtained a pharmacy trace. A pharmacy trace, according to the D/I, comes from records that pharmacies are required to keep regarding prescriptions filled at the pharmacy. The DEA can ask a pharmacy for patient's names and the prescriptions actually filled at the pharmacy for that patient. The pharmacist can then search the database by patient name. The Walgreen's pharmacist also provided the D/I with the Respondent's vehicle license plate number and described the Respondent's vehicle as a white mini-van. Once the D/I had that information, the D/I contacted the S/A at the Belushi County Sheriff's Office. The investigators ran the license plate number given by the Walgreen's pharmacist and found that the vehicle was registered to the Respondent. The investigators together returned to the Walgreen's in Deltona to collect any prescriptions that were written by the Respondent for three individuals. As the Walgreen's pharmacist described to the investigators, the Respondent would either call in the prescription and pick it up through the pharmacy's drive-through, or he would drop off a prescription at the pharmacy and come back in one to three days. The prescriptions had the patient's name and the Respondent's signature. The Respondent would sign the patient's name on the claim log.

Upon further investigation of the three alleged patients, the D/I and S/A discovered that one of the patients was, in fact, the Respondent's wife. The Walgreen's pharmacist was able to identify her from a photograph because she had picked up numerous prescriptions. Investigators did not talk to her in their investigation, however, because of her perceived conflict of interest.

Investigators found another alleged patient in Hollywood, Florida, and spoke to him. He told the investigators that he had never been seen by the Respondent, but did state his brother was a good friend of the Respondent. The Walgreen's Prescription Claim Logs did not indicate any insurance involvement for the prescriptions filled under this alleged patient's name.

When investigators talked with the third alleged patient, she was discovered to be the Respondent's eighty-four-year-old neighbor. When the investigators showed her the prescriptions attributed to her, this alleged patient stated that these prescriptions were not for her, although her late husband was a patient of the Respondent. This alleged patient stated that she had received prescriptions from another physician, but not the Respondent.

On May 15, 1998, pursuant to the issuance of an arrest warrant, the D/I and S/A arrested the Respondent at home. At the time of the arrest, the investigators searched the Respondent's vehicle and found prescription drugs. They also brought the Respondent to his offices and attempted to obtain his records on the three above-mentioned individuals; however, the Respondent had no such records. After the Respondent's arrest, and with his consent, the investigators had the Respondent tested for drug use. The Respondent tested positive for barbiturates, diazepam, and opiates.

After the Respondent's arrest, the investigators took him to the local DEA District office for an interview. At the interview, the Respondent signed a waiver of his rights. The Respondent confirmed that he did not have medical files or other records for the three alleged patients mentioned above.

All of the prescriptions in evidence were obtained from no more than five pharmacies. In May 1998, the DEA was contacted by another pharmacist at Target Pharmacy, regarding prescriptions written by the Respondent for one of the previously mentioned alleged patients. The pharmacist recognized the Respondent's name from a DEA press release. The DEA actually obtained the prescriptions from the pharmacy and found that they corresponded to the same period as the other prescriptions found at other pharmacies. All of the prescriptions

were issued prior to the Respondent's conviction.

Dr. Raymond Pomm is Medical Director for the Impaired Practitioners' Program for the State of Florida, also known as the Physician's Recovery Network (PRN), and is an expert in psychiatry and addiction medicine for professionals, including health care professionals. As Director, Dr. Pomm is directly responsible to the Department of Health for Florida and oversees interventions, evaluations, treatments, and the monitoring of impaired professionals. As Director of the PRN, Dr. Pomm has the authority to request an emergency suspension of license from a state agency if he knows a practitioner from the PRN has problems and if he believes that the practitioner cannot practice with the requisite skill and efficiency. The PRN had approximately 1100 professionals in treatment at the time of the hearing.

Dr. Pomm first came in contact with the Respondent's case when a representative from Florida's Agency for Health Care Administration called Dr. Pomm, seeking an evaluation of the Respondent. Dr. Kenneth W. Thompson conducted an inpatient evaluation of the Respondent on May 28, 1998. Dr. Pomm and Dr. Thompson found that the Respondent was not able to practice medicine with reasonable skill and safety. In addition to the inpatient evaluation, the Respondent also received psychiatric treatment. The Respondent's diagnosis was psychotic disorder.

Based on Dr. Pomm's and Dr. Thompson's recommendations, the Respondent voluntarily withdrew from practice immediately. Eventually, the Respondent officially entered a voluntary withdrawal from practice with the Agency of Healthcare Administration. On July 12, 1999, the Respondent also voluntarily surrendered his DEA registration. The Respondent entered treatment and evaluation.

Mr. Meagher is a certified addictions professional and is employed by Turning Point of Central Florida. Since 1979, he has worked in various counselor and managerial positions in the field of addiction. Specifically, Mr. Meagher has been with the PRN since 1987 or 1988. Mr. Meagher's role is to get involved should a PRN participant violate his or her PRN contract. Mr. Meagher also monitored and facilitated the Respondent's group therapy sessions. Mr. Meagher remembered the Respondent as entering the PRN in 1998. At first, Mr. Meagher believed that the Respondent seemed secretive, paranoid, and unsure whether people were trying to help or hinder him. Slowly, however, the Respondent began to recognize that he was no different from anyone else in the group therapy sessions run by Mr. Meagher. Over time, the Respondent learned to trust others in the group, and recently had been able to assist others who have had difficult situations or problems. Respondent had become more willing to participate and speak about issues surrounding, *inter alia,* the DEA, the Florida Board of Osteopathic Medicine (State Board) and his family.

The Respondent underwent outpatient treatment for mental health and substance abuse at Turning Point. He initially saw a therapist every week and a psychiatrist every two weeks. Besides his two week inpatient evaluation, the Respondent did no other inpatient care. As of the date of the hearing, Mr. Meagher believed that the Respondent had been in total compliance with his PRN contract. If Mr. Meagher believed that the Respondent was not in compliance with his contract, he would notify Dr. Pomm and advise him to seek a second evaluation of the Respondent. Mr. Meagher also testified that the Respondent ''would be an asset in the community [if he were able] to practice medicine to the full extent.'' He also stated that it would be a benefit to the Respondent's patients if the Respondent were granted a DEA registration.

The Respondent entered into a written contract with PRN. The contract details the type of treatment and monitoring recommended for the Respondent. A typical PRN contract lasts for five years. A contract generally stays in effect after an individual resumes his or her medical practice, to ensure continued progress. The program entails a high standard for urine screening that tests for a wider range of drugs than other screening processes used in similar programs in many other regions of the country. The standard is high in light of stringent observation and chain of custody rules and computer randomization. A participant must attend weekly support group sessions with other impaired professionals. Judge Randall found the Respondent thus far has been very compliant with the terms of his PRN contract.

The Respondent recalls that he last used drugs on May 15, 1998, his sobriety date. He characterized his drug use at the time of the intervention to be light to moderate. Pursuant to his contract, the Respondent's frequency of random substance abuse tests is, on average, every two weeks or twice a month. The Respondent must call a toll-free number every day to see if he must provide a urine sample for testing. If the Respondent fails to so provide a requested urine sample, the PRN assumes that the failure is deliberate because the program participant knows that his or her test results would be positive if taken on that date. The Respondent also has urine testing twice a month pursuant to the terms of his probation. There is no evidence in the record that Respondent has ever had a positive result reported from PRN or his court-directed urinalysis.

Also, a PRN participant typically must attend a twelve-step program for recovery. At the Respondent's stage, Dr. Pomm believes that a person should be attending two to three times per week. Dr. Pomm testified that a participant should never attend less than one meeting a week after hitting the five-year mark.

The Respondent is not allowed to take mood altering drugs at all, even by prescription, without first informing the PRN. Thus, the Respondent has a primary care physician with knowledge of the Respondent's PRN contract and his chemical dependency diagnosis and treatment. The Respondent is also required to see a psychiatrist for ongoing medication of his condition. The Respondent participates in a weekly support group for the PRN, specifically for issues facing professionals. The Respondent attends group meetings in Orlando, Florida, monitored and facilitated by Mr. Meagher. As facilitator, Mr. Meagher reports problems whenever seen, and also gives a quarterly report to PRN about the Respondent's participation. The report contains the patient's attitudes, behaviors, attendance at group therapy, and signs or symptoms of relapse. Such signs might be the lack of attending meetings, avoidance of interaction with others in the group, and solitude or not participating in the group. The Respondent has missed group meetings five times, and each occasion was considered a justified absence. The Respondent reported his proposed absence before the meeting, rather than his missing a meeting and then offering an explanation.

The Respondent reports to the State board on a regular basis. The Respondent also signed a release, so the PRN can have access to records of his medical activities. The Respondent agreed that he would withdraw from practice immediately, if Dr. Pomm so instructed. Thereafter, Dr. Pomm would notify the State Board immediately, and investigators from PRN and the State Board would be looking for the Respondent, if necessary.

Dr. Pomm testified the PRN's primary goal is to protect the public, so that rehabilitation of an impaired physician is secondary to the public's protection. From 1995–2000, however, less than 10% of participants relapsed at all after having completed the five-year PRN program. The PRN has an 80% success rate, within the first two years of treatment. The rates of relapse in the Florida program are similar to the rates in other states' programs nationally. A relapse within the two-to-five-year mark is often due to a person's not practicing a recovery program.

He further stated that the type of drug is a factor for relapse in early recovery, but is not so significant once a person has hit the 5 year mark. Notably, the rate of relapse among pharmacists is the same as physicians, despite the former's contact with controlled substances on a regular basis. According to Dr. Pomm, the abuser does not stop abusing a controlled substance because of lack of access, but rather because he or she participates in a recovery and monitoring program. ''[S]o, preventing [the Respondent's] impairment * * * is not done by preventing his prescribing.''

Since April 21, 1999, Dr. Pomm has found the Respondent safe to return to the practice of medicine. Dr. Pomm's opinion is based on another evaluation and a University of Florida Cares assessment, done on February 10 and 11, 1999. The University of Florida Cares assessment is an intense two-day evaluation of a practitioner's competence to practice. The program's recommendations for the Respondent were indirect supervision, chart audits, and Continuing Medical Education. Dr. Pomm testified that it is safe for the Respondent to prescribe controlled substances because the Respondent's disease is in remission, Respondent is maintaining recovery, Respondent is being monitored satisfactorily, and Respondent has confidence in his own skills, as evidenced by his passage of the University of Florida Cares course.

Dr. Pomm recommended that the Respondent be allowed to practice medicine with certain conditions. He suggested that the Respondent's prescribing needed to be monitored, though such monitoring would stem from the disciplinary process rather than any recovery process. But, Dr. Pomm does believe that monitoring would be needed for the safety of the public. Dr. Pomm's recommendation comes from this level of comfort that the Respondent would fit into normal statistics of success for PRN participants. He believes that the Respondent has successful in the PRN program and that there is no ''medical contraindication'' to the Respondent's having a DEA registration. On the contrary, Dr. Pomm suggests that lacking a DEA registration has a negative impact on the Respondent's practice. Dr. Pomm testified to his belief that it is important for a doctor's recovery to engage in the full practice of medicine.

Additionally, Dr. Pomm noted that continuity of care is critical to a patient's well-being. Furthermore, he believes the Respondent is safe to practice medicine, under the same restrictions and protections for the public that exist under the State Board's probation. Dr. Pomm concluded that the Respondent should get a DEA registration with the same restrictions as are in the State Board's Order.

Mr. Meagher also testified that the Respondent would be an asset to the community as a physician and has no qualms about the Respondent's current safety in working with the public. Mr. Meagher stated his belief that a DEA registration would be a benefit to the Respondent's patients.

The Respondent voluntarily withdrew from the practice of medicine on July 9, 1998. The Respondent agreed to abstain from the practice of medicine until the State Board issued a final order in his case. The State Board's Order Reinstating License and Setting Terms of Probation was signed on December 15, 1999, and runs concurrently with the Respondent's contract with the PRN. The Order placed restrictions on the Respondent's medical practice. Among those restrictions are: (a) The Respondent shall issue no controlled substance prescriptions to family members, immediate or otherwise; (b) the Respondent shall keep a log of all Schedule II and III controlled substances that he prescribes, including the date prescribed, the patient's name, the drug name and quantity, and a brief description of reason for the prescription; (c) the log shall be made available for review by an investigator for Florida's Agency for Health Care Administration or by Florida's Department of Health at reasonable times and without prior notice; (d) the Respondent shall use sequentially numbered, triplicate prescriptions for all prescriptions of schedule II and III controlled substances, and the Respondents shall distribute a copy to his monitor, place a copy in the patient's file, and maintain a copy in his office for inspection; (e) if the Respondent leaves the State of Florida for thirty days or more, or if he does not actively engage in the practice of medicine in the State of Florida, certain provisions of his probation are tolled until his return to active practice in Florida. The tolled provisions include the time period of the probation, provisions regarding supervision by a monitoring physician, and provisions regarding the reports that must be filed. If the Respondent leaves the active practice of medicine in the State of Florida for a year or more, the Board may require a demonstration that the Respondent is still qualified to practice with reasonable skill and safety before the Respondent resumes practice. The Board also requires the Respondent to comply with all terms and conditions of his criminal probation, and imposes various costs upon him for the administration of the agreement and for drug testing.

On April 28, 1999, the Circuit Court for the Seventh Judicial Circuit in Volusia County, Florida, entered an Order of Drug Offender Probation in *State of Florida* v. *Vincent J. Scolaro,* Case No. 97–2146CFAWS and 98–0739CFAWS. The Respondent pleaded nolo contendere to Resisting Arrest with Violence and to Unlawfully Obtaining/Attempting to Obtain a Controlled Substance. Both offenses are third degree felonies in Florida.

Pursuant to the conditions of the court's Order, the Respondent served a ninety-day jail term with credit for two days of time served. Having pleaded guilty to felonies, the Respondent was required to register at the Sheriff's Office in the County where he resides. The Order withholds adjudication and imposes a five-year Drug Offender Probation upon the Respondent under the supervision of the Florida Department of corrections. The Respondent must report monthly to his probation officer, and procure his officer's consent before changing his residence or employment, or before leaving the county. Additionally, the Respondent must totally abstain from consuming excess amounts of alcohol, or any drugs or controlled substances, unless they are prescribed by a physician.

The Order prohibits the Respondent from going to business establishments whose primary purpose is to sell or to encourage the consumption of alcohol, and from going to areas in the community where illegal drugs are bought,sold, or used. He must submit to alcohol and drug testing at any time that his probation officer requests. Generally, the Respondent is tested once or twice a month as part of his criminal probation, in addition to the two to three times a month he is tested as part of his PRN contract.

In addition to the PRN contract requirements, the Respondent had to

complete the Department of Corrections' Drug Offender Program. during this program he also had to attend at least two recovery meeting per week in either Narcotics Anonymous or AA, and to provide documentary evidence of his participation to his probation officer. Pursuant to the court's Order, the Respondent also had to complete outpatient and/or inpatient mental health counseling as directed by the PRN program.

The court order also requires that the Respondent not violate the law or associate with a person who is engaged in any criminal activity. A conviction is not necessary for the Respondent to have violated this term of his probation. Also,he must maintain or actively seek employment and pay a number of fees for such things as the cost of his supervision and of the investigation and prosecution of his case by the state.

The Respondent's Probation Officer, Ronald Murray, has worked for the Probation and Parole services, Florida Department of Corrections, Seventh Judicial Circuit, Deland, Florida, for nine years. As of the date of the hearing, he was serving in the position of Correctional Probation Senior Officer. Mr. Murray served as the Respondent's probation officer from April 28, 1999, to January 16, 201. As a probation officer, Mr. Murray visited periodically with the Respondent in his office an din the Respondent's home. Additionally, Mr. Murray was responsible for monitoring the Respondent's compliance with random urine tests and the substance abuse treatment program, as ordered by the court.

Mr. Murray testified that the Respondent, in a consistently timely manner, has been totally compliant with everything required or requested of him. Mr. Murray believes that the Respondent is sincere in his desire to comply with his probation and the law.

The Respondent has a monitoring doctor at the medical center, Dr. Mark Webster. Dr. Webster is a Board Certified Family Physician who acts as the supervisory physician for the Respondent pursuant to the terms of the Respondent's probation from the Department of Health. He works in the same office as the Respondent, and, since April 1, 2000, they have seen each other regularly throughout the eight to ten hour work day. Dr. Webster also believes that the Respondent is doing well in his rehabilitation and is in full compliance with his PRN contract. Dr. Webster testified that the Respondent ''is sincere about his recovery and has an excellent attitude towards recovery.'' Dr. Webster agrees that the Respondent can safely practice medicine and responsibly exercise DEA prescribing privileges.

Judge Randall found that the Respondent's care for his patients is hampered by his lack of a DEA registration. For example, the Respondent, without a DEA certificate, cannot receive hospital privileges in Florida. Additionally, certain insurance carriers will not approve prescriptions for non-controlled substances, such as antibiotics, because the Respondent lacks a DEA number.

The Respondent acknowledged that he fraudulently wrote, for his own use, the prescriptions dated from November of 1994 through May 8, 1998, contained in the Government's exhibits. He further acknowledged that he was addicted to hydrocodone products at the time he wrote the prescriptions offered by the Government. The Respondent credibly described his past history of denial of his substance abuse problem and his withdrawal from other people around him. He contrasted that past with his current ''normal life'' and ''normal interactions.'' Specifically, since the intervention, the Respondent has changed his life by exercising more, socializing more, and experiencing better personal relationships with his wife, his brothers, and his parents.

The Respondent and his wife previously had lost a baby. At the time of the hearing, however, the Respondent and his wife had a four-month old baby. The Respondent's 36-year old brother, Timothy Scolaro, lives in Coconut Creek, Florida, is married, and has a three-year-old daughter. The Respondent and his brother share a good relationship, talking approximately twice a month and seeing each other three to four times a year. Regarding the Respondent's rehabilitation, Timothy Scolaro also reports that the Respondent seems to be doing fine, appears to be much happier, is much more open and willing to talk, and is taking better care of himself. The Respondent's 37-year-old brother, Dan Scolaro, lives in Broward County, Florida. Dan Scolaro talks to the Respondent weekly on the phone and sees him around eight times a year. Dan Scolaro wrote that since undergoing his recovery, the Respondent has lost 40 pounds and exercises every day. He describes the change in the Respondent's attitude as being remarkable. He too finds that the Respondent is doing well in his rehabilitation, and that he is ''open and communicative.''

Currently, the Respondent is happy about being a new father. The Respondent is confident that, as long as he keeps doing fine, there would not be a problem if he were again given a DEA registration. He continues to go to Narcotics Anonymous meetings two to three times a week and acknowledges that he will always consider himself an addict.

Pursuant to 21 U.S.C. 823(f), and subdelegations of authority thereunder found at 28 C.F.R. 0.100(b) and 0.104, the Deputy Administrator may deny an application for registration as a practitioner, if he determines that the issuance of such a registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in evaluating the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances;

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive. The Deputy Administrator may properly rely on any one or any combination of these factors, and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989). As an initial matter, the Government bears the burden of providing that registration of the Respondent is not in the public interest. See *Shatz* v. *United States Dep't of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989).

Regarding factor one, the recommendation of the State licensing board, Judge Randall found the State Board has not made any official recommendation regarding this proceeding's outcome. Judge Randall further noted, however, that the Deputy Administrator has considered facts surrounding state licensure under this factor, See In the Matter of David M. Headley, M.D., 61 FR 39,469, 39,470–71 (1996).

In Headley, the ten-Deputy Administrator approved a physician's application for a DEA registration, subject to conditions. Id. at 39,471. There, the Deputy Administrator noted that the state board quickly responded to the situation after discovering the applicant's drug abuse, acknowledged the applicant's recovery, reinstated the applicant's license, and allowed the

Respondent to apply for a DEA registration. Id. at 39,470–71.

Similarly to Headley, in the instant case the appropriate state health care authority also acted quickly following the Respondent's arrest. The Respondent entered the PRN program and is following through with treatment, according to the PRN staff, the Respondent's monitoring physician, and his family who offered testimony. The individuals who are vested by the State Board with the Respondent's treatment all agree that he is safe to return to practice in light of the ongoing treatment and monitoring that is maintained pursuant to the State Board's Order. Furthermore, the Respondent is in compliance with his responsibilities to keep the State Board appraised of his progress. Judge Randall noted that the Respondent's steady progress was not disputed by the Government. Rather, the Government draws attention to the Respondent's voluntary withdrawal from practice and the State Board's decision to place the Respondent on probation. The Deputy Administrator concurs with Judge Randall's finding that while those facts are relevant and undisputed, also relevant is the Florida State Board's decision that currently authorizes the Respondent to prescribe Schedule II and III controlled substances, with restrictions and monitoring during the probationary period. Similarly to the state board in Headley, the Florida State Board has acknowledged the Respondent's continued recovery in the PRN and reinstated his license to practice medicine. While the State Board did not affirmatively state that the Respondent could apply for a DEA registration, Judge Randall found that the State Board by implication acquiesced to the Respondent's application because the State Board has given state authority to the Respondent to prescribe controlled substances. Such authority would be meaningless if the State Board did not believe that the Respondent should be granted a DEA registration.

In light of the State Board's quick response to the Respondent's situation and its decision to reinstate the Respondent's license to practice with restrictions, the Deputy Administrator concurs with Judge Randall's conclusion that the Florida State Board implicitly agrees that the Respondent is ready to maintain a DEA registration upon the terms set forth in the State Board's December 15, 1999 Order.

Regarding factors two and four, experience in dispensing controlled substances, and compliance with laws related to controlled substances, the Deputy Administrator concurs with Judge Randall's finding that when looking at the Respondent's past experiences in handling controlled substances, one must consider his undisputed record of substance abuse and egregious misconduct in issuing fraudulent prescriptions, a record of numerous violations extending over a number of years. The Government asserts that the Respondent's conduct was proscribed by 21 U.S.C. 829 and 841(a)(1) and 21 C.F.R. 1306.04. Judge Randall concurred, and further concluded that the Respondent's conduct also violated Florida State law. Clearly, the Respondent's conduct was in direct violation of the State and Federal law relating to the handling of controlled substances, as well as in violation of DEA regulations. His multiple breaches of the law, brought on by his personal addiction to controlled substances, are no less serious merely because the Respondent did not unlawfully provide controlled substances to others. The Deputy Administrator concurs with Judge Randall's finding that Respondent's repeated violations were intolerable and would provide more than sufficient reason, if not addressed, to deny the Respondent's application for a DEA registration.

The Respondent's conduct has gone through a dramatic change since he entered the PRN program, however. The State Board's monitoring, the frequent and random drug testing, and the Respondent's consistent record of compliance with all terms of probation and PRN contract together constitute strong evidence that the Respondent is well on the way to rehabilitation, and does not pose a threat to the public interest. The Respondent did not gain any further experience in dispensing controlled substances since his arrest, but he did demonstrate that he no longer illegally obtains controlled substances, and that he actively manages his addiction. The Deputy Administrator further concurs with Judge Randall's significant that the State Board decided to reinstate the Respondent's state authorization to handle controlled substances, subject to the restrictions set out in its December 15, 1999 Order.

Regarding factor three, convictions under Federal or State laws relating to controlled substances, the Deputy Administrator finds the Respondent entered a plea of nolo contendere in the Circuit Court for the Seventh Judicial Circuit in Volusia County for Unlawfully Obtaining/Attempting to Obtain a Controlled Substance. The offense is a third degree felony in Florida, and imposed jail time, probation, and the costs inherent in the management of the Respondent's probation. The Respondent's probation officer also attested to the Respondent's progress and compliance with the Court's probation. Although the Court's order withheld adjudication of guilt during the Respondent's participation in five years of probation, the Deputy Administrator concurs with Judge Randall's finding that the DEA has found such a judicial action satisfies the ''conviction'' component of this factor. See, e.g., Yu-To Hsu, M.D., 62 FR 12,840 (1997) (''DEA has consistently held that a deferred adjudication of guilt following a plea of guilty is a conviction within the meaning of the Controlled Substances Act.'') (quoting Harlan J. Borcherding, D.O., 60 FR 28,796 (1995)).

Regarding factor five, other conduct which they may threaten the public health or safety, the Government notes the Respondent's past abuse of controlled substances, prior to his entry into rehabilitation. The Government admits, however, that the Respondent's agreement with the Florida State Board to monitor his recovery provides mitigating circumstances. Despite the Respondent's evidence of his continuing strong recovery, the Government concludes that the Respondent is in the early stages of rehabilitation, and that he has not shown that he is ready for the responsibilities of a DEA registration. Considering all of the facts and circumstances in evidence, Judge Randall did not concur with the Government's assessment.

Judge Randall found the Respondent began his career with excellent prospects, as evidenced by his board certification, which he has maintained. It is true that the Respondent's conduct during his addiction included unlawful prescribing of controlled substances, unlawful consumption of controlled substances, and deception of his colleagues, family, and friends. Such behavior, absent rehabilitation, would support a decision to deny his pending application. The Deputy Administrator concurs with Judge Randall's finding that the Respondent has succeeded outstandingly in a well established, aggressive rehabilitation program, however. The program's treatment and assessments are rigorous, yet all of the Respondent's evaluators agree that he is performing with excellent results. The Deputy Administrator concurs with Judge Randall's conclusion that the Respondent has returned to a safe and healthy practice of medicine, due to the initial intervention of the State Board and the PRN, the monitoring he has received through the PRN, has new

employment with monitoring by Dr. Webster, and his probation with the Circuit Court.

The Deputy Administrator finds the Respondent has complied with the Court's terms of probation without incident. Unlike the Respondent in the Headley case, the Respondent has maintained a change in his lifestyle and has encountered no incidences of relapse since his reinstatement. See Headly at 39,469 (noting Dr. Headley's relapse). The experts agree that the Respondent's current condition indicates that he will continue to progress in a positive direction, drug-free and committed to his family and profession.

Further, the Respondent enjoys a support network in addition to the PRN, his family. His marriage and relationships with his siblings and his parents have changed to become stronger, which is in no small part due to the recent birth of his daughter. Judge Randall noted the Respondent's demeanor and testimony during the hearing were consistent with the remarks of the professionals who monitor him and his family. The Deputy Administrator concurs with Judge Randall's conclusion that the Respondent understands and has accepted responsibility for his past actions and sees his recovery from his addiction as a multifaceted and ongoing process. The network of family and interested colleagues, in light of the testimony of the Respondent's colleague and PRN staff, lends firm support to granting the Respondent's application.

The Deputy Administrator concurs with Judge Randall's finding that the Government has met its burden of proof for denial of the Respondent's pending application for registration. As Judge Randall correctly notes, however, the Deputy Administrator must consider all of the facts and circumstances of a particular case when deciding the appropriate remedy. See Martha Hernandez, M.D., 62 FR 61,145, 61,147 (1997).

After a review of the totality of the circumstances, the Deputy Administrator concurs with Judge Randall's conclusion that it would be in the public interest to grant the Respondent's application. The Deputy Administrator further concurs with Judge Randall's finding that the Respondent has demonstrated sufficient evidence of rehabilitation to warrant granting his application. See Jimmy H. Conway, Jr., M.D., 64 FR 32,271 (1999); see also Robert G. Hallermeier, M.D., 62 FR 26,818 (1997). The Respondent should be allowed the opportunity to demonstrate that he can now handle the responsibilities of a DEA registrant. He has accepted responsibility for his past offenses and for his recovery. The record amply supports the conclusion that the Respondent will not repeat past misconduct. and relapse is extremely unlikely.

The Deputy Administrator further concurs with Judge Randall's conclusion that further monitoring by the DEA is appropriate, however. Given the aggressive monitoring by the PRN program, and the continuing supervision of the Respondent's conduct by Florida's probation system, federal oversight may seem redundant. Yet the DEA is also charged with protecting the public interest through its registration process. Here, given the evidence of less than five years of recovery time, monitoring by the DEA is warranted to protect the public interest. See Roger Lee Kinney, M.D., 64 FR 42,983 (1999).

Accordingly, the Respondent's application for a DEA Certificate of Registration in Schedules II through V is hereby granted, subject to the following restrictions:

(1) The Respondent, the PRN monitoring professionals, and the Respondent's probation officer shall file with the local DEA office copies of the status reports of the Respondent's progress that are already being filed with the Florida State Board;

(2) The Respondent shall agree to random warrantless inspections of his office, files, and prescription logs by DEA employees in addition to the terms set forth for random inspections under the Florida State Board's Order;

(3) The Respondent shall inform the DEA, within 30 days of the event, of any action taken by any state upon his medical license or upon his authorization to handle controlled substances within that state;

(4) These conditions shall extend through the three-year registration period.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration submitted by Vincent J. Scolaro, D.O., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than July 22, 2002.

Dated: June 11, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–15564 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 27, 2001, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059)	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate tot he Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 7, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–15566 Filed 6–19–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 13, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158 or E-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), with 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the property performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: revision of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Applications for Authority to Employ Full-Time Students at Sub-minimum Wages in Retail or Service Establishments or Agriculture.

OMB Number: 1215–0032.

Affected Public: Business or other for-profit, farms, individuals or households; and not-for-profit institutions.

Frequency: Annually.

Number of Respondents: 350.

Number of Annual Responses: 350.

Estimated Time Per Response: 10 to 30 minutes.

Total Burden Hours: 69.

Total Annualized Capital/Startup Costs: $129.50.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Sections 14(b)(1) and 14(b)(2) of the Fair Labor Standards Act (FLSA) require the Secretary of Labor to provide certificates authorizing the employment of full-time students at 85% of the applicable minimum wage in retail or service establishments and in agriculture to the extent necessary in order to prevent curtailment of opportunities for employment. Sections 519.3, 519.4, and 519.6 of Regulations 29 CFR part 519, set forth the application requirements and terms and conditions for employment of full-time students at sub-minimum wages. The WH–200 and WH–202 are voluntary use forms that are prepared and signed by an authorized representative of the employer to employ full-time students at sub-minimum wage. This information is used to determine whether a retail or service or agricultural employer should be authorized to pay sub-minimum wages to full-time students pursuant to the provisions of section 14(b) of the FLSA. Without the application, employers could not obtain a certificate authorizing payment of full-time students at sub-minimum wages and job opportunities for such students would be reduced.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Rehabilitation Plan and Award.

OMB Number: 1215–0067.

Affected Public: Business or other for-profit; and Individuals or households.

Frequency: On occasion.

Number of Respondents: 7,000.

Number of Annual Responses: 7,000.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 3,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Woerkers' Compensation Program (OWC) administers the Longshore and Harbor Workers' Compensation Act (LHWCA) and the Federal Employees' Compensation Act (FECA). Section 8104(a) of the Federal Employees' Act provides that eligible workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employees' Compensation Fund. Section 39(c) and (2) of the Longshore Act provide that eligible injured workers are to be assisted in obtaining the best rehabilitation services available and the fund provided in Section 44 is to be used where necessary rehabilitation services are not available otherwise. The OWCP–16 is the plan for rehabilitation services, submitted by the injured worker and vocational rehabilitation counselor, and OWCP' award of payment from funds provided for rehabilitation. If the OWCP–16 were not utilized, then OWCP would have to resort to unusual and time consuming methods to limit the types and amounts of funding available.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Report of Changes That May Affect Your Black Lung Benefits.

OMB Number: 1215–0084.

Affected Public: Individuals or households.

Frequency: Biennially.

Number of Respondents: 25,000.

Number of Annual Responses: 1.

Estimated Time Per Response: 5 to 8 minutes.

Total Burden Hours: 2,208.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Federal Coal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 936, 30 U.S.C. 941, and 20 CFR 725.533(g) provides for the reporting of certain changes which may

affect a coal miner beneficiary's black lung benefits. The CM–929 is designed for this use.

Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. To ensure that there is a review and update of all Trust Fund cases and to help the beneficiary comply with the need to report certain changes, the CM–929 is sent to all Trust Fund primary beneficiaries. This information reduces the potential for overpayments and for underpayments to payees due to unreported changes in status.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–15557 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 7, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Contribution Operations.

OMB Number: 1205–0178.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Quarterly.

Number of Respondents: 53.

Annual Responses: 212.

Average Response Time: 8.5 hours.

Estimated Burden Hours: 1,802.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The form ETA 581 reports quarterly data on State agencies' volume and performance in wage processing, promptness of liable registration, timeliness of filing contribution and wage reports, extent of tax delinquency, and results of field audit programs. This collection of information is authorized under Title III, Section 302(a) of the Social Security Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–15558 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the worker are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 1, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of May, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTIONS ON 05/06/2002

TA–W	Subject Firm (petitioners)	Locations	Date of petition	Product(s)
41,465	Energy Convertors (Wkrs)	Dallas, PA	02/07/2002	Heating Elements.
41,466	Execumold (Wkrs)	Erie, PA	02/21/2002	Plastic and Electrical Injection Molds.
41,467	I.C. Isaacs and Co. (Co.)	New York, NY	04/10/2002	Clothing.
41,468	Pacific Crest Lumber (Wkrs)	Winlock, WA	04/05/2002	Pallets.
41,469	Telect (Co.)	Liberty Lake, WA	04/16/2002	Fiber Optic Patchcords.

PETITIONS INSTITUTIONS ON 05/06/2002—Continued

TA–W	Subject Firm (petitioners)	Locations	Date of petition	Product(s)
41,470	Milco Industries (Wkrs)	Bloomsburg, PA	04/15/2002	Undergarments, Night Gowns, PJs, Robes.
41,471	Cummins, Inc. (Wkrs)	Fridley, MN	04/08/2002	Generator Sets, Switch Gear.
41,472	Deeter and Tool (Wkrs)	Erie, PA	03/28/2002	Molds and Repair.
41,473	Mount Vernon Mills (Co.)	Alto, GA	04/12/2002	Spin Yarn.
41,474	Aerus Electrolux (Wkrs)	Bristol, VA	04/02/2002	Sidekicks.
41,475	Ruger Equipment (Wkrs)	Uhrichsville, OH	04/01/2002	Hydraulic Load Lifting Equipment.
41,476	Calvin Klein Jeanswear (UNITE)	New York, NY	04/10/2002	Jeanwear.
41,477	Volex (Wkrs)	Dartmouth, MA	04/04/2002	Electrical Cable.
41,478	Radiio Fequency (Wkrs)	Marlboro, NJ	04/10/2002	Various Communication Antennas.
41,479	Textron Golf, Turf (UAW)	Racine, WI	04/25/2002	Lawn and Turf Care Products.
41,480	Newell Mfg. (UAW)	Lowell, MI	04/18/2002	Metal Stampings for Auto & Truck.
41,481	Siemens Energy (IBEW)	Bellefontaine, OH	04/25/2002	Electrical Boys and Switches.
41,482	D. Hersh Neckwear (Wkrs)	Worcester, MA	04/12/2002	Neckties.
41,483	Acorn Products (Wkrs)	Lewiston, ME	04/16/2002	Slippers, Socks, Footwear.
41,484	Crossroad Knitting (Co.)	Claudville, VA	04/16/2002	Socks.
41,485	Fold Pak Gulf States (PACE)	Newark, NY	04/09/2002	Packaging.
41,486	Mirro Company (Wkrs)	Manitowoc, WI	01/14/2002	Cookware and Bakeware.
41,487	Benchmark Ceramics (Wkrs)	Cheektowaoa, NY	11/15/2002	Thermo-Couple Sleeves, Heater Tubes.
41,488	Terry Products (Co.)	Kannapolis, NC	04/12/2002	Infant Sleepware, Underware and Blankets.
41,489	Goss and Deleeuw (Wkrs)	Kensington, CT	04/25/2002	Machine Tool.
41,490	Dispatch Printing (Wkrs)	Erie, PA	4/11/2002	Printing Foil, Paper Sampling.
41,491	Warner Mfg. (Co.)	Sacred Heart, MN	10/26/2002	Hand Paint and Wall Paper Tools.
41,492	Keystone Tool & Machine (Wkrs)	Carlisle, PA	04/16/2002	Machine Parts.
41,493	Sun Chemical Ink (Co.)	Linden, NJ	04/05/2002	Printing Inks, Concentrates, Extenders.
41,494	Mantua Industreis (Wkrs)	Woodbury Hts., NJ	04/12/2002	Model Trains.
41,495	Arkwight, Inc. (UNITE)	Fiskeville, RI	04/15/2002	Overhead Transparencies.
41,496	Blactec USA (Wkrs)	Plano, TX	04/16/2002	Customer Service.
41,497	Charm House (Wkrs)	Sumter, SC	04/16/2002	Bedroom Decor.
41,498	Aalfs Manufacturing (Co).	Texarkana, AR	01/29/2002	Denim Jeans.
41,499	Newell Rubber Maid (Co.)	Santa Monica, CA	04/18/2002	Rubberized Writing Untensils.
41,500	Bombardier Aerospace (Wkrs)	Wichita, KS	04/25/2002	Engineering and Assemblies.
41,501	Carolina Brands Foods (UFCW)	Holly, NC	04/29/2002	Pork, Hod, and Sliced Bacon.

[FR Doc. 02–15559 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners of any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request if filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 1, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 1, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of May, 2002.

Edward A Tomchick,

Director, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 05/13/2002

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
41,502	Northrop Grumman (Comp)	Sacramento, CA	04/23/2002	Power Amplifiers, Channel Filters
41,503	Kimble Glass Co (AFGW)	Vineland, NJ	04/08/2002	Beakers, Filter Flask
41,504	U.S. Timber Co (Wrks)	Craigmont, ID	04/22/2002	Rough Timber
41,505	Beacon Light Products (Comp)	Meridian, ID	04/16/2002	Beacon Lights

PETITIONS INSTITUTED ON 05/13/2002—Continued

TA–W	Subject Firm (petitioners)	Location	Date of petition	Product(s)
41,506	Ampco Metal, Inc. (UAW)	Milwaukee, WI	04/10/2002	Bronze Safety Tools
41,507	Atlas Copco (UE)	Holyoke, MA	04/18/2002	Air Compressors and Generators
41,508	American Meter Co (IUE)	Erie, PA	04/17/2002	Gas Meters
41,509	Agilent Technologies (Wrks)	Santa Rosa, CA	04/19/2002	Test Equipment and Products
41,510	Chicago Bridge and Iron (BBF)	Provo, UT	04/17/2002	Storage Tanks
41,511	BP Exploration (Alaska) (Comp)	Anchorage, AK	04/16/2002	Crude Oil
41,512	Pillowtex Phenix City (Comp)	Phenix City, AL	04/03/2002	Bathroom Accessories
41,513	Square D Co. (IBEW)	Oxford, OH	04/29/2002	Wireway Products
41,514	Aladdin Industries, LLC (USWA)	Nashville, TN	04/19/2002	Insulated Cups, Mugs, and Bottles
41,515	Stabilit Americas, Inc. (Wrks)	Moscow, TN	04/22/2002	Fiber Glass Reinforced Panels
41,516	Washington Mould Co. (Wrks)	Washington, PA	04/09/2002	Repair of Steel Rolling Mills
41,517	ADS Machinery Corp (Wrks)	Warren, OH	04/18/2002	Steel Finishing and Coating Machinery
41,518	United Electric (Wrks)	Virginia, MN	04/11/2002	Wholesale Electrical Products
41,519	Moll Industries (Wrks)	Morristown, TN	12/06/2002	Toothbrush Manufacturing
41,520	United States Manufacturi (Wkrs)	Pasadena, CA	04/04/2002	Orthopedic Equipment
41,521	Dekko Engineering (Comp)	Manitowoc, WI	04/16/2002	Wiring Harnesses
41,522	John W. Hancock, Jr, Inc (Wrks)	Salem, VA	03/13/2002	Raw Steel, Industrial Rack Systems
41,523	BRA-VOR Tool and Die (Comp)	Meadville, PA	04/22/2002	Carbide and Steele Die
41,524	American Candy (Wrks)	Lebanon, TN	08/27/2001	Hard Candy
41,525	Stanley Furniture Co (Wrks)	Stanleytown, VA	04/12/2002	Furniture
41,526	Wabash Technologies (COMP)	Huntington, IN	05/02/2002	Actuator Coils
41,527	BHP Copper (Comp)	Tucson, AZ	01/31/2002	Copper
41,528	Toro Co. (The) Irrigation (Wkrs)	Riverside, CA	04/16/2002	Commerical & Residential Irrigation Prod
41,529	Mexican Industries, Inc. (UAW)	Detroit, MI	01/23/2002	Airbags, and Automotive Interior
41,530	Martin Color-FI (Comp)	Laurens, SC	04/30/2002	Spun Yarn
41,531	Bath amd Dreufuss (Wrks)	Burbank, CA	04/19/2002	Kitchen and Bath Towels
41,532	Seton Co., Leather Div. (Comp)	Saxton, PA	05/02/2002	Leather Pieces
41,533	Stanley Works (IAMAW)	New Britain, CT	10/19/2001	Tape Rulers
41,534	3M Co. (PAIC)	St. Paul, MN	04/22/2002	Sandpaper/Mineral/& Misc Tape Products
41,535	Sights Denim Systems (Comp)	Henderson, KY	05/06/2002	Denim Garments
41,536	Solectron (Wrks)	Austin, TX	03/21/2002	Cisco Products
41,537	AmeriSteel Corp (Comp)	Jackson, TN	04/23/2002	Zinc Oxide
41,538	RBC Tyso Bearing (USWA)	Glasgow, KY	04/17/2002	Roller Bearing Components
41,539	CECO Doors Products (Wrks)	Harlingen, TX	04/22/2002	Metal Doors and Frames
41,540	Anvil International (Wrks)	Henderson, TN	04/23/2002	Pipe Hanger
41,541	GD Resources, Inc. (Wrks)	Sparks, NV	04/25/2002	Gold/Silver Precious Metals
41,542	Fashion Sportswear Corp (Wrks)	Fall River, MA	04/05/2002	Jacket Samples
41,543	GE Transportation Systems (UE)	Erie, PA	04/29/2002	Diesel Electric Locomotive & Components
41,544	Osprey Packs, Inc (Comp)	Cortez, CO	03/25/2002	Backpacks and daypacks
41,545	Multi Products (Wkrs)	Erie, PA	05/06/2002	Custom Plastic Injection Molds
41,546	Classic Knitting Mills (Co.)	Greensboro, NC	05/06/2002	Knit Fabric

[FR Doc. 02–15560 Filed 6–19–02; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

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 preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the following proposed collection: Certificate of Medical Necessity (CM–893). A copy of the proposed information collection request can be obtained by contacting the office 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 August 19, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

30 U.S.C. 932 includes section 7 of Public Law 803, as amended, and stipulates that medical treatment including services and apparatus, as required, will be furnished to the miner for such period as the nature of the illness or process of recovery may require. 20 CFR 725.701 establishes miner eligibility for medical services

and supplies for the length of time required by the miner's condition and disability. 20 CFR 725.706 stipulates there must be prior approval before ordering an apparatus where the purchase price exceeds $300.00. 20 CFR 725.707 provides for the ongoing supervision of the miner's medical care, including the necessity, character and sufficiency of care to be furnished; gives the authority to request medical reports and indicates the right to refuse payment for failing to submit any report required. Because of the above legislation and regulations, it was necessary to devise a form to collect the information. The form is the CM–893, Certificate of Medical Necessity (CMN). It is used by OWCP to determine reimbursement of medical benefits to Black Lung beneficiaries. Regulatory authority for the collection of this information is at 20 CFR 725.506, 510, 511, and 513. The information collection is currently approved by the Office of Management and Budget (OMB) for use through November 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
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- 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.

Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its responsibility in determining the eligibility for reimbursement of medical benefits to Black Lung recipients. The CMN (CM–893) is considered a medical prescription that requires pre-authorization. There is no change to these forms since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Certificate of Medical Necessity.

OMB Number: 1215–0113.

Agency Numbers: CM–893.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Total Respondents/Responses: 12,000.

Total Hours: 3,600.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/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 will also become a matter of public record.

Dated: June 14, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–15556 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–27–P

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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Point of Purchase Survey.'' 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 of this notice on or before August 19, 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.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allows items that are priced in the CPI to be properly weighted.

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 Telephone Point of Purchase Survey (TPOPS).

Since 1997, the survey has been administered quarterly and entirely via a computer-assisted-telephone-interview. This survey is flexible and creates the possibility of introducing new products into the Consumer Price Index in a timely manner. The data collected in this survey is necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS survey provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 25,060.

Frequency: Quarterly.

Total Responses: 57,280.

Average Time Per Response: 11 minutes.

Estimated Total Burden Hours: 10,501 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 6th day of June, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–15555 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–31; (Exemption Application No. D–11002) et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of he prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) the Act and/or section 4975(c)(2) of the Code an the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon he entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG, Located in Frankfurt/Main, Germany

[Prohibited Transaction No. 2002–31; Exemption Application No: D–11002]

Exemption

I. General Exemption

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)), in which the plan has an interest, and which is managed by Deutsche Bank AG (Deutsche Bank or the Applicant) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)), the part in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate Deutsche Bank as a manager of any of the plan's assets, or

(2) Negotiate the terms fo the management agreement with Deutsche Bank (including renewals or modifications thereof) on behalf of such plan;

(b) The transaction is not described in—

Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) [1] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1) [2] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaciton Class Exemption 82–87 (PTCE 82–87) [3]

[1] 46 FR 7527, January 23, 1981.

[2] 48 FR 895, January 7, 1983.

[3] 47 FR 21331, May 18, 1982.

(relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of Deutsche Bank, and either Deutsche Bank, or (so long as Deutsche Bank retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by Deutsche Bank, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither Deutsche Bank nor a person related to Deutsche Bank (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by Deutsche Bank, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by Deutsche Bank, represent more than 20 percent (20%) of the total client assets managed by Deutsche Bank at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g)(1) Neither Deutsche Bank nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent (5%) or more interest in Deutsche Bank is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of the Act.

(2) The relief provided by this exemption is available to Deutsche Bank (ad defined in section V(a)), notwithstanding the guilty plea on March 11, 1999, of Deutsche Bank's affiliate, Bankers Trust Company (Bankers Trust), to three counts of violations of 18 U.S.C. § 1005, provided that neither Deutsche Bank nor any affiliate, nor any owner, direct or indirect of a 5 percent (5%) or more interest in Deutsche Bank is convicted of any of the crimes (described in section I(g)(1)), and provided that Bankers Trust is not subsequently convicted of any crimes (described in section I(g)(1)).

(3) For purposes of this section I(g), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(4) To consent to service of process on the Process Agent; and

(5) To indemnify and hold harmless each plan affected by this exemption in the United States against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank in its capacity as an asset manager for such plan.

(i) Upon request, Deutsche Bank provides to each plan affected by this exemption copies of the Notice of Proposed Exemption (the Notice) and the final exemption;

(j) Deutsche Bank provides each plan affected by this exemption with a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions, which consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or any other branch or affiliate of Deutsche Bank that is domiciled in the United States);

(k) Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), maintains or causes to be maintained within the United States for a period of six (6) years from the date of each transaction covered by this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable persons (as described in section I(l)) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Deutsche Bank and/or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination (as required by section I(l)(1));

(l)(1) Except as provided in section I(l)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section I(k) are unconditionally available at their customary location during normal business hours to: (i) any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission; (ii) any fiduciary of a plan affected by this exemption or any duly authorized representative of such fiduciary; (iii) any contributing employer to any plan affected by this exemption or any duly authorized employee representative of such employer; and (iv) any participant or beneficiary of any plan affected by this exemption, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in section I(l)(1)(ii)–(iv) are authorized to examine the trade secrets of Deutsche Bank or commercial or financial information which is privileged or confidential;

(m) Upon request, Deutsche Bank discloses to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities.

II. Specific Exemptions for Employers

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a), 406(b)(1)

and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by Deutsche Bank, by a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c).

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transaction engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one percent (1%) of the gross receipts derived from all sources for the prior taxable year of such party in interest, and

(5) The requirements of sections I(c) through (n) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by such plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c).

(2) No commission or other fee is paid by the investment fund to Deutsche Bank or to the employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of Deutsche Bank in which such plan has an interest does not exceed 10 percent (10%) of the fair market value of the assets of such plan held in those investment funds. In determining the aggregate fair market value of employer real property and employee securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest of the investment fund of funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement the term, ''employer real property,'' means real property leased to, the term, ''employer securities,'' means securities issued by, an employer any of whose employees are covered by such plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of section 3(14) of the Act, and

(6) The requirements of sections I(c) through (n) are satisfied with respect to the transaction.

III. Specific Lease exemption for Deutsche Bank

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank, a person who is a party in interest of a plan by virtue of a relationship to Deutsche Bank described in subparagraphs (G), (H) or (I) of section 3(14) of the Act, or a person not eligible for the General Exception of Part I of this exemption by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one percent (1%) of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to Deutsche Bank, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with transaction.

IV. Transactions Involving Places of Public Accommodation

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

V. Definitions

For purposes of this exemption:

(a) The term, ''Deutsche Bank'' means Deutsche Bank AG, provided that Deutsche Bank AG: (i) has the power to manage, acquire or dispose of assets of a plan affected by this exemption; (ii) has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $10,000,000; (iii) has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained Deutsche Bank AG to manage the assets of the plan; and (iv) is subject to regulation by the German federal banking supervisory authority, known as the Bundesaufsichtsamt fuer das Kreditwesen (the BAK).

(b) An ''investment fund'' includes individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of Deutsche Bank) is subject to the discretionary authority of Deutsche Bank.

(c) For purposes of section I(a) section I(k), and Part II, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by such plan will also be considered affiliates with respect to each other for purposes of section I(a), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g), an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or 5 percent (5%) or more partner, or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

(3) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or sister.

(h) Deutsche Bank is ''related'' to a party in interest for purposes of section I(d) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in Deutsche, Bank or if Deutsche Bank (or a person controlling, or controlled by, Deutsche Bank) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(c) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of Deutsche Bank occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to Deutsche Bank. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of Deutsche Bank. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term, ''goods'' includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a) of this exemption, the term ''equity capital'' means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption will be effective retroactively but will be temporary in nature. In this regard, Deutsche Bank, AG, among others, on July 27, 1999, obtained Prohibited Transaction Exemption 99–29 (PTE 99–29) [4] which provided that it would not be precluded from functioning as a ''qualified professional asset manager'' (a QPAM), pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14) [5], solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of a guilty plea filed by an affiliate on March 11, 1999, to three counts of a felony. The relief provided by PTE 99–29 was limited to a period of ten (10) years from July 27, 1999, the date of the publication of the final exemption for PTE 99–29 in the **Federal Register**. The Department in proposing the subject exemption does not intend that, if granted, the relief, as described herein, be available beyond the time remaining in the ten (10) year period established by PTE 99–29. Accordingly, the relief provided by this exemption, if granted, will be retroactive, effective as of June 12, 2001, the date when the application for exemption was filed with the Department, and will continue to be available through July 27, 2009, the date that is ten (10) years from the publication in the **Federal Register** of the final exemption for PTE 99–29.

In the case of a transaction that continues beyond July 27, 2009, the transaction shall be deemed to occur until it is terminated. Although the relief provided by this exemption will not be available after July 27, 2009, for any new, or other transactions that require the consent of Deutsche Bank, as described herein, such relief will

[4] 64 FR 40623, July 27, 1999

[5] 49 FR 9494 (March 13, 1984), *as corrected,* 50 FR 41430 (October 10, 1985).

continue to apply beyond July 27, 2009, for continuing transactions entered into prior to that date, provided such transactions satisfied the conditions of this exemption. In this regard, see section V(i) regarding continuing transactions.

Should the Applicant wish to extend, beyond July 27, 2009, the relief provided by this exemption to new or additional transactions, or should the Applicant wish for any reason to amend the conditions of this exemption, the Applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions or to amend this exemption, the Applicant should be prepared to demonstrate compliance with the conditions of this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 29, 2002. All comments and requests for a hearing were due by May 13, 2002.

During the comment period, the Department received comment letters from three (3) commentators. At the close of the comment period, the Department forwarded copies of these comment letters to the applicant and requested that the applicant respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicant's response thereto are summarized below.

Two commentators provided information on felony charges to which Bankers Trust Company (BT) plead guilty in March 1999. One of these commentators also provided background information on the applicant's acquisition of BT and its subsidiaries in June 1999. This commentator indicated that the applicant was aware of BT's actions before the acquisition. Further, this commentator objected to ''substitution of fiduciary'' proceedings in the New York State Supreme Court which permitted Bankers Trust Company of New York to assume the fiduciary responsibilities of BT. Further, this commentator objected to BT's name being legally changed to Deutsche Bank Trust Company Americas without a hearing.

Two commentators questioned the ability of the applicant, a foreign bank, to do business in the United States. In this regard, one of these commentators objected to funds being invested abroad or co-mingled with Deutsche Bank managed international funds.

An advocacy group for beneficiaries and prospective creators of irrevocable trusts, opposed the requested exemption in light of past actions by BT. In this regard, the commentator sought new and better standards to protect the interests of BT's clients, especially those beneficiaries of personal trusts who lack the power to change corporate trustees, or who for other reasons are denied the freedom to choose a different trustee to manage the assets of such trusts.

One commentator, a member of a family trust, complained of the applicant's refusal to settle alleged violations of New York State banking laws regarding trusts and estates filed by his family's attorneys against BT and affiliates of the applicant. This commentator sought to delay a final determination on the exemption and an opportunity to include the facts of his case in the public record at a hearing.

In response to the comments received by the Department in connection with the requested exemption, the applicant points out that none of the three comments appears to have been written by a participant in a plan covered by the Act for which Deutsche Bank has sought relief. In addition, the substance of each of the letters appears to relate, in substantial part, to actions by Bankers Trust Company or to Bankers Trust Company's personal trust business, neither of which is the subject of the exemption request. Further, the applicant points out that in 1999, Bankers Trust Company was granted relief similar to that requested by Deutsche Bank, the applicant in this case. In response to the allegation raised by several commentators that Deutsche Bank is not a U.S. Bank, the applicant maintains that while this allegation is true, the application for exemption set forth in significant detail the rigorous regulatory structure under which Deutsche Bank operates, which in the applicant's view, justifies granting the exemption.

With regard to those commentators who requested a hearing, the Department, after reviewing the concerns of such commentators, does not believe that there are material issues relating to the subject exemption that were raised by commentators during the comment period which would require the convening of a hearing. Accordingly, the Department has determined not to delay consideration of the final exemption by holding a hearing on application D—11002.

However, the Department has determined to clarify section I(h) of the exemption. In this regard, Section I(h) contains safeguards designed to ensure that plans engaging in the subject transactions are protected. Specifically, section I(h) provides:

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States; which may be an affiliate (the Process Agent); and

(4) To consent to service of process on the Process Agent.

In addition, in the application for exemption, Deutsche Bank represented that it would provide to any plan affected by the exemption an indemnity against any harm, damage, or injury arising from any fiduciary breach or other wrongdoing by Deutsche Bank Acting as asset manager for such plan. Further, Deutsche Bank agreed that enforcement by a plan of such indemnity would occur in the United States district courts. These representations were summarized in paragraph 10 of the Summary of Facts and Representations in the Notice, 67 FR 15236, column 2, lines 47–59. The Department has determined to incorporate the content of Deutsche Bank's representations into the language of section I(h). Accordingly, the Department has modified section I(h), as set forth in this exemption, to add a new sub-paragraph (5) as follows:

> To indemnify and hold harmless each plan affected by this exemption in the United States against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank in its capacity as an asset manager for such plan.

After giving full consideration to the entire record, including the written comments from the commentators and the applicant's response to such comments, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters and the applicant's response thereto submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents

Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 29, 2002, at 61 FR 15230.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (this is not a toll-free number).

Northwoods Bank of Minnesota Employee Stock Ownership Plan (the Plan) Located in Park Rapids, Minnesota

[Prohibited Transaction Exemption 2002–32; Exemption Application No. D–11031]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by individual accounts (the Stock Accounts) within the Plan of Certain shares of common stock (the Shares) of Dorset Bancshares, Incorporated (the Holding Company) to the Holding Company, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Stock Accounts receive the greater of: (i) $32,000 per Share, as currently appraised by an independent, qualified appraiser; or (ii) the current fair market value for the Shares established at the time of the sale by an independent qualified appraiser; and

(c) The Stock Accounts pay no commission or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 26, 2002 at 67 FR 20838.

For Further Information Contact: Ekaterian A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

Morgan Stanley Dean Witter & Co. Located in New York, New York

[Prohibited Transaction Exemption No. 2002–33; Exemption Application No. D–11048]

Exemption

Section I—Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 11, 2001, to:

(a) The lending of securities by an employee benefit plan, including a commingled investment fund holding assets of such plan (the Plan(s)) with respect to which Morgan Stanley Dean Witter & Co. (Morgan Stanley) or any of its affiliates is a party in interest, under certain exclusive borrowing arrangements with:

(1) Morgan Stanley;

(2) Morgan Stanley & Co. Incorporated (MS&Co); MS Securities Services Inc. (MSSSI); and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer (collectively, the MS US Broker-Dealers);

(3) Morgan Stanley & Co. International Limited (MSIL), which is subject to regulation by the Financial Services Authority (FSA) in the United Kingdom; [6]

(4) Morgan Stanley Japan Limited (MSJL), which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan; and

(5) Any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom or which is subject to regulation by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan; [7] and

(b) The receipt of compensation by Morgan Stanley or any of its affiliates in connection with securities lending transactions; provided that for the transactions, set forth in section I(a) and (b), above, the conditions set forth in section II, below, are satisfied.

[6] As of December 1, 2001, the FSA replaced the United Kingdom Securities and Futures Authority.

[7] Each affiliated foreign broker-dealer is referred to herein, individually, as a Foreign Borrower or collectively, as Foreign Borrowers. The Foreign Borrowers together with Morgan Stanley and the MS US Broker-Dealers are referred to, herein, collectively as Borrowers or Applicants, and individually, as the Borrower.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over such Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to such Plan (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with the Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by the Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower an exclusive right to borrow certain securities, the Plan receives from such Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral be retained by such Plan, and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, all earnings on the non-cash collateral shall be returned to such Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee, and together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against the Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective

formula and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of such Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from such Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than the Borrower or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction exemption 81–6 (as amended or superseded) (PTE 81–6).[8] Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or custodian of the Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent (102%) of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (100%) (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent (102%). The level of the collateral is monitored daily by the Plan or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether such Plan should enter into to renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that such Plan would have received (net of tax withholdings)[9] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrowers; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on

[8] 46 FR 7527, Jan. 23, 1981, as amended at 52 FR 18754, May 19, 1987). PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[9] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrowers, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption, and a copy of the final exemption are provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[10]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in this paragraph, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA in the United Kingdom or is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-dominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded) from time to time;

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of Morgan Stanley and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provision of subsections (a)(2) and (b) of section 504 of the Act, the records referred to the paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Interests Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employee; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized in examine to trade secrets of Morgan Stanley or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An ''affiliate'' of a person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term

[10] The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.,* the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which any person is an officer, director of employee, or in which such person is a partner.

(b) The terms, ''Foreign Borrower'' or ''Foreign Borrowers,'' includes MSIL and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom, and MSJL, and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan.

(c) The term ''Borrower,'' includes Morgan Stanley, MS&Co, MSSSI, the Foreign Borrowers, and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer.

Effective Date: This exemption is effective as of November 11, 2001, the date of the application was received by the Department.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 29, 2002. All comments and requests for a hearing were due by May 13, 2002.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the Applicants. In this regard, in a letter dated May 13, 2002, the Applicants requested certain amendments to the operant language of the exemption and the representations which were set forth in the Summary of Facts and Representations (the SFR) published in the Notice.

A discussion of the Applicants' comments and the Department's responses, thereto, are set forth in the numbered paragraphs below. In the language below, words that have been stricken from the text of Notice appear in the closed brackets, and additions to the text of the Notice appear in bold.

1. The Applicants request that the effective date of the exemption, referred to in the first paragraph of section I of the Notice be changed to November 11, 2001, in order to conform to the date set forth at the end of section III of the Notice. In this regard, the Applicants request the language of section I should read as follows:

> The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 11 [13], 2001, to:

The Department concurs and has amended the language, as set forth in the Notice at 67 FR at 15241, column 1, line 20.

2. The Applicants request that the second sentence of section II(e) be clarified such that the independent fiduciary can agree that the Plan retain a percentage of the earnings and/or pay a rebate fee and retain any earnings. In this regard the Applicants propose that the second sentence in section II(e) should read as follows:

> If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral [may] be retained by such Plan, and/or the Plan may agree to pay the Borrower a rebate fee and retain [the] any earnings on the collateral (the Shared Earnings Compensation).

The Department concurs and has amended the language, as set forth in the Notice at 67 FR at 15241, column 3, lines 23–34.

3. The Applicants requests that the second paragraph of Representation 2 of the SFR as published in the Notice be modified to conform to the comparable language contained in the second paragraph of Representation 2 of the SFR of the proposed exemption for Barclays Bank PLC, which was published in the **Federal Register** on June 28, 2001[11] and later published in final form on October 22, 2001 as Prohibited Transaction Exemption 2001–41.[12] In this regard, the Applicants propose that the second paragraph of Representation 2, as set forth in the Notice at 67 FR at 15244, column 2, lines 13 through 25, should have read as follows:

> The Applicants wish to enter into exclusive borrowing arrangements with Plans for which Morgan Stanley or any affiliate of Morgan Stanley may be [an investment manager] a party in interest [for the assets of such Plans that are unrelated to the assets involved in the transaction]. For example, Morgan Stanley or an affiliate may be investment manager for assets of a Plan that are unrelated to the assets involved in the transaction. Morgan Stanley or any of its affiliates may provide securities custodial services, trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to such Plans.

The Department concurs.

After giving full consideration to the entire record, including the written comments from the Applicants, the Department has decided to grant the exemption, as described, amended, clarified, and concurred in above. In this regard, the comment letter submitted by the Applicants to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 29, 2002, at 67 FR 15241.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Louisville Electrical Joint Apprentice and Training Committee Trust Fund (the Fund) Located in Louisville, Kentucky

[Prohibited Transaction Exemption No. 2002–34; Exemption Application No: L–10981]

Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase of the Fund of an interest in a condominium regime (the Condo) from the International Brotherhood of Electrical Workers (IBEW), Local 369 Building Corporation (the Building Corporation), a party in interest with respect to the Fund; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(1) The purchase of the Fund of the interest in the Condo is a one-time transaction for cash;

(2) The Board of Trustees (the Trustees), acting as named fiduciary on behalf of the Fund, prior to entering the

[11] 66 FR 34475.

[12] 66 FR 53449.

transaction, determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(3) An independent qualified fiduciary (the I/F) after analyzing the relevant terms of the transaction advises the Trustees that proceeding with the transaction would be in the interest in the Fund;

(4) The purchase price paid by the Fund for the interest in the Condo is the lesser of: (a) the total amount actually expended by the Building Corporation in the construction of the north wing unit (the Unit) of the condominium building (the Condo Building), as documented in writing and approved by the I/F, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by an independent, qualified appraiser, as of the date of the transaction, provided that such value does not exceed $2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such independent, qualified appraiser, as of December 11, 2001;

(5) The terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(6) The Fund does not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(7) The Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the IBEW, Local Union 369 (the Local) and the Bank of Louisville (the Bank);

(8) The Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the subject transaction, and the costs incurred in connection with the purchase by the Fund at closing does not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(9) Under the terms of the loan agreement between the Bank and the Fund, the Bank in the event of a default by the Fund has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(10) Under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 26, 2002, at 67 FR 20839.

Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of June, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–15625 Filed 6–19–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Integrative Activities (#1373).

Date and Time: Thursday, July 11, 2002, 8 a.m.–4 p.m.; Friday, July 12, 2002, 8 a.m.–3 p.m.

Place:

July 11, 8 a.m.–9 a.m. and July 12, 8 a.m.–3 p.m., National Science Foundation, RM 330, 4201 Wilson Blvd., Arlington, VA 22230;

July 11, 9:30 a.m.–2 p.m., RAND Corporation, 1200 South Hayes St., Arlington, VA;

July 11, 2:30 p.m.–4 p.m., Office of Science and Technology Policy, Washington, DC.

Contact: Paul J. Herer, Senior Staff Associate, Office of Integrative Activities, National Science Foundation, Room 1270, Arlington, Virginia. Phone: 703/292–8040.

Type of Meeting: Part-Open.

Purpose of Meeting: Review and evaluation of the RAND Science and Technology Policy Institute (STPI).

Agenda:

Open Sessions

July 11, 8 a.m.–2 p.m.—Introductions, Discussions with NSF Deputy Director, Visit to RAND, Corp.

July 12, 8 a.m.–9—Public Comment, Discussions of S&E Policy

Closed Session

July 11, 2:30 p.m.–4 p.m. and July 12, 9 a.m.–3 p.m.—Review and evaluate progress and plans of STPI.

Reason for Closing: The information being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the institute. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in Sunshine Act.

Dated: June 14, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–15494 Filed 6–19–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Advanced Reactor Designs; Notice of Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on July 8, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, July 8, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will review the proposed Advanced Reactors Research Plan and its implication on the NRC's Regulatory framework. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Dr. Medhat M. El-Zeftawy (Telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: June 14, 2002.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 02–15590 Filed 6–19–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25612; 812–12262]

SunAmerica Asset Management Corp., et al.; Notice of Application

June 13, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants: SunAmerica Series Trust, Anchor Series Trust, Seasons Series Trust, SunAmerica Style Select Series, Inc., SunAmerica Equity Funds, SunAmerica Income Funds, SunAmerica Money Market Funds, Inc., SunAmerica Strategic Investment Series, Inc. (collectively, the ''SunAmerica Funds''); VALIC Company I and VALIC Company II (together, the ''VALIC Funds''); and Brazos Mutual Funds and all existing and future series (the ''Portfolios'') of the SunAmerica Funds, the VALIC Funds and the Brazos Mutual Funds (collectively, the ''Funds'')[1] and SunAmerica Asset Management Corp. (''SAAMCo''), John McStay Investment Counsel, LP (''JMIC''), and The Variable Annuity Life Insurance Company (''VALIC'') (each an ''Adviser'' and together, the ''Advisers'') and any other open-end management investment company and its series registered under the Act for which SAAMCo, JMIC or VALIC or a person controlling, controlled by or under common control with SAAMCo, JMIC or VALIC serves as investment adviser (together with the Funds, the ''Funds'').

Summary of Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Filing Dates: The application was filed on September 20, 2000 and amended on June 6, 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 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 July 8, 2002, and should be accompanied by proof of service on the 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 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; Applicants, 733 Third Avenue, New York, New York, 10017–3204.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 or Mary Kay Frech, 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 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Funds is registered under the Act as an open-end management investment company and is organized as a Maryland corporation, Massachusetts business trust or Delaware business trust and consists of multiple Portfolios. Certain of the Portfolios are money market funds that rely on rule 2a-7 under the Act (''Money Market Portfolios''). Each Adviser is registered under the Investment Advisers Act of 1940. Each Portfolio has entered into an investment advisory agreement with an Adviser. SAAMCo, VALIC and JMIC are under common control because each is a direct or indirect, majority or wholly owned subsidiary of American International Group, Inc.

2. Some Portfolios may lend money to banks or other entities by entering into repurchase agreements (including through a joint account (''Joint Account'')). Other Porfolios may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a portfolio security sold by a Portfolio has been delayed. The VALIC Funds

[1] All existing Funds that currently intend to rely on the requested order are named as applicants, and any Fund that relies on the order in the future will comply with the terms and conditions of the application.

Portfolios currently have credit arrangements with their custodian (i.e., overdraft protection) under which the custodian may, but is not obligated to, lend money to the VALIC Funds Portfolios to meet the VALIC Funds Portfolios' temporary cash needs. Currently, some Portfolios participate in an uncommitted line of credit (the ''Uncommitted Line'') and the Portfolios participate in a committed line of credit (the ''Committed Line,'' and collectively with the Uncommitted Line, the ''Lines of Credit'') with their custodian banks.

3. If the Portfolios were to borrow money from their custodian banks under their current arrangements or under other credit arrangements with a bank, the Portfolios would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Portfolios on investments in repurchase agreements entered into by the Portfolios (including through the Joint Account). Applicants believe that this differential represents the bank's profit. Under the Committed Lines, the Portfolios pay commitment fees in addition to interest.

4. Applicants request an order that would permit the Funds to enter into an interfund lending facility (''Credit Facility'') by entering into master interfund lending agreements (''Interfund Lending Agreements'') under which the Portfolios would lend and borrow money for temporary purposes directly to and from each other through the Credit Facility (''Interfund Loans''). Applicants believe that the Credit Facility would substantially reduce the Portfolios' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term loans. Although the Credit Facility potentially could reduce the Portfolios' need to borrow from banks, the Portfolios would continue to use their Lines of Credit or would be free to establish other borrowing arrangements with banks.

5. Applicants anticipate that the Credit Facility would provide a borrowing Portfolio with significant savings when the cash position of the Portfolio is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Portfolios have insufficient cash on hand to satisfy such redemptions. When a Portfolio liquidates portfolio securities to meet redemption requests, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the Credit Facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Portfolio's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Portfolio has undertaken to purchase a security with the proceeds from securities sold. When the Portfolio experiences a cash shortfall due to a sales fail, the Portfolio could (a) fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Portfolio, or (b) sell a security on a same day settlement basis, earning a lower return on the investment, or (c) borrow to meet the short-term cash shortfall. Use of the Credit Facility under these circumstances would enable the Portfolio to have access to immediate short-term liquidity at a reduced cost.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the Credit Facility a borrowing Portfolio would pay lower interest rates than those offered by banks on short-term loans. In addition, Portfolios making short-term cash loans directly to other Portfolios would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term loans. Thus, applicants believe that the Credit Facility would benefit both borrowing and lending Portfolios.

8. The interest rate charged to the Portfolios on any Interfund Loan (the ''Interfund Loan Rate'') would be determined daily and would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Portfolios from investments in overnight repurchase agreements. The Bank Loan Rate for any day would by calculated by SAAMCo each day according to a formula established by each Fund's Board of Directors (''Board'') designed to approximate the lowest interest rate at which short-term bank loans would be available to the Portfolios. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and short-term bank loan rates that would be available to the Portfolios, including, without limitation, the rates available through the Portfolios' Lines of Credit (''Lines of Credit Rates''). The initial formula and any subsequent modification to the formula would be subject to the approval of each Fund's Board.

9. The Credit Facility would be administered by SAAMCo's mutual fund accounting, legal and treasury departments (the ''Credit Facility Committee''). Under the Credit Facility, the portfolio managers for each participating Portfolio may provide standing instructions to participate daily as a borrower or lender. The Credit Facility Committee on each business day would collect data on the uninvested cash and borrowing requirements of all participating Portfolios from the Portfolios' custodians. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Committee would allocate loans among borrowing Portfolios without any further communication from portfolio managers. If there is more available uninvested cash than borrowing demand, the Credit Facility Committee will invest any remaining cash in accordance with the standing instructions of portfolio managers (*e.g.,* in repurchase agreements including through the Joint Account) or return remaining amounts to investment in the Portfolios. The Money Market Portfolios typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Credit Facility Committee would allocate borrowing demand and cash available for lending among the Portfolios on what the Committee believes to be an equitable basis, subject to certain administrative procedures applicable to all Portfolios, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. The Credit Facility Committee and the Advisers would (a) monitor the interest rates charged and the other terms and conditions of the Interfund Loans, (b) limit the borrowings and loans entered into by each Portfolio to ensure that they comply with the Portfolio's investment policies and limitations, (c) ensure equitable treatment of each Portfolio, and (d) make quarterly reports to the Boards concerning any transactions by the Portfolios under the Credit Facility and the interest rates charged. The method

of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Portfolios participate in the Credit Facility on an equitable basis.

12. SAAMCo, through the Credit Facility Committee, would administer the Credit Facility and would receive no additional compensation for its services. Neither SAAMCo nor companies affiliated with it will collect any fees in connection with the Interfund Loans.

13. Each Portfolio's participation in the Credit Facility will be consistent with its organizational documents and its investment policies and limitations. The statement of additional information (''SAI'') of each Portfolio discloses the extent to which the respective Portfolio may borrow money for temporary purposes and the extent to which the respective Portfolio is able to mortgage or pledge securities to secure permitted borrowing. If the requested order is granted, the SAI for each Portfolio participating in the Credit Facility will disclose the Portfolio's participation in the Credit Facility.

14. In connection with the Credit Facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Portfolios may be under common control by virtue of having a common investment adviser or investment advisers who are under common control.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transactions is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Credit Facility transactions do not raise these concerns because (a) SAAMCo, through the Credit Facility Committee, will administer the Credit Facility as a disinterested fiduciary; (b) all Interfund Loans will consist only of uninvested cash reserves that the Portfolio otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Joint Account; (c) the Interfund Loans will not involve a greater risk than other similar investments; (d) the lending Portfolio will receive interest at a rate higher than it could obtain through other similar investments; and (e) the borrowing Portfolio will pay interest at a rate lower than the Bank Loan Rate. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Portfolio obtaining an undue advantage over any other Portfolios.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by another investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Portfolio to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the Credit Facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Portfolios or shareholders, and that SAAMCo would receive no additional compensation for its services in administering the Credit Facility. Applicants also note that the purpose of the Credit Facility is to provide economic benefits for all the participating Portfolios.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting an evidence of indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Credit Facility (because the lending Portfolios are not banks).

7. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis

different from or less advantageous than that of other participants.

8. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the Credit Facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Portfolios and their shareholders. Applicants note that each Portfolio would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Portfolio's participation in the Credit Facility will be on terms which are no different from or less advantageous than that of other participating Portfolios.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Portfolios under the Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Portfolio than the Repo Rate and (b) more favorable to the borrowing Portfolio than the Bank Loan Rate and, if applicable, the Lines of Credit Rates.

3. If a Portfolio has outstanding borrowings, any Interfund Loans to the Portfolio (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Portfolio, that event of default will automatically (without need for action or notice by the lending Portfolio) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Portfolio to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Portfolio.

4. A Portfolio may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Portfolio has a secured loan outstanding from any other lender, including but not limited to another Portfolio, the Portfolio's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Portfolio's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Portfolio may borrow through the Credit Facility on a secured basis only. A Portfolio may not borrow through the Credit Facility or from any other source if its total outstanding borrowings, immediately after the interfund borrowing, would be more than 33⅓% of its total assets or its maximum borrowing limit set forth in the Portfolio's fundamental investment restrictions, whichever is lesser.

5. Before any Portfolio that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Portfolio must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Portfolio with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Portfolio will within one business day thereafter: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value equal to at least 102% of the outstanding principal value of the loan until the Portfolio's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Portfolio's total outstanding borrowings exceeds 10% is repaid or the Portfolio's total outstanding borrowings cease to exceed 10% of its total assets, the Portfolio will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan equal to at least 102% of the outstanding principal value of the loan.

6. No Portfolio may lend to another Portfolio through the Credit Facility if the loan would cause its aggregate outstanding loans though the Credit Facility to exceed 15% of its net assets at the time of the loan.

7. A Portfolio's Interfund Loans to any one Portfolio shall not exceed 5% of the lending Portfolio's current net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Portfolio's participation in the Credit Facility must be consistent with its investment policies and limitations and organizational documents.

10. Except as set forth in this condition, no Portfolio may borrow through the Credit Facility unless the Portfolio has a policy that prevents the Portfolio from borrowing for other than temporary or emergency purposes, except that certain Portfolios may engage in reverse repurchase agreements for any purpose. In the case of a Portfolio that does not have such a policy, the Portfolio may borrow through the Credit Facility only if such borrowings, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Portfolio's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

11. Each Interfund Loan may be called on one business day's notice by a lending Portfolio and may be repaid on any day by a borrowing Portfolio.

12. The Credit Facility Committee will calculate total Portfolio borrowing and lending demand through the Credit Facility, and allocate Interfund Loans on an equitable basis among the Portfolios, without the intervention of any portfolio manager of the Portfolios. The Credit Facility Committee will not solicit cash for the Credit Facility from any Portfolio or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Committee will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Portfolios.

13. The Credit Facility Committee and the Advisers will monitor the Interfund Loan Rate charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the

Boards concerning the participation of the Portfolios in the Credit Facility and the terms and other conditions of any extensions of credit under the Credit Facility.

14. The Board of each Fund, including a majority of the Independent Directors, will (a) review no less frequently than quarterly the participation by the Fund's Portfolios in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) establish the Bank Loan Rate formula used to determine the Interfund Loan Rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Portfolios' participation in the Credit Facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Portfolio makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser to the lending Portfolio promptly will refer the loan for arbitration to an independent arbitrator selected by the Boards of the Funds whose Portfolios are involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans. If the dispute involves Portfolios with separate Boards, the Board of each Portfolio will select an independent arbitrator that is satisfactory to those Boards. The arbitrator will resolve any problem promptly and the arbitrator's decision will be binding on both Portfolios. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Portfolios to resolve the dispute.

16. Each Fund, on behalf of its Portfolios, will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the Interfund Loan Rate, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. The Credit Facility Committee and the Advisers will prepare and submit to the Boards of the Funds for review an initial report describing the operations of the Credit Facility and the procedures to be implemented to ensure that all Portfolios are treated fairly. After the commencement of operation of the Credit Facility, the Credit Facility Committee and the Advisers will report on the operations of the Credit Facility at the quarterly meetings of the Boards of the Funds.

In addition, for two years following the commencement of the Credit Facility, the independent public accountants for each Portfolio shall prepare an annual report that evaluates the respective Adviser's assertion that the Credit Facility Committee and the Adviser have established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attesting Engagements No. 3 and it shall be filed pursuant to Sub-Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate, and if applicable, the Lines of Credit Rates; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures establish by the Boards; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Portfolio at the time of the Interfund Loan.

After the final report is filed, the Portfolio's independent public accountants in connection with their Portfolio audit examinations, will continue to review the operation of the Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Portfolio will participate in the Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–15426 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46075; File No. SR–Amex–2002–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Require Members and Member Organizations To Establish Anti-Money Laundering Compliance Programs

June 13, 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 June 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Amex Rule 431 (Anti-Money Laundering Compliance Program) to require members and member organizations to establish anti-money laundering programs meeting specific minimum standards. The text of the proposed rule change is below. Proposed new language is in italics.[3]

Anti-Money Laundering Compliance Program

Rule 431. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Amex did not underscore all of the proposed new language in its Form 19b–4. Rather than require the Amex to file an amendment to correct this technical omission, the Commission added the missing underscoring, to ensure that all proposed new language appears in italics in the **Federal Register**.

seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.

The anti-money laundering programs required by this Rule shall, at a minimum:

(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(2) Establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(3) Provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party;

(4) Designate a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

(5) Provide ongoing training for appropriate persons.

* * * * *

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

In response to the events of September 11, 2001, President Bush signed into law on October 26, 2001 the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''Patriot Act'') to address terrorists threats through enhanced domestic security measures, expanded surveillance powers, increased information sharing and broadened anti-money laundering requirements. The Patriot Act amends, among other laws, the Bank Secrecy Act, as set forth in Title 31 of the United States Code. Certain provisions of Title III of the Patriot Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''MLAA''), impose affirmative obligations on a broad range of financial institutions, including broker-dealers, specifically requiring the establishment of anti-money laundering monitoring and supervisory programs.

MLAA Section 352 required all financial institutions (including broker-dealers) to establish anti-money laundering programs by April 24, 2002, that include, at a minimum: (i) Internal policies, procedures and controls; (ii) specific designation of an anti-money laundering compliance officer; (iii) ongoing employee training programs; and (iv) an independent audit function to test the anti-money laundering program.

In addition to requiring the establishment of anti-money laundering programs, the MLAA imposes additional obligations, including, without limitation:

—Implementation of special measures with respect to transactions involving ''Primary Money Laundering Concerns'' (''PMLCs'' are particular foreign jurisdictions designated by the Department of Treasury), including obtaining and maintaining records of beneficial ownership of accounts;

—Cooperation and information sharing among law enforcement and regulators concerning information about individuals or entities engaged in or suspected of money laundering or terrorism;

—Identification and verification of owners of new accounts for both domestic and foreign customers; and

—Prohibition on financial institutions from establishing, maintaining, administering or managing correspondent accounts for foreign shell banks (banks with no physical presence in their offshore jurisdiction).

Additionally, the rules to be issued by the Department of Treasury in conjunction with the Commission and the Federal Reserve Board on or about July 1, 2002 will require registered securities brokers and dealers, among others, to file Suspicious Activity Reports pursuant to Section 356 of the Patriot Act.

The Commission has already approved the New York Stock Exchange's (''NYSE'') and the National Association of Securities Dealers, Inc.'s (''NASD'') proposed rule changes adopting respective new rules requiring their members and member organizations to establish anti-money laundering compliance programs with the minimum standards described above.[4] Proposed Amex Rule 431 involves a similar requirement. The Amex is the designated examining authority for almost 300 broker-dealers. Virtually all of those firms clear through other brokerage firms that are either NYSE or NASD members and, therefore, do not carry customer funds or securities on their own. While the clearing firms will have primary responsibility for anti-money laundering compliance, all broker-dealers are covered by the law. In implementing the proposed rule, the Amex will make sure that the specific standards it develops, and the Amex's enforcement of the Rule, recognizes the significant differences between self-clearing firms and those that do not handle customer funds or securities, or do not maintain customer accounts.

As noted above, many of the federal regulations that will help clarify the application of the requirements of the Patriot Act to our members and member organizations are awaiting issuance in the coming months. Adoption of proposed Amex Rule 431 establishes a regulatory framework for members and member organizations pending issuance of further regulatory guidance.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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.

[4] *See* Securities Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002)(SR–NASD–2002–24 and SR–NYSE–2002–10)(approval order).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2002–52 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15574 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46077; File No. SR–NASD–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Amending Code of Arbitration Procedure To Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims

June 14, 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 May 9, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') 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 NASD Dispute Resolution. 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

NASD Dispute Resolution is proposing to amend the Code of Arbitration Procedure to conform Rule 10314(b) to the current minimum standard applicable to claims. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

CODE OF ARBITRATION PROCEDURE

* * * * *

10314. Initiation of Proceedings

(a) Unchanged.

(b) Answer—Defenses, counter Claims and/or Cross-Claims:

(1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all [available defenses and] relevant facts *and available defenses* [thereto that will be relied upon at the hearing] *to the Statement of Claim submitted* and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] *to a pleading that states specific facts and contentions* may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(Remainder of rule unchanged.)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution proposes to amend the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

As background, NASD Dispute Resolution recently streamlined its procedures for review of arbitration claims, NASD Dispute Resolution does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the same respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Claim. This has accelerated the claims review process, so that claims can be served promptly after filing.[3] Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

Rule 10314(b)(1) currently provides, however, that the ''Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing,'' and Rule 10314(b)(2)(B) provides that a ''Respondent who fails to specify all available defenses and relevant facts in such party's Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's Answer at the hearing.'' [4] Similarly, Rule 10314(b)(2)(A) provides that ''Respondent who pleads only a general denial as an Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.''

The National Arbitration and Mediation Committee (NAMC) of NASD Dispute Resolution [5] determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators may prevent the respondent from introducing additional facts or defenses to the expanded claim. The NAMC recommended, therefore, that Rule 10314(b)(1) be amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which would make the requirement consistent with the streamlined claims procedure; and that Rule 10314(b)(2)(A) be amended to apply only to general denials to pleadings that state specific facts and contentions.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must 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. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by harmonizing the requirements for claimants and respondents.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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.

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 will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2002–62 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15572 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Although the Uniform Forms Guide (last amended April 2001) (*Http://www.nasdadr.com/pdf-text/uniform_forms_guide.pdf*) continues to recommend that the Statement of Claim set forth the details of the dispute, informal guidance for parties on the Dispute Resolution Website now states, ''A claim is reviewed for the minimum requirements of a properly signed Submission Agreement, proper fees, and sufficient copies of the Statement of Claim. The Statement of Claim should include the dollar amount of damages requested, and the type of claims being made. Any deficiencies can delay the service of the claim.'' Arbitration Case Flow (*Http://www.nasdadr.com/arb_case_flow.asp*) (visited May 3, 2002).

[4] The term ''defenses'' in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

[5] NASD Dispute Resolution states that the NAMC includes representation from public investors, from the securities industry, and from the neutrals serving in the NASD Dispute Resolution forum. NASD Dispute Resolution additionally states that this diverse composition ensures a neutral approach in the administration of the forum.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46070; File No. SR–PCX–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to the PCX's Schedule of Fees and Charges for Exchange Services

June 12, 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 May 29, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), is proposing to modify its fee schedule for services provided to Equities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Trading Permit (''ETP'') Holders and Sponsored Participants [3] on the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCXE, proposes to amend its fees charged to ETP Holders and Sponsored Participants (collectively ''Users'') that access the ArcaEx trading facility to: (1) Reduce the per-share transaction fee charged to Users that take liquidity from the ArcaEx Book; (2) increase the per-share transaction fee for orders that are routed away and executed by another market center or participant; (3) clarify the application of the current odd-lot transaction fee; (4) introduce a liquidity provider transaction credit for Users; (5) increase the amount of the per-share transaction credit provided to registered market makers for any ''Q Orders'' [4] executed against Users' orders; (6) adopt a new per-share transaction fee for processing ArcaEx market makers' ''drop copies'' [5] of their trades executed on other market centers; (7) introduce a mechanism for sharing market data revenue with Users; and (8) establish User connectivity fees for ArcaEx. The proposed changes to the PCX's Schedule of Fees and Charges are discussed below.

On October 25, 2001, the Commission approved the PCX's proposed rule change to establish ArcaEx as a new electronic trading facility of PCXE.[6] ArcaEx is a fully electronic securities trading facility for use by ETP Holders and their customers. The PCX and PCXE are responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., is responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of the PCX and PCXE. ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.

Summary of Proposed Fee Changes

Transactions Fees

The PCX currently charges all Users a transaction fee of $0.003 per share for orders that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book.[7] The PCX is proposing to reduce this transaction fee to $0.002 per share, but it will continue to apply the current fee of $0.003 per share for transactions executed in Exchange-Traded Fund shares (''ETFs''). The PCX believes that this fee change will provide incentives for increasing order flow to ArcaEx and will attract resting limit orders into the ArcaEx Book, which will help promote liquidity, transparency, and in turn, price discovery. The PCX notes that the following items continue to be excluded from this fee: (1) Directed orders, regardless of account type, that are matched within the directed order process; [8] (2) directed orders for the account of a retail public customer that are executed partially or in their entirety via the other order processes; [9] (3) orders executed in the Opening Auction and the Market Order Auction; [10] (4) cross orders; [11] (5) commitments received through the Intermarket Trading System (''ITS''); and (6) participants in the Nasdaq/National Market System/Unlisted Trading Privileges Plan (''Plan'') that transmit orders via telephone.[12]

The PCX is also proposing to increase from $0.003 to $0.004 the per-share transaction fee charged to any unfilled or residual portion of a User's order (including a retail public customer order)[13] that is routed away via ArcaEx and executed by another market center or participant. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility. Consistent with the terms of the ITS Plan, the PCX will not apply this transaction fee for commitments sent through ITS.

Odd and Mixed Lots

The PCX proposes to amend its fee schedule to clarify that *all* odd-lot orders (including the odd-lot portion of a mixed lot) are subject to the $0.03 per-share transaction fee. This fee is not restricted to inbound odd-lot orders as incorrectly reflected in the current fee schedule. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot will continue to be excluded from this fee.

Market Maker Transaction Credits

Currently, registered market makers receive a credit of $0.001 per share for any Q Orders they have entered that are executed against Users' orders.[14] The PCX is proposing to increase this credit

[3] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).

[4] Q Orders are limit orders that a market maker submits to ArcaEx in securities in which the market maker is registered to trade. *See* PCXE Rule 7.31(k).

[5] A ''drop copy'' is an electronic report of a transaction for a market maker's account that is executed on another market center and that has been prepared for informational purposes (*e.g.,* market maker inventory tracking, surveillance audit trail).

[6] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25).

[7] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the directed order process, the display order process, the working order process, and the tracking order process. *See* PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.

[8] The directed order process is the first step in the ArcaEx execution algorithm. Through this process, Users may direct an order to a market maker with whom they have a relationship and the market maker may execute the order. To access this process, the User must submit a directed order, which is a market or limit order to buy or sell that the User directs to the a particular market maker. *See* PCXE Rule 7.37(a) (description of the directed order process).

[9] If a retail public customer order has not been executed in its entirety after progressing through the directed order, display order, working order, and tracking order processes, the remaining portion of such order, if eligible, will be routed to another market center or participant. Any executed portion of that order will be subject to the proposed transaction fee of $0.004 per share, as discussed below.

[10] *See* PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

[11] A cross order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. *See* PCXE Rule 7.31(s).

[12] *See* Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Section IX (''Market Access'').

[13] *See* footnote 9, *supra.*

[14] The current $0.002 per share credit that is provided to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

to $0.0015 per share. This increase in credit is designed to provide an additional incentive to firms to become market makers and to build liquidity in the ArcaEx Book, which will foster price competition and order interaction.

Market Maker ''Drop Copy'' Processing Fee

The PCX is proposing to adopt a new $0.001 per-share fee for processing ArcaEx market makers' drop copies [15] of their transactions executed on other market centers. In addition, the PCX is clarifying that such off-board trades are not eligible for the market maker transaction credit or User transaction credit. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

User Transaction Credit

The PCX is proposing to establish a transaction credit for Users who provide liquidity in the ArcaEx Book. Under the proposal, a User that enters a resting limit order into the Book that is subsequently executed against an incoming marketable order in a listed equity security that is traded on ArcaEx (on an unlisted or listed basis) will receive a credit of $0.001 per share. In the case of an ETF, a User that provides liquidity will receive a transaction credit of $0.002 per share. This credit is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through ArcaEx. Any credit received by a User will be applied to reduce any charges payable to ArcaEx. Any remaining balance may be paid directly to the User.

Market Data Revenue Sharing Credit

The PCX proposes to share a portion of its gross revenues derived from market data fees (*i.e.,* tape revenue) with (i) any User that provides liquidity by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the display order, working order, or tracking order processes; (ii) any market maker that executes against a directed order within the directed order process; [16] and (iii) any User that represents all of one side and all or a portion of the other side of a cross-order execution.[17] Under the proposal, any User that meets the requirements stated in subsection (i), above, will receive a 50 percent tape revenue credit per qualifying transaction that is reported over the Consolidated Tape Association's Network. Any User that meets the requirements stated in subsections (ii) and (iii), above, will receive a 100 percent tape revenue credit per qualifying transaction. This proposal is similar to tape revenue sharing programs already established by Nasdaq and various exchanges.[18] The proposed tape revenue credit is intended to create additional incentives to participants to provide liquidity on the ArcaEx facility.

The proposed market data revenue sharing credit will become operative on a pilot basis, commencing on June 1, 2002 and ending on June 28, 2002. During the pilot period, the PCX will assess the effect of the rule change on market participants and may file additional changes to the level or structure of its fees.

User Connectivity Fees

Users are able to route orders to the ArcaEx trading facility via RealTick, a proprietary front-end workstation, or the FIX application programming interface. Currently, the PCX does not charge Users for the costs incurred in establishing the initial line connection (this includes one router and one circuit) to the ArcaEx trading facility. The PCX is now proposing to adopt an initial connectivity fee that would consist of a variable pass-through charge that Users would pay for access to the system. These charges relate to the hardware, software, and network costs associated with connecting to the system. Users would pay the actual charges incurred by the Archipelago Exchange, L.L.C., the operator of the ArcaEx facility, or the service provider retained for the work being performed. The PCX notes that Users that wish to obtain redundant or additional connections would continue to be assessed this variable pass-through charge. The PCX also proposes to charge Users that access the ArcaEx trading system via the RealTick interface a monthly fee of $300 for each workstation.

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act, [19] in general, and section 6(b)(4) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among PCX members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee or other charge, and therefore has become effective pursuant to section 19(b)(3)(A) of the Act [21] and Rule 19b-4(f)(2) thereunder.[22] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No.

[15] *See* footnote 5, supra.

[16] *See* footnote 8, *supra.*

[17] *See* footnote 11, supra.

[18] *See, e.g.,* Securities Exchange Act Release No. 45642 (March 26, 2002), 67 FR 15436 (April 1, 2002) (SR–CSE–2002–03); Securities Exchange Act Release No. 45342 (January 28, 2002), 67 FR 5019 (February 1, 2002) (SR–NASD–2001–96); Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR–CSE–99–03); Securities Exchange Act Release No. 40591 (October 22, 1998), 63 FR 58078 (October 29, 1998) (SR–BSE–98–9).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

SR–PCX–2002–28 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15573 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46071; File No. SR–PCX–2002–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Adopt a New Order Modifier Called "Timed Order" and To Adopt a New Interpretation Under PCXE Rules 1.1(r) and 7.37

July 12, 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 May 20, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. On June 7, 2002, the PCX filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by: (1) Adopting a new order modifier called a "Timed Order" for use by ETP Holders and Sponsored Participants;[3] (2) amending its interpretation of PCXE Rule 7.37 to clarify the manner in which NOW Orders and Primary Only Orders will be treated on the ArcaEx facility when the routing of such orders to other market centers or market participants is required; (3) clarifying its definition of "Indicative Match Price" as it relates to the opening auctions; and (4) making several minor technical rule changes to correct grammatical or typographical errors. The text of the proposed rule change is as follows:

Text of the Proposed Rule Change[4]

Rule 1—Definitions

Rules 1.1(a)–(q)—No change.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (*or, in the case of a Trading Halt Auction, the last sale during normal market hours*), as determined by the Consolidated Tape *will establish the opening price, provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.*

(s)–(aaa)—No change.

* * * * *

Rule 7—Equities Trading

Cancellation of [Revisions in] Transactions

Rule 7.10—No change.

* * * * *

Short Sales

Rule 7.16(a)–(c)—No change.

(d) Exceptions. The provisions of subsection (a) hereof shall not apply to:

(1)–(8)—No change.

(9) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment[.]*; or*

(10)—No change.

(e)–(f)—No change.

* * * * *

Orders and Modifiers

Rule 7.31(a)–(p)—No change.

(q) *Timed Order. A limit order to buy or sell that is to remain in effect until a specified time, after which such order or the portion thereof not executed is to be treated as cancelled. The specified time interval of such order may remain in effect for one or more consecutive trading sessions for that particular day only.* [Reserved.]

(r)–(x)—No change.

* * * * *

Opening Session Auctions

Rule 7.35(a)–(d)—No change.

(e) *Transition to Core Trading Session.*

(1)—No change.

(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule *7.35* [7.30](c)(2)(C).

(3)—No change.

(f)—No change.

* * * * *

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to [all] away markets at the NBBO, *where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO).*

(a)–(e)—No change.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

On October 25, 2001, the Commission approved the PCX's proposal to

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[4] New text is italicized and deleted text is in brackets.

establish ArcaEx as a new electronic trading facility of PCXE.[5] ArcaEx is a fully electronic securities trading facility for use by ETP Holders and their customers. PCX and PCXE are responsible for all regulatory functions related to the facility, and Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., is responsible for the business of the facility to the extent that these activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE. ArcaEx commenced operations on March 22, 2002, replacing the PCXE's traditional trading floor facilities.

1. Timed Order Modifier

As part of its continuing effort to enhance participation in its electronic auction market, the PCX proposes to adopt a new order modifier, called a ''Timed Order,'' for use by ETP Holders and Sponsored Participants (collectively ''Users'') on ArcaEx. The PCX proposes to add PCXE Rule 7.31(q) to define a Timed Order. A Timed Order is a limit order to buy or sell that is to remain in effect until a specified time, after which the order or the portion thereof not executed is to be treated as cancelled. The specified time interval of the order may remain in effect for one or more consecutive trading sessions for that particular day only.[6]

The PCX believes that the Timed Order modifier would enable a User to implement its own customized means for accomplishing the order execution. This modifier would be an enhanced alternative to a traditional day order in that a shorter time interval could be specified for the order to remain in effect, and Users would be able to specify in advance when to cancel their outstanding orders. In the PCX's view, this would afford Users more flexibility in applying their trading strategies. Accordingly, the PCX believes that the proposed rule would promote a more efficient and effective market operation, and would enhance the investment choices available to investors over a broad range of trading scenarios.

2. NOW and Primary Only Orders

The PCX's current rules governing the order execution processes for orders in the ArcaEx Book[7] are set forth in PCXE Rule 7.37. The proposed rule change provides a clarification of PCXE Rule 7.37 as to the manner in which NOW Orders and Primary Only Orders (''PO Orders'') would be treated through ArcaEx's trading system when the routing of those orders to other market centers or market participants is required. The first paragraph of PCXE Rule 7.37 states that ''[s]ubject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids, and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to all away markets at the NBBO.'' With this filing, the PCX is proposing to add interpretive language to make it clear that a User may submit a NOW Order or PO Order that may be routed away to other markets without consideration of the NBBO. The PCX believes that this interpretation is fairly implied in its rules that define these order types and the terms of the ArcaEx Approval Order.

ArcaEx has been designed to provide its Users with a choice as to how they wish to route their orders to away markets. This includes NOW Orders and PO Orders, as discussed below. Under PCXE Rule 7.31(v), a NOW Order is a Limited Price Order[8] that is executed in whole or in part on the ArcaEx, and the portion not so executed is routed pursuant to Rule 7.37(d)[9] to one or more NOW Recipients for immediate execution when received. If a NOW Order is not marketable when submitted to ArcaEx, it is cancelled. Similarly, any portion of the order that the NOW Recipient does not immediately execute is cancelled. NOW Orders may not be Directed Orders.[10] For purposes of a NOW Order, a NOW Recipient means any exchange, ECN or other broker-dealer (i) with which ArcaEx maintains an electronic linkage, including ITS, and (ii) which provides instantaneous responses to NOW Orders routed from ArcaEx. The PCXE designates from time to time those exchanges, ECNs, or other broker-dealers that qualify as NOW Recipients.[11]

Similarly, a PO Order modifier enables Users to implement their own customized means for accomplishing the order execution. As defined in Rule 7.31(x), a PO Order is a market order, for exchange-listed securities only, that is to be routed as a market-on-open order to the designated primary market for participation in the primary market opening or re-opening process. A PO Order bypasses the order-execution processes of the ArcaEx Book and is routed directly to the designated primary market.

The PCX believes that the NOW and PO order types involve a routing element unique to ArcaEx. These specific orders types allow a User's instructions to take precedence over the general requirement that orders will be routed to away markets at the NBBO. The PCX believes that it is implicit in the current definitions of these alternative order types that they will be processed in a manner consistent with the User's instructions and, therefore, the order may have to be routed to away markets that are not quoting at the NBBO.

3. Indicative Match Price

ArcaEx operates two auctions during its Opening Session—the Opening Auction and the Market Order Auction. Also, to facilitate the re-opening of a security following a trading halt in that security, ArcaEx will conduct a Trading Halt Auction.[12] The term ''Indicative Match Price'' is applicable to these auctions and is defined in Rule 1.1(r) to mean ''for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.'' The PCX proposes to amend the definition of the term ''Indicative Match Price'' to clarify the process that establishes a single price opening when there are two or more prices at which the maximum volume of shares are executable.

Currently, PCXE Rule 1.1(r) provides that if there are two or more prices at which the maximum volume of shares

[5] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (hereinafter ''ArcaEx Approval Order'').

[6] *See* PCXE Rule 7.34(a) for a description of ArcaEx's trading sessions.

[7] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the directed order process, the display order process, the working order process, and the tracking order process. See PCXE Rule 7.37 for a detailed description of these order execution processes.

[8] *See* PCXE Rule 1.1(s) (''Limited Price Order'' is defined as any order with a specified price or prices (*e.g.,* limit orders and working orders, other than stop orders).

[9] The routing order process is the fifth step of the ArcaEx execution algorithm, which involves routing orders away to other market centers or market participants and is available only to those ETP Holders who have entered into a Routing Agreement. *See* PCXE Rule 7.37(d) (description of ''routing order process'').

[10] *See* PCXE Rule 7.31(i) (definition of ''directed order''). *See also* PCXE Rule 7.37(a) (description of ''directed order process'').

[11] *See* PCXE Rule 1.1(ff) (definition of ''NOW Recipient'').

[12] *See* PCXE Rule 7.35 for a discussion of the Opening Session Auctions and the Trading Halt Auction.

are executable, the price that is closest to the closing price of the previous day's normal trading hours will be used to establish the opening price. Since this language may be interpreted to mean that the opening trade for the subject auction may occur at a price that trades through eligible limited price orders residing in the ArcaEx Book, and since such an interpretation would be inconsistent with the PCX's priority rules as set forth in PCXE Rule 7.36(a), the PCX proposes to add interpretive language to its definition of Indicative Match Price. The proposed language would make it explicit that when there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous day's normal trading hours would be used to establish the opening price, provided that if the price would trade through an eligible limited price order designated for that auction, then the opening price would occur at the best price level available where no trade through occurs. The PCX is also proposing to modify PCXE Rule 1.1(r) by adding a parenthetical statement to clarify that, in the case of a Trading Halt Auction, the last sale during normal market hours will be used for purposes of determining the opening price.

The PCX believes that the proposed rule change will more accurately reflect ArcaEx's current opening price methodology, and that it is consistent with PCXE's price-time priority rules. Accordingly, the ArcaEx system is designed to ensure that limited price orders residing in the Arca Book will be executed in strict price-time priority, and that those orders will be afforded trade-through protection.

4. Technical Changes

The PCX proposes to make the following minor technical rule changes to correct grammatical or typographical errors:

(a) *Rule 7.10*—''Cancellation of Transactions'' is replacing the heading entitled ''Cancellation of Revisions in Transactions.''

(b) Rule 7.16(c)(9)—A semi-colon and the word ''or'' will be inserted after the first sentence.

(c) *Rule 7*.35(e)—The rule cross-referenced in the text will be changed from Rule 7.30(c)(2)(C) to 7.35(c)(2)(C).

The PCX believes that the proposed rule change is consistent with Section 6(b) [13] of the Act, in general, and furthers the objectives of Section 6(b)(5), [14] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Moreover, the PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder. [16] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) under the Act, [17] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative date so that the PCX can implement the proposed rule change as quickly as possible. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period. [18]

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 the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–27 and should be submitted by July 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15575 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3421]

State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino, and Ventura in the State of California constitute a disaster area as a result of damages caused by an explosion and fire that occurred May 24, 2002 at the Park Encino apartment complex in Encino. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 12, 2002 and for economic injury until the close of business on March 13, 2003 at the

address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
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 342105 and for economic damage is 9Q1200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 13, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–15554 Filed 6–19–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3419]

State of Massachusetts; (and Contiguous Counties in New Hampshire)

Essex County and the contiguous counties of Middlesex and Suffolk in the Commonwealth of Massachusetts; and Hillsborough and Rockingham Counties in New Hampshire constitute a disaster area as a result of a fire that occurred in the City of Gloucester on June 1, 2002. The fire destroyed a 42 unit condominium complex. Applications for loans for physical damage may be filed until the close of business on August 13, 2002 and for economic injury until the close of business on March 12, 2003 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	6.750
Homeowners without credit available elsewhere	3.375
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 341905 for Massachusetts and 342005 for New Hampshire. The number assigned to this disaster for economic injury is 9Q1000 for Massachusetts and 9Q1100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–15491 Filed 6–19–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4051]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Educational Advising Program for International Students From Hong Kong/China

SUMMARY: The Educational Information and Resources Branch of the Bureau of Educational and Cultural Affairs announces an open competition for an Educational Advising Program for International Students from Hong Kong/China. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide information on U.S. higher education to prospective students and serve as country coordinator for Department of State-affiliated advising centers in China.

Program Information

Overview: An ideal program should provide a state-of-the-art advising center in Hong Kong dedicated to providing information, orientation, and advice to Chinese students interested in studying in the U.S. The center should coordinate educational information resources with other Department of State-affiliated advising centers in the People's Republic of China. The centers are located at the U.S. embassy and consulates, and include universities, language institutes, libraries and Chinese Service Centers for Scholarly Exchange. The proposal should address the applicant's ability to do the following:

1. Produce and disseminate advising information packets and materials about US higher education to advising centers in China;
2. Recommend appropriate level of educational advising resource materials supplied by the Educational Information and Resources Branch (ECA/A/S/A) to advising centers in China;
3. Develop and maintain a database of advising centers in China;
4. Order books and materials for advising centers in China through ECA/A/S/A's web-based book ordering system;
5. Ensure centers receive and provide information for surveys to ECA/A/S/A;
6. Provide feedback to ECA/A/S/A and Regional Educational

Advising Coordinator on site visits, consultations, training activities, and advising needs/concerns after each site visit and upon request from ECA/A/S/A;

7. Encourage communication and networking among advising centers within China.

The center should work with the Regional Educational Advising Coordinator (REAC) to provide in-country and regional workshops and seminars, site visits, needs assessments and training for U.S.-affiliated advising center personnel in China as requested.

Guidelines: The Grant should begin on October 1, 2002 and end on September 30, 2003. The programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information. The proposal should be presented in three parts.

I. Applicant's Background and Overview

The first part of the proposal should contain an overview of the applicant's history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars must be included. The overview should indicate the total amount of funding requested with a justification as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephone numbers of the executive officer(s) and of the person(s) ultimately responsible for the project, must be included in the proposal. Resumes or vitae of key personnel must be

provided. ECA/A/S/A also recommends the inclusion of brochures and general information concerning the applicant, e.g., websites, organizational charts, job descriptions, the names of board members (or similar groups), the number of employees, etc.

II. Advising Center Operation and Services

The second part of the proposal should contain details on the advising center's proposed location and hours of operation, proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), budget, and advising services to be provided. A resume or brief narrative explaining the qualifications of the person or persons who will have primary responsibility for conducting advising and/or providing oversight of the advising center staff should be included. The proposal should demonstrate the center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields of study, specialized training, testing, etc.;
2. Information and research on short-term institutional training in technical and professional fields;
3. Information on English language training programs in the U.S.;
4. Group and individual advising sessions, pre-departure orientation and reentry programs, as appropriate. The applicant should be willing to assist the embassy and consulates in China in support of educational outreach activities by developing a network of contacts with the local offices of the Ministry of Education, universities, U.S. government-affiliated advising centers, and other appropriate institutions.

III. Provision of Resource Materials, Equipment and Training

The third part of the proposal should address the extent to which the headquarters office will support this advising program through the provision of educational advising resource materials and professional development activities and training.

Student access to a comprehensive university catalog collection, in print and/or computer software programs, and an extensive collection of current references on U.S. educational institutions and programs, through print or computer networks, is an integral component of an educational advising center and the applicant's ability to provide such should be made clear in this section.

Office equipment that facilitates the processing of inquiries, such as electronic mail, internet and facsimile machines would be regarded as an asset to the advising function and mention of such equipment should be made in the proposal. The Bureau expects the advising center to be equipped with audio visual aids for students' use. Videos/CD–ROMS on U.S. study and life should complement the presentation and materials offered at group and individual advising sessions.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $90,000 under this grant competition. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations must demonstrate at least four years experience in conducting international exchanges to be eligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of this program.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

1. Salary and benefits
2. Budget for travel and per diem
3. Office supplies and expenses
4. Rent and utilities
5. Outreach and publicity
6. Indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/ASA–03–04.

FOR FURTHER INFORMATION CONTACT: The Educational Information and Resources Branch, ECA/A/S/A, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936, fax: 202–401–1433, *http://exchanges.state.gov/education/rfgps* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Dorothy Mora on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Thursday, August 1, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/ASA–03–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and

- ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the

advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institutional record/ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-partner country relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 13, 2002.

Rick Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–15611 Filed 6–19–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending June 7, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412

and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12464.

Date Filed: June 7, 2002.

Parties: Members of the International Air Transport Association.

Subject:

CTC COMP 0392 dated 7 June 2002 (r1–r10),

Expedited Composite Resolutions, Extract of Minutes attached,

Intended effective date: 1 September 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–15500 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–41]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 1, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Buchanan-Sumter, (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 14, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12133.

Petitioner: SkyWest Airlines.

Section of 14 CFR Affected: 14 CFR 121.463(c).

Description of Relief Sought: To allow SkyWest to permit newly hired dispatchers to accomplish the required 5 hours of dispatcher operating familiarization time in the Canadair Regional Jet (CL–65) to fulfill the dispatcher operating familiarization time requirement for the CL–65 and the Embraer EMB–120 Brasilia aircraft.

[FR Doc. 02–15602 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held July 9–12, 2002 from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036, telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- July 9:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
  - Resolve DO–224A Minimum Aviation System Performance Standards Change 2 for Final Review and Comment (FRAC) comments
- July 10:
  - Continue work on DO–224A Change 2 FRAC comments
  - Approve DO–224A Change 2
  - Work on DO–271A Mode 3 Minimum Operational Performance Standard FRAC comments
- July 11:
  - Continue work on DO–271A FRAC comments
- July 12:
  - Continue work on DO–271A FRAC comments
  - Approve DO–271A
  - Review Relevant International Activities (EUROCAE WG–47 status and issues, Others as appropriate)
  - Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 13, 2002.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 02–15526 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on July 9–11, 2002, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- July 9:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Minutes of Previous Meeting)
  - Status of Working Group 4, VHF Data Link (VDL) 3 Implementation
  - Status of Working Group 5, VDL 3 Operational Safety Analysis, System Performance Requirements (OHA/SPR), for NEXCOM VDL 3
  - Status of Working Group 6, VDL 3 Interoperability of NEXCOM
  - Working Group 5 Session
  - Closing Plenary Session (Date and Place of Next Meeting)
- July 10, 11:
  - Working Groups 6 and 4 sessions

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 13, 2002.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 02–15527 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12514]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GATO GO.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12514]. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* GATO GO. *Owner:* San Diego Multihull Charters, LLC.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''Length 44.5 ft., Beam 25.0 ft., Draft 4.0 ft., Height off water 60.0 ft., Tonnage: 8 tons net'

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

General Chartering, Team Building and Business Meetings * * * Coast of California from Point Conception south to the Mexican border.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1992. *Place of construction:* France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''As a small recreational sailing vessel with room for a limited number of passengers, Gato Go will fill a specialty market in San Diego Bay and Southern California waters. This market will include limited day charters for 12 passengers or less, coastal cruising, corporate events, including team building, retreats, and other activities. There are several existing companies with sailing chargers aimed at larger groups, as well as large commercial companies taking groups of 50 or more * * * The present operators of commercial vessels are going well and the future looks good for market growth.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''As a commercial vessel verses a recreational vessel, Gato Go will have many more

days at sea and will therefore incur more usage of the local shipyards of San Diego to keep her in running order.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15623 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12518]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Havsornen.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12518. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: HAVSORNEN. Owner: Paul Dimick.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length: 34 ft.; Hull Depth: 5.08 Ft.; Hull Breadth: 11.42 ft.; Gross Tonnage: 9; Net Tonnage: 8''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: The sailing vessel will be used for charters promoting the ecology and history of Biscayne Bay and the Florida Keys through personal experience in the marine environment. Further emphasis will be put on chartering to groups of four (4) passengers or fewer in order to provide a one-on-one understanding of the ecology and history of South Florida through interaction in the marine environment. Geographic Region: The waters surrounding the state of Florida, specifically from Miami to Key West.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Stenungsund, Sweden.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The impact on other commercial passenger vessel owners in the area will be negligible because the intended use of the subject vessel is focused on a segment of the population who are not now targeted by other vessel owners in this area. Also the intended use of the vessel is focused on personalized charters, carrying four (4) or fewer passengers.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The impact on U.S. shipyards will be negligible because the scope of the intended use of the vessel is so limited, that it would not be cost-effective to build or purchase a new yacht to fit operation described above.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary,

[FR Doc. 02–15619 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12517]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Amazing Grace.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12517.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: AMAZING GRACE. Owner: Kelrich Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''40 ft. L.O.D., 46 ft. L.O.A., capacity: 6 passengers maximum, 14 gross tons, 12 net tons''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Sailing charters Hawaiian Islands only, inter-island and near coastal waters.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Tainan, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This waiver will not have any adverse impact on other commercial passenger vessel operators. There are very few such operators in Hawaii and a real need exists for small sailing charters in the islands.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''This waiver will have no impact on U.S. shipyards.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15620 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12516]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Wanderbird.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12516. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: WANDERBIRD. Owner: Frederick & Karen Miles.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''Length 88 feet, beam 20 feet, draft 10 feet, Capacity 12 passengers, Tonnage 111.47 Gross Tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

''The vessel will be used as an interactive passenger carrying research vessel. We will conduct 4–30 day trips along the migrational paths of whales and seabirds primarily along the Eastern Seaboard of the Continental United Sates. This unique vessel will offer folks the opportunity to actually contribute to ongoing research projects while actually observing the animals and cruising in

their habitat. We plan to work with accredited research organizations and operate within their research guidelines. Our mission is to support research and conservation through educational tourism. Our hope is to be able to operate along the complete migrational path of resident whales and seabirds. We request an operational range of Near Coastal USA and Territories with the primary usage to be between Eastport, Maine and Cape Ann, Massachusetts.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1963. Place of construction: Holland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''There are no other vessels offering this type of cruise in the projected area of operation. * * * It is our sincere belief that our intended operation will help to stir the public's interest in marine ecology and preservation and bring more people to all of the operators who offer trips to view the whales and seabirds.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The impact this waiver will have on US shipyards will be a positive one. The Wanderbird will be hauled out annually at a US shipyard and all major repair and maintenance will be done at US shipyards.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15621 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12515]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Lewis Reef.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12515. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: LEWIS REEF. Owner: Ancamax Corporation.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''57.3′ long, 17.1′ wide and 10.1'' deep'gross tonnage is 66, and her net tonnage is 53.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

''I intend to keep the vessel in St. Michael's, MD, and will carry charters of no more than six passengers. Charters will be run on the Chesapeake Bay and surrounding area, no more than one hundred nautical miles north south, or east of home port.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1988. Place of construction: Vancouver, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "'I can state without equivocation that granting of this waiver will not adversely affect any existing operators. No vessels based in the St. Michaels, MD area currently offer maritime training for pleasure boaters, nor are there plans to do so that I am aware of''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''United States shipbuilders will not be affected by the requested waiver. I will continue to have the vessel serviced and drydocked in the United States as it has been for the past year.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15622 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12513]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TIKI II.

SUMMARY: As authorized by Public Law 105–383, the Secretary of

Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 22, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12513. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: TIKI II. *Owner:* Scott D. Sanford.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''L.O.A.=41.3 ft., B.O.A.=22.8 ft., Overall Depth=9.1 ft., Gross Tonnage: 27 GRT*, Net Tonnage: 22 NRT*''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:*

''* * * day sailing charters, for twelve passengers or less, in the big Pine Key, Florida area, within 20 nautical miles from shore (from the Florida Keys island chain) and within a radius of 30 nautical miles of Big Pine Key, Florida. Charters would include sightseeing and snorkeling. I would avoid competition with the day sailing charter boats of Key West. I would also like to do term sailing charters for six passengers or less * * * with a total operational area of the entire Florida Keys chain and the surrounding waters.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1994. *Place of construction:* Aigrefeuille, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''Other local vessels operating in my immediate area are not sailing charter operations, and thus they are not direct competition.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''I believe this waiver would have no impact on the U.S. shipyards. The U.S. has a very small market of American built cruising catamarans adequate for my needs.''

Dated: June 17, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–15624 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–004

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency initiate an investigation to determine the existence of a defect related to motor vehicle safety. The petition is identified as DP02–004.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Ms. Charlene Blake, Vienna, VA, submitted a petition to NHTSA by letter dated April 9, 2002, requesting that an investigation be initiated to determine whether to issue an order concerning a defect in Model Year 1997 to 2001 Toyota Camry, Solara, Sienna, Avalon, Celica and Highlander vehicles and Lexus ES 300 and RX 300 vehicles. The petitioner alleges sudden engine seizure in certain aforementioned vehicles attributable to engine sludge-related problems.

In February 2002, Toyota Motor Sales, USA, Incorporated (Toyota) initiated a Special Policy Adjustment (SPA) covering the aforementioned model vehicles. In April 2002, Toyota expanded the SPA to include certain model year 2002 production for the same models. Toyota's SPA program is designed to provide assistance to consumers who have experienced engine problems related to ''oil gelling'' or ''sludge.'' While aggravating to the owner, this problem appears to have limited safety implications within the meaning of NHTSA's authorizing statue. Moreover, given the actions taken by Toyota to address this problem, NHTSA does not believe that pursuing this matter would be an effective use of its resources.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of an alleged safety-related defect as defined by the petitioner in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and

prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: June 12, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–15499 Filed 6–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 5)]

Railroad Cost of Capital—2001

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision.

SUMMARY: On June 20, 2002 the Board served a decision to update its computation of the railroad industry's cost of capital for 2001. The composite after-tax cost of capital rate for 2001 is found to be 10.2%, based on a current cost of debt of 6.9%; a cost of common equity capital of 12.8%; a cost of preferred equity capital of 6.3%; and a capital structure mix comprised of 41.8% debt, 56.0% common equity, and 2.2% preferred equity capital. The cost of capital finding made in this proceeding will be used in a variety of Board proceedings.

EFFECTIVE DATE: This action is effective June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision may be used for a variety of regulatory purposes. To obtain a copy of the full decision, write to, call, or pick up in person from: Da-To-Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone 202 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.] The decision is also available on the Board's internet site at *http://www.stb.dot.gov.*

Environmental and Energy Considerations

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

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of this action are to update the annual railroad industry cost of capital finding by the Board. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 14, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–15592 Filed 6–19–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34207]

CHS Holdings, Inc.—Acquisition and Operation Exemption—J.K. Line, Inc.

CHS Holdings, Inc. (CHS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from J.K. Line, Inc., and to operate a 2.11-mile line of railroad between milepost 177.44 and the end of the line at milepost 179.55 in Joliette, Pembina County, ND.[1] CHS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class III rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or after May 28, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed 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. 34207, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

[1] CHS is a wholly owned subsidiary of Cenex Harvest States Cooperatives, a noncarrier.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 13, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–15474 Filed 6–19–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Internal Revenue Service. Tax Exempt and Government Entities Division; Meeting

AGENCY: Internal Revenue Service (IRS). Treasury.

ACTION: Location change for public meeting of the Advisory Committee on Tax Exempt and Government Entities (ACT).

SUMMARY: This notice corrects information regarding the meeting room for the public meeting of the Advisory Committee on Tax Exempt and Government Entities (ACT) on Friday, June 21, 2002.

FOR FURTHER INFORMATION CONTACT: Rick Trevino, Office of Communication and Liaison; 1111 Constitution Ave., NW.; T:CL—Penn Bldg; Washington, DC 20224. Telephone: 202–283–9950 (not a toll-free number). E-mail address: *Rick.Trevino@irs.gov.*

SUPPLEMENTARY INFORMATION: A notice of a public meeting of the Advisory Committee on Tax Exempt and Government Entities was published in the **Federal Register** on May 29, 2002 (67 FR 37472). The location of the meeting has changed from Room 3313 to Room 4718 in the Main IRS building located at 1111 Constitution Ave., NW, Washington, DC.

Dated: June 11, 2002.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division.

[FR Doc. 02–15714 Filed 6–18–02; 3:32 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act)

that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Monday, July 1, 2002, beginning at 9:30 a.m. and adjourning at 1:30 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, D.C. and is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The Task Force will hold an open discussion on the Draft Interim Report as discussed during the June 2002 meeting.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: June 10, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–15583 Filed 6–19–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 119

Thursday, June 20, 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 EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

Correction

In notice document 02–13704 beginning on page 38079 in the issue of Friday, May 31, 2002, make the following corrections:

1. On page 38079, in the third column, in the third paragraph, in the first line, ''Section 477 (B)(5)'' should read, ''Section 477 (b)(5)''.

2. On page 38080, in the middle of the page, in the table, under the heading ''Then the adjusted net worth is–'', in the fourth entry, ''$135,000'' should read, ''$135,500''.

3. On page 38081, in the second column, in the table entitled ''INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE'', under age ''50'', in the column entitled ''married'', ''47,400'' should read, ''47,700''.

[FR Doc. C2–13704 Filed 6–19–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–10–AD; Amendment 39–12764; AD 2002–11–03]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

Correction

In rule document 02–13423 beginning on page 38371 in the issue of Tuesday, June 4, 2002, make the following corrections:

§ 39.13 [Corrected]

1. On page 38374, in the first column, in paragraph (1), in the second line, ''*COM001*'' is removed. In paragraph (1)(ii), in the fifth line, the word ''modification'' is removed and a period is added at the end of the paragraph.

2. On page 38375, in the first column, a period is added at the end of paragraphs (2)(iii) and (3)(ii).

3. On page 38376, in the first column, a period is added at the end of paragraph (4).

[FR Doc. C2–13423 Filed 6–19–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 20, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7222–9]

RIN 2060–AG68

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action replaces Refractories Manufacturing with Refractory Products Manufacturing on the list of categories of major sources of hazardous air pollutants (HAP) published under section 112(c) of the Clean Air Act (CAA) and on the source category schedule for national emission standards for hazardous air pollutants (NESHAP). This action also proposes NESHAP for new and existing refractory products manufacturing sources. The proposed rule would require all major sources to meet emission standards reflecting the application of maximum achievable control technology (MACT). The proposed rule would protect air quality and promote the public health by reducing emissions of several of the HAP listed in section 112(b)(1) of the CAA, including ethylene glycol, formaldehyde, hydrogen fluoride (HF), hydrochloric acid (HCl), methanol, phenol, and polycyclic organic matter (POM). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the liver, kidneys, and skeleton. The EPA has classified the HAP formaldehyde and POM as probable human carcinogens. We estimate that the proposed rule would reduce nationwide emissions of HAP from these facilities by as much as 120 megagrams per year (Mg/yr) (132 tons per year (tons/yr)).

DATES: *Comments.* Submit comments on or before August 19, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 10, 2002, a public hearing will be held on July 22, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–50, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–50, Room M–1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket No. A–2000–50 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Zapata, Minerals and Inorganic Chemicals Group, Emissions Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5167, electronic mail (e-mail) address: *zapata.susan@epa.gov.* For questions about the public hearing, contact Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422, e-mail address: *medley.tanya@epa.gov.*

SUPPLEMENTARY INFORMATION: *Comments.* Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect®. All comments and data submitted in electronic form must note the docket number: A–2000–50. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Susan Zapata, c/o OAQPS Document Control Officer, C404–02, U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Tanya Medley at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Medley to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, with certain exceptions, will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Industrial	3255	327124	Clay refractories manufacturing plants.
Industrial	3297	327125	Nonclay refractories manufacturing plants.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your plant site is regulated by this action, you should examine the applicability criteria in § 63.9782 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Outline.* The information presented in this preamble is organized as follows:

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I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed rule was listed as Chromium Refractories Production on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

C. What Is the History of the Source Category?

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Chromium Refractories Production was included on the initial source category list as a major source category. After obtaining and analyzing information on HAP emissions from chromium refractories manufacturing plants, we determined that some facilities were major sources due to HAP emissions from the manufacturing of nonchromium refractories at these plants. Because the production of nonchromium refractories at those facilities would not be covered by other source categories on the current source category list, we decided to expand the scope of the chromium refractories production source category to include most manufacturers of refractory products.

Section 112(c) of the CAA allows EPA to revise the source category list at any time. On November 18, 1999, we revised the source category name from Chromium Refractories Production to Refractories Manufacturing (64 FR 63025) to reflect the broadened scope of the source category. Today's action changes the source category name from Refractories Manufacturing to Refractory

Products Manufacturing on the source category list under section 112(c) of the CAA to further clarify the source category.

D. What Is Refractory Products Manufacturing?

Refractory products are heat-resistant materials that provide the linings for high-temperature furnaces, reactors, and other processing units. They include, but are not limited to: Kiln furniture, crucibles, refractory ceramic fiber (RCF), and materials used as linings for boilers, kilns, and other processing units and equipment where extremes of temperature, corrosion, and abrasion would destroy other materials.

Refractory products manufacturing facilities generally can be classified based on the different types of raw materials and process operations used. In the broadest sense, refractory products can be classified by raw materials as either clay refractories or nonclay refractories. Chromium refractories are a subset of nonclay refractory products. Classifications of refractory products by process operations include monolithics, resin-bonded refractories, pitch-impregnated refractories, pitch-bonded refractories, other formed refractories that use organic additives, RCF, and fused-cast refractories. Table 1 of this preamble contains abbreviated definitions of each of these classifications.

TABLE 1.—REFRACTORY PRODUCTS CLASSIFICATIONS

Classification	Product type	Description
By raw material	Clay	Products that contains at least 10 percent clay in the raw material mix.
	Nonclay	Products that contain less than 10 percent clay in the raw material mix.
By process	Monolithics	Products that consist of a mixture of granular refractory raw materials that have not been shaped or formed.
	Resin-bonded	Cured products that are produced using a phenolic resin or other type of HAP-forming resin as a binder.
	Pitch-impregnated	Fired products that are subsequently impregnated with coal tar or petroleum pitch.
	Pitch-bonded	Cured products that are produced using coal tar or petroleum pitch as a binder.
	Other formed products that are produced using organic additives.	Dried or cured products that are products that are produced using an organic binder other than resins, coal tar, or petroleum pitch.
	RCF	Spun or blown bulk RCF and products that consist primarily of RCF.
	Fused-cast	Products manufactured by casting a molten refractory raw material mix into a form.

There are approximately 167 domestic refractory products manufacturing plants currently in operation located in 30 States and Puerto Rico. In terms of the number of facilities, the leading States are Ohio (40 plants), Pennsylvania (28 plants), Illinois (13 plants), and Missouri (10 plants). Most of these facilities are not likely to be major sources of HAP.

To produce most refractory products, raw materials are mixed, formed into shapes, dried or cured, then fired at high temperature in a kiln. The raw materials used in the refractory can be classified as either body materials or binders and additives. The body materials used in the industry are either raw or processed minerals, the most common of which are clays, silica, alumina, magnesium oxide, bauxite, silicon carbide, mullite, and graphite. The percentage of clay used in the mixture defines whether the product is a clay or nonclay refractory product.

Binders are substances that are added to a granular material to give it workability and green or dry strength. Nonclay refractory products generally require binders, whereas clay refractories may not need binders due to the cohesive nature of clay and the presence of moisture in the clay. Binders can also serve as lubricants and can impart other properties to the final product. For example, in addition to acting as binders, phenolic resins and pitch also increase product lifetime and durability by adding carbon that remains in the refractory body after firing. Additives are used to facilitate processing and/or impart specific properties to the final product. The most widely used binders and additives are cement, water, silicates, inorganic acids, phenolic resins, pitch, and lignin compounds, such as calcium lignosulfonate.

Clays and other raw minerals that are used as body materials in refractory products manufacturing require mechanical processing, such as grinding and screening, prior to their use. After processing, body materials, binders, and additives are proportioned and mixed. Monolithics typically require no further processing other than bagging or packaging for shipment. Other types of refractory products must be formed into shapes by pressing, extruding, molding, or casting. Next, the formed shapes generally are dried or cured at temperatures of 90° to 260°C (200° to 500°F). Drying and curing are similar processes with respect to equipment design and operation; the primary difference between the two processes is that the function of drying is to reduce the free moisture content of the shapes, whereas curing activates the resin or binder in the shapes. The final step in the production of most refractory shapes is firing. Firing serves three primary functions: to reduce the number of pores in the refractory; to increase the density of the refractory; and to bond together the individual refractory grains into a strong, hard mass. Firing typically is performed in either tunnel kilns, which operate continuously, or in periodic kilns, which operate as a batch process. Most firing temperatures are in the range of 1090° to 1540°C (2000° to 2800°F) and the entire firing cycle typically takes 24 to 36 hours. After firing, the shapes may be finished by grinding, cutting to specification, or other process; the shapes then are packaged for shipment.

Some refractory products manufacturing facilities impregnate fired shapes with coal tar or petroleum pitch to add additional carbon to the body to increase the durability of the finished product. This process includes the simultaneous heating of pitch in a

pitch working tank and heating of fired shapes in a shape preheater to between 150° and 260°C (300° and 500°F); placing the shapes and pitch in a sealed vessel, typically called an autoclave; and applying pressure to force the pitch into the pores of the shapes. After impregnation, the shapes are cooled (defumed). For certain applications, the impregnated shapes undergo an additional process referred to as coking. In the coking process, the shapes are placed in a coking oven and heated under reducing conditions to drive off the volatile constituents (i.e., POM) of the pitch.

To produce fused-cast refractories, raw materials are mixed and loaded into an electric arc furnace where the mixture is heated to a molten state. The molten material is then poured into molds and allowed to cool before any final cutting, grinding, or finishing operation.

The production of RCF involves process steps that differ significantly from the steps used to produce formed refractory products. To manufacture RCF, alumina, silica, and calcined kaolin are mixed and fed into a melting furnace. As the molten material pours or drains from the furnace, it is fiberized into long, thin fibers by blowing or spinning. The fibers can then be chopped and shipped as bulk fibers, needled into fiber blankets, or cast into formed fiber products.

Based on the available data, we have concluded that no existing facilities that produce fused-cast refractory products or RCF are major sources of HAP emissions. In addition, we have determined that none of the existing facilities that produce only monolithics are major HAP sources. Therefore, facilities that produce only these types of refractory products would not be regulated under today's rule as proposed.

E. What Are the Health Effects of Pollutants Emitted From the Refractory Products Manufacturing Source Category?

The HAP that would be controlled by the proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (e.g., irritation of the lung, skin, and mucous membranes, gastrointestinal effects, and damage to the kidneys and liver) and acute health disorders (e.g., respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (formaldehyde and POM) as probable human carcinogens.

The EPA does not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's proposed rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and this proposed rule reduces emissions, subsequent exposures would be reduced.

Following is a discussion of the health effects of seven HAP: ethylene glycol, formaldehyde, HF, HCl, methanol, phenol, and POM. Although the proposed rule would reduce emissions of HF and HCl from any new kilns that emit these HAP, it would not reduce emissions of these HAP from existing sources. We estimate that emissions of methanol from existing sources would also not be reduced by today's proposed rule. However, methanol is a constituent of some resins used in resin-bonded refractory production, and today's proposed rule would regulate methanol emissions from any affected source that began producing refractory products made with resins that contain methanol.

1. Ethylene Glycol

Acute (short-term) exposure of humans to ethylene glycol by ingesting large quantities causes central nervous system depression (including drowsiness and respiratory failure), gastrointestinal upset, cardiopulmonary effects, and renal damage. The only effects noted in the one available study of humans acutely exposed to low levels of ethylene glycol by inhalation were throat and upper respiratory tract irritation. Rats and mice exposed chronically (long-term) to ethylene glycol in their diet exhibited signs of kidney toxicity and liver effects. No information is available on the reproductive or developmental effects of ethylene glycol in humans, but several studies of rodents have shown ethylene glycol to be fetotoxic. The EPA has not classified ethylene glycol for carcinogenicity.

2. Formaldehyde

Both acute and chronic exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The EPA considers formaldehyde a probable human carcinogen (Group B2).

3. Hydrogen Fluoride

Acute inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified HF for carcinogenicity.

4. Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified HCl for carcinogenicity.

5. Methanol

Acute or chronic exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. The EPA has not classified methanol with respect to carcinogenicity.

6. Phenol

Acute inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. The EPA has classified phenol in Group D, not classifiable as to human carcinogenicity.

7. Polycyclic Organic Matter

The term polycyclic organic matter defines a broad class of compounds that includes the polycyclic aromatic hydrocarbon compounds (PAH), of which benzo[a]pyrene is a member. Dermal exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of POM in humans, but animal studies have reported that oral exposure to benzo[a]pyrene causes reproductive and developmental effects. Human studies have reported an increase in lung cancer in humans exposed to POM-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. Animal studies have reported respiratory tract tumors from inhalation exposure to benzo[a]pyrene and forestomach tumors, leukemia, and lung tumors from oral exposure to benzo[a]pyrene. The EPA has classified seven PAH compounds (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as Group B2, probable human carcinogens.

II. Summary of the Proposed Rule

A. What Source Category Is Affected by the Proposed Rule?

Today's proposed rule would apply to the Refractory Products Manufacturing source category. This source category includes, but is not limited to, any facility that manufactures refractory bricks and shapes that are produced using an organic HAP compound, pitch-impregnated refractory products, chromium refractory products, and fired clay refractory products. Fired refractory products are those that have undergone thermal processing in a kiln.

B. What Are the Primary Sources of Emissions From Major Sources and What Are the Emissions?

At most refractory products manufacturing plants, the primary sources of HAP emissions are the thermal process units. Other sources of HAP emissions at these facilities are the raw material processing and handling equipment.

Thermal process units can emit several HAP, as well as a number of criteria pollutants. The thermal process units that would be covered by the proposed rule are: Shape dryers, curing ovens, and kilns that are used to process resin-bonded, pitch-bonded, and other refractory products that are produced using an organic HAP compound; defumers, coking ovens, shape preheaters, and pitch working tanks associated with pitch-impregnated refractory production; kilns used to fire chromium refractory products; and kilns used to fire clay refractory products. The HAP emitted by a specific thermal process unit depend mostly on the raw materials, binders, and additives used. The criteria pollutants emitted by thermal process units include particulate matter (PM), sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen oxides (NO_X), and volatile organic compounds (VOC). Depending on the type of resin or additive used, these materials can include phenol, methanol, ethylene glycol, POM, and other organic compounds. For resin-bonded refractory production, the thermal process units are the curing ovens and kilns, which can emit phenol, formaldehyde, ethylene glycol, and methanol. For pitch-bonded refractory production, the thermal process units are the curing ovens and kilns. These sources all emit POM, which is the primary constituent of coal tar and petroleum pitch. For pitch-impregnated refractory production, the thermal process units are the coking ovens, defumers, pitch working tanks, and shape preheaters, which also emit POM. Kilns that are used to fire chromium refractory products emit particulate chromium and several other HAP metals. For clay refractory production, the fluorides and chlorides in the clay form HF and HCl, respectively, which are subsequently emitted from kilns during firing.

C. What Are the Affected Sources?

Today's proposed rule would establish emission limitations (emission limits and operating limits) and work practice standards for several types of refractory products manufacturing sources. Table 2 of this preamble lists the affected sources that would be subject to the proposed rule.

TABLE 2.—SOURCES THAT WOULD BE AFFECTED BY THE PROPOSED REFRACTORY PRODUCTS MANUFACTURING RULE

Refractory product type	Affected sources
Resin-bonded	Existing and new curing ovens and kilns.
Pitch-bonded	Existing and new curing ovens and kilns.
Pitch-impregnated	Existing and new shape preheaters, pitch working tanks, defumers, and coking ovens.
Other formed products that use organic additives	Existing and new shape dryers and kilns used to process refractory shapes that are made using an organic HAP compound.
Chromium	Existing and new kilns.
Clay	Existing and new kilns.

D. What Are the Emission Limits?

Emission limits are numeric limits on the emissions from affected sources. Today's proposed rule would specify separate emission limits for affected sources of organic HAP, HF, and HCl.

1. Existing and New Thermal Process Sources of Organic HAP

Today's proposed rule would establish emission limits for specified thermal process sources that emit organic HAP. Facilities that operate these types of sources could meet either of two types of emission limits: A specified minimum combustion efficiency of an add-on control device (i.e., a thermal oxidizer or a catalytic oxidizer); or a limit on the concentration

of total hydrocarbons (THC) in the emissions. The combustion efficiency option would apply only to sources that are controlled with a thermal or catalytic oxidizer for which the carbon dioxide (CO_2) concentration at the outlet of the device is 3 percent or less. To comply with the combustion efficiency limit, you would be required to reduce emissions of CO and THC so that the average combustion efficiency is 99.8 percent or greater. If the outlet CO_2 concentration is more than 3 percent, or if you choose to comply with the THC emission concentration limit, you would be required to reduce emissions of THC at the outlet of the source or control device to 20 parts per million by volume, dry basis (ppmvd), or less, corrected to 18 percent oxygen (O_2). The sources that would be subject to these organic HAP emission limits include new and existing shape dryers, curing ovens, kilns, coking ovens, and defumers. In addition, new shape preheaters would be subject to these same emission limits. You would also be required to meet the THC emission concentration limit if you operate an affected source that is not equipped with a thermal or catalytic oxidizer.

For continuous process sources, the format of the combustion efficiency and THC emission limits would be a 3-hour block average. That is, the average combustion efficiency or THC concentration based on three 1-hour test runs would have to meet the emission limit of at least 99.8 percent combustion efficiency or no more than 20 ppmvd THC at 18 percent O_2, whichever applies. For batch process sources, the format of the standard is the average of the highest rolling 3-hour averages for three test runs. In other words, you would have to calculate the rolling 3-hour average combustion efficiency of THC concentration for each 3-hour period of each test run. From each of the three test runs, you would select the highest rolling 3-hour average. You would then determine the average of those three highest rolling averages to determine if your source is in compliance with the emission limit.

2. New Clay Refractory Kilns

If you own or operate an affected new clay refractory kiln, you would be required to meet emission limits for both HF and HCl. For affected tunnel kilns, you would have to meet an HF emission limit of 0.001 kilogram per megagram (kg/Mg) (0.002 pound per ton (lb/ton)) of product or reduce HF emissions by at least 99.5 percent. You would also be required to meet an HCl emission limit of 0.0025 kg/Mg (0.005 lb/ton) of product or reduce uncontrolled HCl emissions by at least 98 percent. If you own or operate a new affected periodic kiln, you would be required to reduce HF emissions by at least 99.5 percent and HCl emissions by at least 98 percent.

E. What Are the Operating Limits?

Operating limits are limits on operating parameters of process equipment or control devices. Today's proposed rule specifies process and control device operating limits for thermal process sources that emit organic HAP and clay refractory kilns. For each of these operating limits, you would be required to measure the appropriate operating parameters during the performance test and establish limits on the operating parameters based on those measurements. Following the performance test, you would be required to monitor those parameters and ensure that the established limits are not exceeded.

1. Existing and New Thermal Process Sources of Organic HAP

For affected thermal process sources that discharge organic HAP, we would require operating limits on the organic HAP processing rate and the operating temperatures of your control devices. The operating limit on the organic HAP processing rate would require you to measure during the performance test the rate at which organic HAP are processed in an affected process unit. To determine the organic HAP processing rate, you would need data on the mass fractions of organic HAP in each resin, binder, or additive that contains an organic HAP. You could determine the mass fraction of organic HAP in a material using EPA Method 311, ''Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph.'' You could also use material safety data sheets (MSDS) or product labels to determine the mass faction of organic HAP in a substance.

For continuous process units, the organic HAP processing rate would be measured in units of mass of organic HAP per unit time (e.g., pounds of HAP per hour) contained in the refractory products that undergo thermal processing. For batch process units, the organic HAP processing rate would be measured in units of mass of organic HAP per mass of refractory products that undergo thermal processing (e.g., pounds of organic HAP per ton of refractory product in the batch). Following the performance test, you would be required to monitor the organic HAP processing rate and ensure that the rate does not exceed the rate established during the performance test. If you decided to start production of a refractory product that is likely to have an organic HAP processing rate greater than the rate established during the most recent performance test, you would be required to conduct a new performance test for that product and establish a new operating limit for the organic HAP processing rate.

For sources that are controlled with a thermal oxidizer, you would be required to monitor the combustion chamber temperature. For affected sources that are controlled with a catalytic oxidizer, you would be required to monitor the temperature at the inlet of the catalyst bed. You would also be required to maintain the catalyst according to manufacturer's specifications. For either type of control device, you would be required to measure and record the appropriate temperature during the performance test. Following the performance test, you would be required to monitor continuously the control device operating temperature and ensure that the 3-hour block average temperature does not fall below the corresponding temperature measured during the performance test minus 14°C (25°F).

2. New Clay Refractory Kilns

If you have a new clay refractory kiln that is controlled with a dry lime injection fabric filter (DIFF) or a dry lime scrubber/fabric filter (DLS/FF), you would be required to monitor fabric filter inlet temperature and lime feed rate. During the performance test, you would be required to measure the fabric filter inlet temperature. Following the performance test, you would be required to continuously measure fabric filter inlet temperature and ensure that the temperature does not exceed the temperature established during the performance test plus 14°C (25°F). During the performance test, you would also be required to measure the lime feed rate and subsequently ensure that the lime feed rate did not fall below the feed rate established during the performance test. You would also have to verify that lime is free-flowing to the control system. In addition, you would be required to install a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm, and complete corrective actions according to your operation, maintenance, and monitoring (OM&M) plan. You would also have to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month reporting period. In calculating this operating

time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time would be counted. If corrective action is required, each alarm would be counted as a minimum of 1 hour, and if you take longer than 1 hour to initiate corrective action, the alarm time would be counted as the actual amount of time taken to initiate corrective action.

If you use a DLS/FF, you would also be required to measure the water injection rate during the performance test. Following the performance test, you would be required to maintain the water injection rate at least at the levels established during the performance test.

If you use a wet scrubber (WS), you would be required to measure the pressure drop across the scrubber, liquid pH, and liquid flow rate during the performance test. Following the performance test, you would be required to ensure that the levels of these parameters did not fall below the corresponding levels established during the performance test.

3. All Affected Sources

Under today's proposed rule, you would be required to prepare a written OM&M plan and keep the plan up to date for all affected sources. The plan would have to include procedures for the proper operation and maintenance of each affected source and its air pollution control device(s). The plan would also have to include procedures for monitoring and proper operation of monitoring systems to help assure both initial and continuous compliance with the emission limits, operating limits, and work practice standards.

If you own or operate an affected source of organic HAP equipped with an alternative control device or technique not listed in the proposed rule, you would have to install a THC continuous emission monitoring system (CEMS) on the outlet of the control device or in the stack. You would also be required to comply with Performance Specification (PS) 8 of 40 CFR part 60, appendix B, and with Procedure 1 of 40 CFR part 60, appendix F. If you own or operate an affected chromium refractory products kiln or clay refractory products kiln that is equipped with an alternative control device or technique not listed in the proposed rule, you would have to establish operating limits for the appropriate operating parameters subject to prior written approval by the Administrator as described in 40 CFR 63.8(f). You would be required to submit a request for approval of alternative monitoring procedures that includes a description of the alternative control device or technique, the type of monitoring device or procedure that would be used, the appropriate operating parameters that would be monitored, and the frequency that the operating parameter values would be determined and recorded. You would establish site-specific operating limits during your performance test based on the information included in the approved alternative monitoring procedures request. You would also be required to install, operate, and maintain the parameter monitoring system for the alternative control device or technique according to your OM&M plan. If the Administrator determines that parameter monitoring cannot assure continuous compliance, a CEMS may be required.

If you use a control device or technique listed in the proposed rule, you could establish operating limits for alternative operating parameters subject to prior written approval by the Administrator on a case-by-case basis. You would be required to submit the application for approval of alternative operating parameters no later than the notification of the performance test. The application would have to include information justifying the request for alternative operating parameters (such as why using the alternative operating parameters is preferable to using the operating parameters in the proposed rule), a description of the proposed alternative control device operating parameters, the monitoring approach, the frequency of measuring and recording the alternative parameters, the averaging period for the operating limits, how the operating limits are to be calculated, and information documenting that the alternative operating parameters would provide equivalent or better assurance of compliance with the relevant emission limit. You would have to install, operate, and maintain the alternative parameter monitoring systems in accordance with the application approved by the Administrator.

F. What Are the Work Practice Standards?

Today's proposed rule would establish work practice standards for existing shape preheaters that are used to produce pitch-impregnated refractory products, existing and new pitch working tanks that are used to produce pitch-impregnated refractory products, existing and new chromium refractory products kilns, and existing clay refractory products kilns.

If you operate an affected existing shape preheater, you would be required to control emissions of POM from the shape preheater by one of three methods. Two of the methods entail removing the residual pitch from the surfaces of the baskets or containers that are used for holding refractory shapes in a shape preheater and autoclave. You would have to clean the basket surfaces at least every ten impregnation cycles. Alternatively, you could duct the exhaust from the shape preheater to a control device that meets the applicable emission limits for thermal process sources of organic HAP. If you choose to clean the basket surfaces, you would have two cleaning options. One basket cleaning option would be to remove residual pitch by abrasive blasting, provided that the emissions from the abrasive blasting operation are exhausted to a fabric filter. The other basket cleaning option would be to subject the baskets to a thermal process cycle that matches or exceeds the temperature and cycle time of the affected shape preheater and is ducted to a thermal or catalytic oxidizer that is comparable to the control device for your defumer or coking oven. For example, if the operating temperature and cycle time of your shape preheater are 200°C (400°F) and 2 hours, respectively, you could ''clean'' the baskets by placing them in a shape dryer that operates at a temperature of 200°C (400°F) or higher for at least 2 hours and is exhausted to a thermal oxidizer that is comparable to your defumer thermal oxidizer. Subjecting the baskets to a thermal process with a cycle time and temperature equal to or greater than those of the shape preheater ensures that POM that would have been emitted from the shape preheater otherwise is controlled. If you choose to duct shape preheater emissions to a control device, you could duct the emissions to the coking oven control device, defumer control device, or to another thermal or catalytic oxidizer that is comparable to the coking oven or defumer controls and meets the applicable emission limits for thermal process sources of organic HAP.

If you have an affected existing or new pitch working tank, you would be required to duct the exhaust from the tank to either the coking oven control device, the defumer control device, or an equivalent thermal or catalytic oxidizer. If you choose to exhaust the working tank emissions to an alternate thermal or catalytic oxidizer, the emissions from that control device would have to meet the applicable emission limits for thermal process sources of organic HAP.

If you have an affected existing or new chromium refractory products kiln or an affected existing clay refractory products kiln, you would have to use

natural gas, or an equivalent fuel, as the kiln fuel.

G. What Are the Testing and Initial Compliance Requirements for Sources Subject to Emission Limits?

Under today's proposed rule, you would be required to conduct an initial performance test on each affected source to demonstrate initial compliance with the emission limits. In accordance with 40 CFR 63.7(a)(2), you would be required to conduct the test within 180 days after the compliance date using specified test methods.

1. Existing and New Thermal Process Sources of Organic HAP

If you have an affected existing or new shape dryer, curing oven, kiln, coking oven, or defumer, or a new shape preheater, you would be required to measure emissions of THC in stack gases exhausted to the atmosphere using EPA Method 25A, ''Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.'' If you choose to comply with the THC concentration limit of 20 ppmvd corrected to 18 percent O_2, you would also have to measure the oxygen concentration of the stack gas using EPA Method 3A, ''Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure).'' The oxygen concentration data are needed for correcting the measured THC concentration to 18 percent O_2. The performance test would consist of at least three 1-hour test runs, and you would be required to measure and record the stack gas concentrations of THC and oxygen every minute.

If the affected source is controlled with a thermal or catalytic oxidizer, and the outlet CO_2 concentration is 3 percent or less, you could elect to comply with the combustion efficiency limit. If you choose to comply with the combustion efficiency limit, you would be required to measure emissions of CO using EPA Method 10, ''Determination of Carbon Monoxide Emissions From Stationary Sources,'' and CO_2 using EPA Method 3A, in addition to measuring THC. The performance test would consist of at least three 1-hour test runs, and you would be required to measure and record the stack gas concentrations of THC, CO, and CO_2 every minute.

If your source is a continuous process, you would determine compliance with the emission limit by first determining the hourly average concentrations for each pollutant and diluent (i.e., THC and O_2 for the THC limit, or CO_2, CO, and THC for the combustion efficiency limit) as the numeric average of the 1-minute concentrations for each test run. Each test run must last at least 1 hour. The minimum number of 1-minute concentration measurements needed for each hour of testing would be 50. You would then calculate the average concentrations for each pollutant as the mean of the three hourly concentrations for that pollutant. To be in compliance with the combustion efficiency limit, the average of three 1-hour average combustion efficiencies for the test would have to be 99.8 percent or greater.

The test methods and conditions for meeting the combustion efficiency limit for a continuous process also apply if your source operates as a batch process. You would also be required to measure emissions for three test runs. However, for batch processes, each test run would have to be conducted over all or part of separate batch cycles.

You would be required to test throughout three complete batch cycles unless you developed an emissions profile for the duration of the batch cycle, or met certain conditions for terminating a performance test run before completion of the batch cycle. If you choose to develop an emissions profile, you would be required initially to sample THC emissions throughout a complete batch cycle, regardless of whether you were complying with the THC limit or the combustion efficiency limit. You would be required to determine the hourly average concentrations of THC, corrected to 18 percent O_2, for each hour of the batch cycle. Based on the average hourly THC concentrations, you would identify the 4-hour period of peak emissions. That is, the period of 4 consecutive hours when THC concentrations are highest. During the two subsequent test runs, you would not be required to sample emissions outside that 4-hour period of peak THC emissions. To be in compliance with the THC emission limit, the average of the highest rolling 3-hour average THC concentrations corrected to 18 percent O_2 during the period of peak emissions for the three test runs would have to be 20 ppmvd or less. Likewise, to be in compliance with the combustion efficiency limit, the average of the highest rolling 3-hour average combustion efficiencies during the period of peak emissions for the three test runs would have to be 99.8 percent or greater. During subsequent performance tests, you would have to complete at least three test runs, but you would only have to test during the 4-hour period of peak emissions during each run.

If you choose not to develop an emissions profile, you could terminate testing before the completion of a batch cycle if you met certain conditions. For each of three test runs, you would have to begin testing at the start of the batch cycle and continue testing for at least 3 hours beyond the point in time when the process reaches peak operating temperature. You could stop testing for that run at that time if you could show that THC concentrations are not increasing over the 3-hour period since process peak temperature was reached; at least 1 hour has passed since any reduction in the operating temperature of the control device (thermal or catalytic oxidizer); and either the average THC concentration at the inlet to the control device for the previous hour has not exceeded 20 ppmvd, corrected to 18 percent O_2, or your source met the emission limit during each of the previous 3 hours after the process reached peak temperature. For example, if you were testing to show compliance with the THC limit, and the hourly THC concentrations after peak process temperature was reached were 12 ppm, 12 ppm, and 11 ppm, respectively, you could stop that test run. However, if the hourly THC concentrations for those 3 hours were 12 ppm, 14 ppm, and 16 ppm, respectively, you could not stop testing because THC concentrations would still be increasing. You would have to satisfy these testing procedures for the remaining two test runs during two other batch cycles.

For both continuous process and batch process performance tests, you would be required to conduct performance tests on affected thermal process sources under the conditions that would result in the highest levels of organic HAP emissions expected to occur for that affected source. You would determine these ''worst-case'' conditions by taking into account the organic HAP processing rate, the process operating temperatures, and the processing times. The organic HAP processing rate is the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process source. For continuous process units, the organic HAP processing rate would be measured in units of mass of organic HAP processed per hour (e.g., pounds of phenol per hour). For example, if a continuous curing oven is curing 2 tons per hour (4,000 lbs/hr) of resin-bonded refractory shapes, the refractory mix contains 5 percent resin, and the resin contains 10 percent phenol, the organic HAP processing rate (for phenol) is:

$$4{,}000 \text{ lbs/hr} \times 5/100 \times 10/100 = 20 \text{ lbs/hr}.$$

For batch processes, the organic HAP processing rate would be measured in units of mass of organic HAP processed per batch cycle (e.g., pounds of phenol per batch). The organic HAP processing rate would be determined based on the amount or percentage of organic HAP in the raw material mix and the weight of the shapes processed. You would be required to record the total weight and cycle time of each batch. For example, if you operate a batch process coking oven, and the oven is loaded with 20 tons (40,000 lbs) of pitch-impregnated refractories that contain 6 percent pitch, the organic HAP processing rate (for POM) is:

$$40{,}000 \text{ lbs/batch} \times {}^{6}/_{100} = 2{,}400 \text{ lbs/batch.}$$

If you decided to start production of a refractory product that is likely to have an organic HAP processing rate greater than the rate established during the most recent performance test, you would be required to conduct a new performance test for that product and establish a new operating limit for the organic HAP processing rate. You would also have to conduct a new performance test on an affected uncontrolled kiln following any process changes that are likely to increase kiln emissions. For example, if the kiln followed a curing oven, and you shortened the curing oven cycle time significantly, you would have to repeat the performance test on the kiln because the shorter curing time could result in a decrease in organic HAP emissions from the curing oven and an increase in organic HAP emissions from the kiln.

If the affected source is controlled with a thermal oxidizer, you would be required to measure the thermal oxidizer combustion chamber temperature continuously and record the temperature at least every 15 minutes during the performance test. If the affected source is controlled with a catalytic oxidizer, you would be required to measure the temperature at the inlet of the catalyst bed continuously and record the temperature at least every 15 minutes during the performance test. You would also be required to measure and record the process operating temperature of the affected source at least once every hour.

If the source is a batch process and is controlled with a thermal or catalytic oxidizer, you could reduce the operating temperature of the control device or shut the control device off under the following conditions: (1) At least 3 hours have passed since the process unit reached its maximum temperature; (2) the applicable emission limit (THC concentration or combustion efficiency) has been met during each of the three 1-hour periods since the process reached peak temperature; (3) emissions of THC have not increased during the 3-hour period since maximum process temperature was reached; and (4) either the average THC concentration at the inlet to the oxidizer has not exceeded 20 ppmvd, corrected to 18 percent O_2, for at least 1 hour, or the applicable emission limit has been met during each of the four 15-minute periods immediately following the oxidizer temperature reduction. In other words, if you measure THC emissions at the inlet to the oxidizer and the data show that the THC concentration corrected to 18 percent O_2 has remained 20 ppmvd or lower for at least 1 hour, you could shut off the oxidizer at the end of the third hour following the process reaching temperature. Alternatively, you could continue measuring emissions at the oxidizer outlet for another hour beyond the 3-hour period that follows the peak process temperature. If the outlet emissions met the THC or combustion efficiency limit for four straight 15-minute periods, you could shut off the oxidizer after the fourth 15-minute period (i.e., at the end of the fourth hour since the process reached peak operating temperature). If the applicable emission limit has not been met during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you would have to return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour. You would be required to repeat this procedure (i.e., measure emissions for at least 1 hour and return the control device to normal temperature if the emission limit was not met) until the source meets the applicable emission limit for at least 1 hour.

If you elect to shut off or reduce the temperature of a thermal or catalytic oxidizer by satisfying these conditions, you could use the results from the performance test to establish the time at which an oxidizer could be shut off (or temperature reduced) during the production of other refractory products that use organic HAP. For any such product, you would be required to operate the oxidizer at a temperature at least as high as that established during the performance test, minus 16°C (25°F), from the start of the batch cycle until 3 hours have passed since the process reached its peak temperature. You would have to maintain that oxidizer temperature for the same length of time beyond the process peak temperature as during the performance test. For example, if, during the performance test, an affected curing oven reached peak temperature at 12 hours into the cycle, and you satisfied all of the conditions for shutting off the thermal oxidizer at hour 16 of the cycle (i.e., 4 hours after the curing oven reached peak temperature), you could shut off the thermal oxidizer 4 hours after reaching the curing oven peak temperature for any other affected product that is cured in that curing oven. This provision would apply to curing cycles of any duration; regardless of the total cycle time, you would have to operate the thermal oxidizer for at least 4 hours beyond the time at which the process reaches peak temperature.

If you control emissions from an affected curing oven, shape dryer, kiln, defumer, coking oven, shape preheater, or pitch working tank using process modifications or an add-on control device other than a thermal or catalytic oxidizer, you would be required to install a THC CEMS. You would also be required to satisfy the requirements of PS–8 of 40 CFR part 60, appendix B.

2. New Clay Refractory Kilns

For each new kiln that manufactures clay refractory products, you would be required to measure emissions of HF and HCl. You would measure HF and HCl emissions using EPA Method 26A, ''Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method.'' You would be required to conduct the tests for HF and HCl while the affected kiln is operating at the maximum production level likely to occur. Each test run would have to be at least 1 hour in duration.

If you have an affected continuous clay refractory kiln, you would determine initial compliance with the production-based mass emission limits for HF and HCl by calculating the mass emissions per unit of production for each test run using the mass emission rates of HF and HCl and the production rate (on a fired-product basis) measured during your performance test. For HF, mass emissions per unit of production would have to be less than or equal to 0.001 kg/Mg (0.002 lb/ton). For HCl, mass emissions per unit of production would have to be less than or equal to 0.0025 kg/Mg (0.005 lb/ton). To determine initial compliance with any of the percent reduction emission limits, you would calculate the percent reduction of the specific HAP (HF or HCl) entering and exiting the control device for each test run using the mass emission rates measured during your performance test. The percent of HF reduced would have to be 99.5 percent

or greater, and the percent of HCl reduced would have to be 98 percent or greater.

If you have an affected batch process clay refractory kiln, you would have to comply with the percent reduction limit. You would be required to test throughout three complete batch cycles unless you developed an emissions profile. If you choose to develop an emissions profile, you would be required to sample HF and HCl emissions throughout one complete batch cycle. Based on the average hourly HF percent reduction for each hour of the cycle, you would identify the period of 3 consecutive hours over which HF emissions are highest. During all subsequent test runs, you would not have to sample emissions outside that 3-hour period of peak HF emissions.

For both continuous and batch process kilns, you would be required to measure and record the average uncalcined clay processing rate for each test run. For continuous kilns, the uncalcined clay processing rate would be measured as the weight of uncalcined clay processed divided by the duration of the test run (e.g., tons per hour). For batch process kilns, the uncalcined clay processing rate would be the weight of uncalcined clay processed per batch cycle (e.g., tons per batch).

If you have an affected clay refractory kiln that is controlled with a DIFF or a DLS/FF, you would be required to measure the fabric filter inlet temperature at least every 15 minutes. You would also be required to measure and record the lime feed rate at least hourly and verify that lime is free-flowing to the control system.

If you have an affected clay refractory kiln that is controlled with a DLS/FF, you would be required to measure the water injection rate at least every 15 minutes during the performance test. If you use a wet scrubber, you would be required to measure the pressure drop across the scrubber, liquid pH, and liquid flow rate at least every 15 minutes during the performance test.

3. All Affected Sources

In addition to the procedures previously described, you would be required to follow the procedures specified in EPA Methods 1 to 4 of appendix A of 40 CFR part 60, where applicable. You would perform Method 1, ''Sample and Velocity Traverses for Stationary Sources,'' (or Method 1A) to select the locations of sampling points and the number of traverse points. You would perform Method 2, ''Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube),'' (or Method 2A, 2C, 2D, 2F, or 2G) to determine gas velocity and volumetric flow rate. You would perform Method 3, ''Gas Analysis for the Determination of Dry Molecular Weight,'' (or Method 3A or 3B) to determine the exhaust gas molecular weight. You would perform Method 4, ''Determination of Moisture Content in Stack Gases,'' to measure the moisture content of the exhaust gas.

Prior to the initial performance test, you would be required to install the continuous parameter monitoring system (CPMS) that you would need for demonstrating continuous compliance. During the performance test, you would use the CPMS to establish the operating limits (e.g., minimum thermal oxidizer combustion chamber temperature).

H. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?

If you own or operate an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you would be required to select a method for complying with the work practice standard and provide a description of that method as part of your initial notification, as required by 40 CFR 63.9(b)(2) of the General Provisions. For affected shape preheaters, if you choose to comply with the work practice standard by removing pitch from basket or container surfaces, you would have to describe the method of removal. If you choose to comply by subjecting the baskets or containers to a thermal process cycle, you would have to describe the process, the process unit operating temperature, the process cycle time, and the emission control system used on the process unit into which the baskets or containers are placed. If you choose to comply by capturing and ducting emissions from the shape preheater to a control device, you would have to describe the design (e.g., thermal oxidizer combustion chamber temperature and residence time) and operation of that control device.

For affected existing or new pitch working tanks, you would have to describe in your initial notification the design (e.g., thermal oxidizer combustion chamber temperature and residence time) and operation of the control device to which the emissions from the working tank are exhausted. You would also have to verify that the control device is the same as, or is at least equivalent to, the control device that is used to control organic HAP emissions from an affected defumer or coking oven.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you would have to indicate in your initial notification the type of fuel used in those kilns.

I. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?

Under today's proposed rule, you would be required to demonstrate continuous compliance with each emission limitation that applies to you. You would be required to follow the requirements in your OM&M plan and in your startup, shutdown, and malfunction plan (SSMP) and document conformance with both plans. For each affected source equipped with an add-on air pollution control device (APCD), you would be required to operate and maintain an emission capture and control system, inspect each system at least once each calendar year, and record the results of each inspection. You would be required to install, operate, and maintain each required CPMS to monitor the operating parameters established during your initial performance test. The CPMS would have to collect data at least every 15 minutes, and you would need to record at least one data point during three of the four 15-minute periods per hour to have a valid hour of data. You would have to collect all data while the process is operational. You would have to operate the CPMS at all times when the process is operating. You would also have to conduct proper maintenance of the CPMS (including inspections, calibrations, and validation checks) and maintain an inventory of necessary parts for routine repairs of the CPMS. Using the 15-minute block average recorded readings, you would calculate and record the average hourly values of each operating parameter. You would also be required to repeat any required performance tests at least every 5 years.

1. Existing and New Thermal Process Sources of Organic HAP

For each affected source, you would have to monitor and maintain the organic HAP processing rate below the level established during the performance test. You would also be required to record the process operating temperature hourly. For batch process sources, you would be required to record cycle times for each batch cycle. The start of a cycle would coincide with the heating of the process unit, and the cycle would end when the process unit is opened for removal of the refractory products. If you decided to start production of a refractory product that is likely to have an organic HAP processing rate greater than the rate

established during the most recent performance test, you would be required to conduct a new performance test for that product and establish a new operating limit for the organic HAP processing rate.

For affected continuous sources that are controlled with a thermal oxidizer, you would be required to maintain the 3-hour block average combustion chamber temperature at or above the combustion chamber temperature established during the performance test minus 14°C (25°F). For affected continuous sources that are controlled with a catalytic oxidizer, you would be required to maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the corresponding temperature established during the most recent performance test minus 14°C (25°F).

For affected batch process sources that are controlled with a thermal oxidizer, you would be required to maintain the average hourly combustion chamber temperature at or above the combustion chamber temperature established during the performance test minus 14°C (25°F). If you met the conditions for reducing the operating temperature of the thermal oxidizer during the performance test and either reduced the temperature or shut off the oxidizer, as specified in item 13 of Table 4 of the proposed rule, you could likewise reduce the temperature of the oxidizer during other process cycles. That is, from the start of the cycle until 3 hours after the process unit reaches peak temperature, you would have to maintain the hourly combustion chamber temperature established during the performance test for the corresponding period. If you were able to shut off the oxidizer after this 3-hour period during the performance test, you could likewise shut off the oxidizer for the remainder of the process cycle following this 3-hour period after peak temperature is reached, regardless of the cycle duration. For affected batch process sources that are controlled with a catalytic oxidizer, the requirements would be the same as described in the previous paragraph for thermal oxidizers, except that you would have to maintain the temperature at the inlet of the catalyst bed at or above the corresponding temperature, minus 16°C (25°F), established during the performance test. For any affected source controlled with a catalytic oxidizer, you would also be required to maintain the catalyst according to manufacturer's specifications.

To document compliance with these operating limits for thermal or catalytic oxidizers, you would be required to measure and record the specified average hourly temperatures. You would also be required to report any average hourly control device operating temperature below the corresponding temperature measured during the most recent performance test minus 14°C (25°F). In such cases, you would be required to promptly initiate and complete corrective actions in accordance with your OM&M plan following an hourly average control device operating temperature that is below the corresponding minimum temperature established during the performance test minus 14°C (25°F).

If you control emissions from an affected curing oven, shape dryer, kiln, defumer, coking oven, shape preheater, or pitch working tank using process modifications or an add-on control device other than a thermal or catalytic oxidizer, you would demonstrate continuous compliance by operating a THC CEMS in accordance with Procedure 1 of 40 CFR part 60, appendix F.

2. New Clay Refractory Kilns

For new clay refractory kilns that are controlled with a DIFF or DLS/FF, you would have to continuously maintain the 3-hour block average temperature at the fabric filter inlet at or below the average temperature, plus 14°C (25°F), established during your performance test. You would have to maintain free-flowing lime in the feed hopper or silo at all times. You can verify that lime is free-flowing by a visual check or by means of the output of a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system. If the lime is found not to be free-flowing, you would have to promptly initiate and complete corrective actions. You would also have to maintain the lime feeder setting at or above the level established during your performance test and record the feeder setting once each day. You would have to initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan. You would also have to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in any 6-month reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time would be counted. If corrective action is required, each alarm would be counted as a minimum of 1 hour, and if you take longer than 1 hour to initiate corrective action, the alarm time would be counted as the actual amount of time taken to initiate corrective action.

Additionally, for a DLS/FF, you would have to continuously maintain the 3-hour block average water injection rate at or above the minimum value established during your performance test. For kilns that are controlled with a wet scrubber, you would have to continuously maintain the 3-hour block average scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the minimum values established during your performance test.

Finally, you would be required to record the uncalcined clay processing rate for all affected kilns. For continuous kilns, the uncalcined clay processing rate would be recorded in units of mass per unit time (e.g., pounds of uncalcined clay per hour). For batch process kilns, you would record the uncalcined clay processing rate in units of mass per batch cycle (e.g., pounds of uncalcined clay per batch).

J. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?

If you have an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you would be required to perform the appropriate work practice and document that you are complying with the work practice standard in your Notification of Compliance Status, as required by 40 CFR 63.9 of the General Provisions. For affected shape preheaters, you would have three work practice options: mechanically remove pitch from the basket or container surfaces, subject the baskets or containers to a thermal process cycle, or capture and duct emissions from the shape preheater to a control device. The control device would have to be the same device that controls emissions from an affected defumer or coking oven, or a device that is comparable to the control device used for controlling emissions from an affected defumer or coking oven. That control device also would have to meet the applicable emission limits for thermal process sources of organic HAP.

For affected pitch working tanks, you would have to capture and duct emissions from the affected storage tank to a control device that controls an affected defumer or coking oven, or is comparable to the control device used for controlling emissions from an affected defumer or coking oven. If you choose to exhaust emissions from either a shape preheater or working tank to a control device other than those used to

control defumer or coking oven emissions, you must satisfy for those control devices the same monitoring requirements and operating limits as for affected defumer and coking oven control devices.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you would have to use natural gas, or equivalent, as the kiln fuel and document the type of fuel used.

K. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you have an affected refractory products manufacturing source, you would be required to submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the proposed rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR 63.9(h)(2)(i) of the General Provisions, you would also be required to include the following in your Notification of Compliance Status: (1) The operating limit parameter values established for each affected source (with supporting documentation) and a description of the procedure used to establish the values; (2) design information and analysis (with supporting documentation) demonstrating conformance with requirements for capture and collection systems; (3) your OM&M plan; (4) your SSMP; and (5) descriptions of the methods you use to comply with any applicable work practice standards.

You would have to submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out of control CPMS, and periods of startup, shutdown, or malfunction (SSM) when actions consistent with the approved SSMP were taken. If there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period, you would only be required to include a statement in your semiannual compliance report that there were no deviations. If there were deviations from the emission limits, operating limits, or work practice standards during a reporting period, you would be required to submit the information required in today's proposed rule in your semiannual compliance report. If you have any SSM's during the reporting period, and you take actions consistent with your SSMP, your compliance report would have to include the information specified in 40 CFR 63.10(d)(5)(i). In addition, if you undertake an action that is inconsistent with your approved SSMP, you would then be required to submit an SSM report within 2 working days of starting such action and within 7 working days of ending such action.

For all affected sources, you would have to maintain records for at least 5 years from the date on which the data are recorded. You would have to keep the records onsite for at least the first 2 years, but could store the records offsite for the remaining 3 years. You would be required to keep a copy of each notification and report along with supporting documentation. You would also be required to keep records related to the following: (1) Records of SSM; (2) records of performance tests; (3) records used in the development of any emissions profile; (4) records to show continuous compliance with each emission limitation and work practice standard that applies to you; (5) records of each operating limit deviation, including a description of the cause of the deviation and the corrective action taken; (6) records of production rate and organic HAP processing rate, if applicable; (7) records for any approved alternative monitoring or test procedures; (8) records for each CPMS; and (9) current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance. The records for CPMS would include records of the applicable operating limits and monitoring data required in today's proposed rule to demonstrate continuous compliance.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Any Subcategories?

Section 112(d)(1) of the CAA allows EPA to distinguish among classes, types, and sizes of sources within a category or subcategory in establishing emission standards. Section 112(d)(1) allows us to define subsets of similar emission sources within a source category if differences in emission characteristics, processes, control device use, or opportunities for pollution prevention exist within the source category. As a result of our analyses of data on process and emission characteristics, we identified four subcategories of the Refractory Products Manufacturing source category: the manufacture of refractory products that are made using an organic HAP compound, pitch-impregnated refractory products manufacturing, chromium refractory products manufacturing, and clay refractory products manufacturing. We distinguished between these subcategories because either the HAP emissions or the affected sources differ significantly among them.

The subcategory that encompasses the production of refractories that use organic HAP includes resin-bonded refractory curing ovens and kilns and pitch-bonded refractory curing ovens and kilns. A few facilities use organic HAP other than resins and pitch as binders or additives; the shape dryers and kilns used to process refractories that contain those binders and additives would also be included in this subcategory. The shape dryers and curing ovens that are included in this subcategory are similar with respect to function, operating temperature, and processing time. Likewise, the kilns that are included in this subcategory are similar in terms of design and operation. Although the HAP emitted from these sources may differ, the sources all emit organic HAP which typically are controlled using the same types of control devices: thermal and catalytic oxidizers. For these reasons, we concluded that there is justification to cover these thermal process sources in a single subcategory. For the purposes of establishing MACT floors, we classified the affected sources within this subcategory into two groups: shape dryers and curing ovens are covered in one group, and kilns comprise the other group of affected sources in this subcategory.

The affected sources that are included under the subcategory for pitch-impregnated refractory production include shape preheaters, defumers, coking ovens, and the pitch working tanks used for temporary storage of pitch during the impregnation and defuming processes. These sources emit organic HAP (specifically, POM) and are controlled with thermal and catalytic oxidizers. Pitch-impregnated refractory sources differ in design and operation from the thermal process sources used for manufacturing resin-bonded, pitch-bonded, and other refractory products covered by the previous subcategory. Therefore, we concluded that a separate subcategory is warranted for pitch-impregnated refractory sources.

The raw materials used for producing chromium refractory products include chromium in one of two forms: chromium oxide or chromite. Chromium oxide is a processed compound that is relatively pure and contains chromium in the trivalent form. Chromite is naturally occurring chromium ore and contains up to approximately 60 percent chromium oxide. Because chromium refractory kilns emit chromium compounds and chromium refractory products are not

made using organic HAP compounds, we decided to establish a separate subcategory for chromium refractory kilns.

For clay refractory production, the primary HAP source is the kiln. Clay refractory kilns do not differ significantly in design from the kilns used to produce resin-bonded and pitch-bonded refractory products. However, organic binders and additives typically are not used in the production of clay refractories. The primary HAP emitted by clay refractory kilns are HF and HCl. In addition, devices that are effective in controlling HF and HCl emissions would not be used to control organic HAP emissions. Therefore, clay refractory kilns comprise a separate subcategory under the proposed rule for refractory products manufacturing.

Several refractory products plants produce nonclay refractories that do not contain organic HAP. For these plants, and plants that produce only monolithics, HAP emissions consist of small amounts of HAP metals that are released from raw material processing operations. These facilities are all area sources that emit much less than 10 tons/yr of any single HAP and 25 tons/yr of total HAP, and the HAP sources at these plants generally are well controlled. Because the Refractory Products Manufacturing source category was listed for major sources and not for area sources, we decided against including these facilities within the scope of the proposed rule.

We considered regulating sources of fine mineral fibers associated with the production of RCF. However, we determined that none of the existing RCF manufacturing facilities are major sources, and it is unlikely that any new sources would be constructed that would be major sources of HAP. The RCF industry is not expected to grow significantly, and, if new sources were constructed, they most likely would be well controlled because it would not be economical to allow RCF product to be emitted in any significant quantities.

We also considered regulating fused-cast refractory products manufacturing sources. However, we decided against regulating these facilities. There are only two fused-cast refractory facilities currently operating, and both are well controlled. Emissions of HAP from these facilities are much less than 10 tons/yr for any single HAP and 25 tons/yr of total HAP, and no new facilities or growth is expected in this sector of the refractories industry.

B. How Did We Select the Emission Sources To Be Regulated?

The primary sources of HAP emissions at most refractory products manufacturing plants are the thermal process units. Thermal process units emit the organic constituents of the raw materials, binders, and additives that comprise refractory product formulations. Several of the organic constituents of binders and additives used in the refractory industry are HAP. Many resins contain phenol and formaldehyde, and some resins also contain methanol and ethylene glycol. The available test data for resin-bonded refractory sources indicate that approximately 15 percent of the free phenol, 40 percent of the formaldehyde, 100 percent of the methanol, and 14 percent of the ethylene glycol contained in the resin are emitted from thermal process sources. Based on these percentages, we estimate that several existing facilities that use organic binders and additives to produce refractory products are potential major sources for at least one of these organic HAP. For this reason, we decided that regulation of organic HAP from existing and new shape dryers, curing ovens, and kilns is warranted.

Coal tar and petroleum pitch used in the production of pitch-bonded and pitch-impregnated refractory products consist of POM. The available emission data on pitch-impregnated refractory production indicate that 40 to 45 percent of the pitch is volatilized and emitted from thermal process units. Based on these data, several facilities that produce pitch-impregnated or pitch-bonded refractory products are potential major sources of POM emissions. For this reason, we decided that it is necessary to regulate existing and new pitch-bonded and pitch-impregnated refractory products thermal process units, the sources of POM emissions.

The source category Chromium Refractories Production was included on the initial source category list based on an Agency screening study conducted in 1985. As part of that study, tests were performed on a chromium refractory kiln. At the temperature encountered in the kiln (1540°C (2800°F)), hexavalent chromium, which is a known human carcinogen, was formed and emitted to the atmosphere as PM. The 1985 study recommended that fabric filters (baghouses) be installed on kilns used to fire chromium refractories to capture the PM emissions from the kiln outlets at the ten plants that produced chromium refractories at that time. Currently, one major source in the refractory products source category produces chromium refractory products.

At the temperatures encountered in clay refractory kilns, naturally occurring fluorides and chlorides found in raw clays are released to the atmosphere as HF and HCl. We estimate that some existing clay refractory manufacturing facilities are major sources due to HF emissions from their kilns, and at least one of those facilities could also be a major source of HCl due to kiln emissions. Because kilns are the only clay refractory products sources that emit HF and HCl and are located at major source facilities, we decided to limit the scope of the proposed rule to kilns for the clay refractory products subcategory.

C. How Did We Define the Affected Sources?

Affected source means the collection of equipment and processes in the source category or subcategory to which the emission limitations and other regulatory requirements apply. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we must decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

Most refractory products manufacturing facilities are characterized by numerous diverse and complex operations. Many of the process units at typical refractories plants are not sources of HAP emissions. For this reason, rather than define the affected sources as the plants themselves, we decided to define the affected sources in terms of the specific process units that emit HAP and are associated with the production of specific types of refractory products. These product types include resin-bonded, pitch-bonded, and other refractory products that use organic HAP; pitch-impregnated refractory products; chromium refractory products; and clay refractory products. The affected sources, which are listed in Table 2 of this preamble, include shape dryers and curing ovens, kilns, shape preheaters, pitch working tanks, defumers, and coking ovens.

D. How Did We Determine the Proposed Standards for Existing Sources?

1. How Did We Determine the MACT Floor for Existing Sources?

Section 112(d)(3) of the CAA specifies that each MACT standard be at least as stringent as the floor for the sources in the relevant source category or subcategory. It further specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) where there are 30 or more sources in the category or subcategory. For source categories with less than 30 sources, the CAA requires that the floor be based on the average emission limitation achieved by the best-performing five sources. Our interpretation of the ''average emission limitation'' is that it is a measure of central tendency, such as the arithmetic average or the mean. If the median is used when there are at least 30 sources, then the emission level achievable by the source and its control device that is at the bottom of the top 6 percent of the best-performing sources (i.e., the 94th percentile) represents the MACT floor control level. For source categories or subcategories with less than 30 sources, we interpret the MACT floor level to correspond to the median of the best-performing five sources. Finally, in determining the pool of sources from which the floors are determined, we consider only those facilities that are major HAP sources or synthetic area HAP sources (i.e., those that would be major HAP sources in the absence of any emission controls currently in place). The MACT floors for each subcategory identified during development of the proposed rule are based on these interpretations.

The affected existing thermal process units that emit organic HAP include shape dryers, curing ovens, kilns, coking ovens, defumers, shape preheaters, and pitch working tanks. To rank these sources in terms of their performance in controlling organic HAP emissions, we needed uncontrolled and controlled emissions data for each source type. Because of the limited emissions data available for organic HAP sources, it is not possible to rank the sources based on actual emissions reductions. An alternative approach to using actual emissions data is to rank sources based on the likely performance level of the control devices in place. The MACT floor technology can then be selected as the control device(s) matching the 94th percentile unit, or for subcategories with less than 30 sources, the median of the best-performing five sources. We used this approach to determine the MACT floors for organic HAP emissions from thermal process units.

Among the refractory products thermal process sources that are currently controlled for organic emissions, the majority are controlled with thermal oxidizers. The other controlled sources are equipped with catalytic oxidizers. Thermal oxidizer performance levels are largely a function of three parameters: combustion chamber temperature, residence time of the gases in the combustion chamber, and the degree of mixing of the gases in the combustion chamber. Therefore, performance level rankings should take these parameters into consideration. Based on the available design and operating data, we were unable to evaluate the subject thermal oxidizers in terms of their degree of mixing. Therefore, we based our rankings of thermal oxidizers on combustion chamber temperature and residence time only, using the Arrhenius equation, which relates the amount of an organic compound remaining after combustion for a specific period of time at a specified temperature.

We were not able to compare quantitatively the performance of catalytic oxidizers to that of thermal oxidizers. The Arrhenius equation does not apply to catalytic oxidizers and we were not able to identify a comparable method for evaluating catalytic oxidizer performance based on design. Catalytic oxidizer performance is largely a function of the space velocity and the temperatures at the inlet and outlet of the catalyst bed. Space velocity is the reciprocal of the residence time in the catalyst bed and is defined as the flow rate of the gas entering the catalyst bed divided by the volume of the catalyst bed. For the catalytic oxidizers currently in operation at refractory products manufacturing plants, we were able to obtain data on catalyst bed inlet and outlet temperatures, but could not obtain space velocity data. For these reasons, our ranking of catalytic oxidizers for today's proposed rule is largely qualitative.

Before ranking sources according to control technology, we also differentiated between the various types of thermal process sources that would be affected by today's proposed rule. We grouped shape dryers and curing ovens because they are similar in terms of function, design, and operating parameters. The initial thermal processing step in the production of refractory shapes is drying or curing. Shape dryers and curing ovens, which are used to form temporary bonds between refractory body material grains, typically operate between 90° and 260°C (200° and 500°F). Although there are large variations among plants, cycle times for shape dryers and curing ovens generally are in the range of 5 to 20 hours. Based on the data submitted to us in 1998 in response to our information collection requests sent to refractory products manufacturers, there are a total of 35 shape dryers and curing ovens that are used to produce resin-bonded, pitch-bonded, or other refractory products that use organic HAP; and are located at facilities that are major or synthetic area sources of organic HAP. Emissions from 21 of the shape dryers and curing ovens are controlled: 16 are controlled with thermal oxidizers, and 5 are controlled with catalytic oxidizers. The median of the best-performing 12 percent of these sources (*i.e.,* the 94th percentile) is controlled with a thermal oxidizer that is designed for a 0.64-second residence time at 815°C (1500°F). Therefore, this control device represents the MACT floor for existing shape dryers and curing ovens.

Data from the wood products industry indicate that the performance of catalytic oxidizers with catalyst bed outlet temperatures of 430° to 480°C (800° to 900°F) is comparable to the performance of thermal oxidizers designed for a residence time of approximately 0.5 seconds and combustion chamber temperatures of 820° to 870°C (1500° to 1600°F). Two of the five catalytic oxidizers used in the refractory products industry to control curing oven emissions operate with catalyst bed outlet temperatures of approximately 450°C (850°). Therefore, we concluded that these two controls are comparable to the MACT floor control level for shape dryers and curing ovens. We concluded that the other three catalytic oxidizers, which operate with bed outlet temperatures of approximately 370°C (700°F), are much less effective in controlling organic emissions than the MACT floor level of control for this group of sources.

Following the drying or curing, refractory shapes typically are fired in kilns, which operate at peak temperatures in the range of 1090° to 1540°C (2000° to 2800°F). We estimated that there are 26 kilns that are used to produce resin-bonded, pitch-bonded, or other refractory products that contain organic HAP and are located at facilities that are major or synthetic area sources of organic HAP. Nine of these kilns are controlled, all with thermal oxidizers. Because there are less than 30 sources in this group, the MACT floor for this

group of sources corresponds to the median of the best-performing five sources, which is a kiln controlled with a thermal oxidizer designed for a 0.41-second residence time at 760°C (1400°F).

In the pitch-impregnated refractory process, fired refractory shapes initially are heated in a shape preheater, which typically operates at temperatures of 150° to 260°C (300° to 500°F). Of the seven shape preheaters located at four pitch-impregnated refractory manufacturing facilities that are major or synthetic area sources of organic HAP, two are controlled with thermal oxidizers and the other five are not equipped with add-on controls. All four of the facilities periodically clean the deposits of pitch on the holding baskets or containers by abrasive blasting. Cleaning is done on an as-needed basis, but a typical cleaning frequency is once every ten cycles. Of the two controlled preheaters, both are ducted to the thermal oxidizers that are used to control defumer emissions. The MACT floor for this group of sources is based on the median of the best-performing five sources, which corresponds to periodic basket/container cleaning (i.e., every ten cycles).

As the shapes are heated in the shape preheater, pitch is transferred to a pitch working tank, which heats the pitch to between 150° and 260°C (300° and 500°F) prior to the pitch being transferred to the autoclave. There are a total of four pitch working tanks that are located at facilities that produce pitch-impregnated refractories and are major or synthetic area sources of organic HAP. One of these working tanks is uncontrolled. The other three pitch working tanks are ducted to thermal oxidizers that are used to control defumer emissions. The thermal oxidizers operate only during the impregnation-defuming process. As a result, the oxidizers provide periodic, rather than continuous, control of working tank emissions. Because there are less than 30 existing sources in this group, the MACT floor control for existing pitch working tanks is based on the median of the best-controlled five sources, which corresponds to periodic control of tank emissions by means of a thermal oxidizer.

After the shapes are impregnated with pitch, they are defumed. Defuming takes place either in the autoclave or in a separate defumer. If the defuming step occurs in the autoclave, the autoclave serves as the defumer. There are five defumers located at facilities that are major or synthetic area sources of organic HAP; four are controlled with thermal oxidizers, and one is controlled with a catalytic oxidizer. The MACT floor for these sources corresponds to the median of the best-performing five sources, which a defumer controlled with a thermal oxidizer that is designed for a 0.52-second residence time at 790°C (1450°F). Based on the data from the wood products industry, which was discussed previously in this preamble, we concluded that the catalytic unit, which is designed for a catalyst bed outlet temperature 450°C (845°F) would be comparable to the floor level of control for existing defumers.

After defuming, the impregnated shapes may undergo an additional process referred to as coking. In the coking process, the shapes are placed in a coking oven and heated to between 540° and 870°C (1000° and 1600°F) under reducing conditions to drive off the volatile constituents (i.e., POM) of the pitch. Our data indicate that there are six coking ovens located at facilities that are major or synthetic area sources of organic HAP. All six of the coking ovens are controlled with thermal oxidizers. Because there are less than 30 existing sources, the MACT floor for these sources corresponds to the median of the best-performing five sources, which is a coking oven controlled with a thermal oxidizer that is designed for a 1.0-second residence time at 915°C (1680°F).

The HAP emitted from chromium refractory products kilns include hexavalent chromium, other chromium compounds, and other nonvolatile HAP metals. Because these HAP are emitted in the form of PM, we considered establishing an emission standard in the format of a PM emission limit. However, none of the 32 chromium refractory products kilns currently in operation are equipped with add-on APCD that have been demonstrated to reduce HAP metal emissions that occur in the particulate form. Hence, considering only add-on APCD, the MACT floor, as defined in section 112 of the Clean Air Act, for existing chromium refractory kilns would not reduce emissions of chromium or other nonvolatile HAP metals.

In addition to add-on APCD, we considered other possible MACT floors for existing chromium refractory products kilns, such as the use of low-HAP raw materials or fuels, that would reduce emissions of chromium or other nonvolatile HAP metals.

Emissions of chromium and other nonvolatile HAP metals from kilns can originate with the raw materials and the kiln fuel. Consequently, we considered nonchromium raw materials as a potential MACT floor for chromium refractory kilns. Chromium greatly enhances the ability of refractory linings to withstand high temperatures and corrosive environments; where those conditions exist, there is no reliable raw material substitute for chromium. Therefore, we concluded that there are no substitutes for chromium oxide or chromite in chromium refractory products, and raw material substitution is not a feasible component of the MACT floor for existing chromium refractory products kilns.

We considered the use of low-HAP fuels as the basis for a MACT floor standard for existing chromium refractory products kilns. With the exception of natural gas, the fuels that are commonly used to fire industrial kilns and furnaces (e.g., fuel oil and coal) contain HAP metals, which are subsequently emitted when those fuels are burned. Because fuels can contribute to emissions of chromium and other HAP metals from kilns, a MACT floor for existing chromium refractory products kilns could be based on fuel type. Although a few area source refractory manufacturing plants use fuel oil in kilns, our data indicate that all of the six facilities that produce fired chromium refractories, including the one major source in our source category that produces chromium refractory products, use natural gas to fuel the kilns that fire chromium refractories. Because natural gas does not contain HAP metals and, therefore, does not contribute to HAP metal emissions, the use of natural gas or other equivalent clean fuel is a feasible MACT floor for existing chromium refractory products kilns. Having eliminated add-on APCD and raw material substitution as options for a MACT floor for this subcategory, we concluded that the use of natural gas or other such clean fuel is the MACT floor for existing chromium refractory kilns. Under an emission limitation (in this case, a work practice standard) based on this floor, you would not be permitted to fire existing chromium refractory products kilns with coal, fuel oil, waste oil, or other fuels that contain HAP metals.

For clay refractory products kilns, the HAP to be regulated are HF and HCl. There are a total of 100 clay refractory products kilns, six of which are located at facilities that are major or synthetic area sources. However, none of these clay refractory kilns are equipped with add-on APCD that have been demonstrated to reduce emissions of HF or HCl. Therefore, considering only add-on APCD, the MACT floor for existing clay refractory kilns would not reduce emissions of HF or HCl. In addition to add-on APCD, we considered other possible MACT floors for existing clay

refractory products kilns, such as the use of low-HAP raw materials or fuels, that would reduce emissions of HF or HCl. Because HF and HCl emissions from clay refractory kilns are largely a function of the primary raw material (i.e., fire clay), we considered raw material substitution with fire clays that have low concentrations of fluorides and chlorides as a possible floor for existing clay refractory kilns. The available data indicate that the fluoride and chloride contents of many clays can vary significantly, even within the same deposit. There are no available data that indicate that any of the fire clay deposits that are used by major and synthetic area source facilities are uniformly low in fluorides and chlorides. Furthermore, the procurement of low-fluoride or low-chloride clays as a measure for controlling emissions is not practiced in the refractory products industry.

We also considered pre-calcined clay as a possible floor for clay refractory kilns. Calcining of fire clay prior to incorporating the clay into a refractory shape drives off the HF and HCl that otherwise would be emitted from a kiln when firing clay refractory products. However, none of the 25 facilities that produce fired clay refractories currently use pre-calcined clay for clay refractory production as a means of reducing emissions of HF or HCl. Therefore, substitution of raw clay with calcined clay cannot be considered the MACT floor technology for existing clay refractory products manufacturers. Therefore, we concluded that raw material substitution is not a feasible MACT floor for existing clay refractory products kilns.

We also considered the use of low-HAP fuels as the basis for a MACT floor standard for existing clay refractory products kilns. Certain fuels, waste-derived fuels in particular, may contribute to emissions of HF or HCl when burned. In addition, the fuels that are commonly used to fire some industrial kilns and furnaces (e.g., fuel oil and coal) contain HAP metals, which are subsequently emitted when those fuels are burned. Because fuels can contribute to HAP emissions from kilns, a MACT floor for existing clay refractory products kilns could be based on fuel type. Although a few area source facilities use fuel oil to fire their refractory kilns, our data indicate that all clay refractory products manufacturers use natural gas to fuel the kilns that fire clay refractories. Because natural gas does not contribute to emissions of HF, HCl, or HAP metals, the use of natural gas, or other equivalent clean fuel, is a feasible MACT floor for existing clay refractory products kilns. Having eliminated add-on APCD and raw material substitution as options for a MACT floor for this subcategory, we concluded that the use of natural gas or other such clean fuel is the MACT floor for existing clay refractory kilns. An emission limitation (in this case, a work practice standard) based on this floor would prohibit the use of coal, fuel oil, waste oil, or equivalent fuels to fire existing clay refractory products kilns.

2. How Did We Select the Emission Limits for Existing Sources?

Section 112(d)(3) of the CAA specifies that each MACT standard be at least as stringent as the floor for the sources in the relevant source category or subcategory. Consequently, the MACT floor represents the minimum level of control that can be used in establishing emission limits for existing sources subject to NESHAP. After identifying the emission limits that correspond to the MACT floors for existing sources, we consider regulatory alternatives that are more stringent than the MACT floor levels. Regulatory alternatives are emission control options, process changes, and other methods for reducing HAP emissions other than those defined by the MACT floor. The selected regulatory alternative may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective in considering these beyond-the-floor control options is to achieve the maximum degree of emissions reductions without imposing unreasonable impacts (section 112(d)(2)of the CAA).

Today's proposed rule would establish emission limits for organic HAP emitted from affected existing thermal process sources. These emission limits would apply to the following affected sources: shape dryers, curing ovens and kilns used to produce refractory products that contain organic HAP, and pitch-impregnated refractory products defumers and coking ovens. The emission limits would be presented in two alternate formats: a THC emission concentration and combustion efficiency of certain types of add-on control devices.

Today's proposed rule would establish a THC emission limit as a surrogate for organic HAP emitted from affected thermal process sources. Affected thermal process sources include shape dryers, curing ovens, and kilns that are used to produce resin-bonded or pitch-bonded refractory products; coking ovens and defumers that are used to produce pitch-impregnated refractory products; and other shape dryers and kilns that process refractory shapes that use organic HAP that is emitted during the drying or firing processes.

To determine an appropriate THC concentration limit for refractory products thermal process sources that are controlled at the MACT floor level, we reviewed the available emission test data for the refractory products manufacturing industry. Although we have no THC data on sources controlled at the MACT floor control levels, we have data on two sources with thermal oxidizers that we estimate are more effective in controlling organic emissions than the MACT floor level, and four sources with thermal oxidizers that we estimate are less effective in controlling organic emissions than the MACT floor level. Both of the sources with controls that are more effective than the MACT floor level easily achieved THC emission concentrations of less than 20 ppmvd, corrected to 18 percent O_2. In addition, one of the four sources with controls that are less effective than the floor level achieved a THC emission concentration of less than 20 ppmvd. The THC emission concentrations for the remaining three sources were at least 30 ppmvd. Based on these data, we concluded that a THC emission limit of 20 ppmvd is appropriate and representative of the emission level that the MACT floor controls can achieve. This emission limit also is consistent with other NESHAP and new source performance standards (NSPS) for industries that commonly use thermal or catalytic oxidizers for control of organic HAP emissions. Examples include 40 CFR part 60, subparts DDD, III, and NNN; and 40 CFR part 63, subparts DD, YY, GGG, HHH, JJJ, MMM, and PPP.

We reviewed the available emission test data to determine if it were possible to establish a THC emission concentration limit that would be more stringent than the MACT floor for existing shape dryers, curing ovens, kilns, defumers, and coking ovens. However, the available data indicate that there are no other control devices in use that would perform better than the MACT floor level thermal oxidizers for these sources. We also considered establishing an emission limit based on the estimated level of control that would be achieved by thermal oxidizers that operate at higher temperatures and/or longer residence time than do the MACT floor level thermal oxidizers. However, we concluded that the

available data do not show that these thermal oxidizers would achieve better control of organic HAP than do the MACT floor level thermal oxidizers. Therefore, we decided against establishing a THC emission concentration limit that was more stringent than the MACT floor level of control for existing shape dryers, curing ovens, kilns, defumers, and coking ovens.

Combustion efficiency of a thermal oxidizer is a function of the concentrations of CO_2, CO, and THC in the exhaust stream of the oxidizer. To establish a combustion efficiency standard for thermal process sources, we reviewed the available data for CO_2, CO, and THC emissions from sources controlled with thermal oxidizers that are comparable to the MACT floor technology. In addition to data from refractory products thermal process sources, data from another industry (asphalt roofing) were used to supplement the refractory products data. We believe that using data on asphalt roofing sources is valid because the exhaust stream characteristics and emission controls for the asphalt roofing sources are similar to those found in the refractory products industry.

The data on CO_2 emissions indicate that exhaust gas concentrations of CO_2, corrected to 18 percent O_2, for refractory products sources that are controlled to the MACT floor level typically are between 1.7 and 2.0 percent. The data on CO emissions indicate that thermal oxidizer outlet concentrations of 10 to 20 ppmvd are representative of CO concentrations from sources in the refractory products manufacturing industry with MACT floor level controls. The data on THC emissions indicate that thermal oxidizer outlet concentrations of 10 to 20 ppmvd are representative of THC concentrations from sources in the refractory products manufacturing industry with MACT floor level controls.

Using the value of 1.7 percent CO_2, and the midpoint values for 10 to 20 ppmvd CO and 10 to 20 ppmvd THC, we calculated the combustion efficiency to be 99.8 percent. On this basis, we believe that a combustion efficiency limit of 99.8 percent is achievable for refractory products thermal process sources that operate combustion-based controls that are comparable to the MACT floor level of control. Our analysis of the available data indicates that a combustion efficiency of 99.8 percent is currently achieved by thermal process sources in the refractory products industry that are controlled to the level of the MACT floor. Data from asphalt roofing industry also demonstrate that sources with emission controls comparable to the MACT floor controls for the refractory products industry achieve a 99.8 percent combustion efficiency. With a combustion efficiency limit, affected sources in the refractory products industry that are controlled with thermal oxidizers that operate below the floor level of control would have the option of increasing thermal oxidizer operating temperature in order to reduce CO and THC emissions, and thus increase the combustion efficiency and avoid having to install new emission controls.

A combustion efficiency limit of 99.8 percent may not be an appropriate indicator of the floor level of organic emission control for some sources because combustion efficiency is largely a function of the CO_2 concentration, and CO_2 concentrations in thermal oxidizer exhaust streams vary from source to source. These variations can be attributed to differences in process operation, the amounts of CO_2 entering the thermal oxidizer from the process exhaust stream, and the degree of combustion within the thermal oxidizer. As the CO_2 concentration increases, the concentrations of CO and THC that correspond to a specified combustion efficiency limit also increase. For example, at 2.0 percent CO_2, the sum of the THC and CO concentrations can be no more than 40 ppmvd to achieve a combustion efficiency of 99.8 percent. However, at 4.0 percent CO_2, the source would meet 99.8 percent combustion efficiency even if the sum of the THC and CO concentrations were 80 ppmvd. For this reason, we concluded that it was necessary to restrict the use of the combustion efficiency limit for sources with relatively high CO_2 concentrations. To ensure that owners and operators of affected sources who choose to comply with this combustion efficiency limit are achieving good control, we decided to establish an upper limit of 3.0 percent CO_2 for affected thermal process sources. In other words, demonstrating compliance with the combustion efficiency limit is an option only for sources that have exhaust gas CO_2 concentrations equal to or less than 3.0 percent (corrected to 18 percent O_2) at the outlet of the control device (thermal or catalytic oxidizer). At 3.0 percent CO_2, the combined concentrations of CO and THC can be as high as 60 ppmvd to achieve a combustion efficiency of 99.8 percent.

As CO_2 concentrations decrease, it becomes increasingly difficult to meet a specified combustion efficiency. For example, at 1.0 percent CO_2, the sum of the THC and CO concentrations can be no greater than 20 ppmvd to meet a combustion efficiency of 99.8 percent. From the perspective of organic HAP emissions control, low CO_2 concentrations do not present a problem because the lower the concentration of CO_2, the higher the control level needed to comply with the 99.8 percent combustion efficiency limit. If the CO_2 concentration is so low that it cannot be achieved with a control that is comparable to the MACT floor, the owner or operator can choose to comply with the 20 ppmvd THC emission limit.

We reviewed the available emission test data to determine if it were possible to establish a combustion efficiency limit that would be more stringent than the MACT floor for existing shape dryers, curing ovens, kilns, defumers, and coking ovens. However, the available data indicate that there are no other control devices in use that would perform better than the MACT floor level thermal oxidizers for these sources. We also considered establishing an emission limit based on the estimated level of control that would be achieved by thermal oxidizers that operate at higher temperatures and/or longer residence time than do the MACT floor level thermal oxidizers. However, we concluded that the available data do not show that these thermal oxidizers would achieve better control of organic HAP than do the MACT floor level thermal oxidizers. Therefore, we decided against establishing a combustion efficiency limit that was more stringent than the MACT floor level of control for existing shape dryers, curing ovens, kilns, defumers, and coking ovens.

The MACT floor for reducing emissions of chromium and other nonvolatile HAP metals from existing chromium refractory products kilns is the use of natural gas, or equivalent, as the kiln fuel.

We next considered beyond-the-floor options for establishing an emission standard for existing chromium refractory kilns. Beyond-the-floor options are those regulatory alternatives that would be more stringent than the MACT floor for existing sources. Because no existing chromium refractory kilns are equipped with APCD that would reduce emissions of HAP metals, we considered two other source categories that operate kilns that are similar in design and operation to refractory products kilns: the ceramics manufacturing industry and the brick and structural clay products manufacturing industry. Within the ceramics manufacturing industry, no kilns are equipped with APCD that would be effective in controlling HAP

metals. Within the brick and structural clay products industry, two kilns are equipped with fabric filters. Fabric filters have been demonstrated to be effective in controlling emissions of PM, including HAP metals. Therefore, we considered fabric filter control as a potential regulatory option for establishing an emission limit for existing chromium refractory products kilns. Both of the fabric filters used in the brick industry are installed on coal-fired kilns. The fabric filters were installed specifically because the kilns are fired with coal, which generally is associated with significantly higher emissions of PM and HAP metals than would be associated with gas-fired kilns. The PM emitted from a coal-fired kiln consists largely of fly ash, which results from the burning of the coal. In the absence of this fly ash component, PM concentrations from brick (or refractory) kilns are very small and approach the limits that can be controlled by a fabric filter. Coal-fired kilns are not used in the refractory products industry due to contamination of the product with fly ash and the difficulty in elevating coal-fired kilns to the temperatures needed to fire refractory products properly. Furthermore, there are no natural gas-fired brick kilns that are equipped with an APCD for controlling PM emissions. Consequently, we concluded that coal-fired brick kilns are not similar to chromium refractory products kilns, all of which are natural gas-fired. Therefore, the fabric filter controls used on coal-fired brick kilns are not a regulatory option for establishing an emission limit for existing chromium refractory products kilns.

Because there are no existing chromium refractory products kilns or similar sources that are equipped with an add-on APCD that would control HAP metal emissions, we concluded that there are no beyond-the-floor control options for existing chromium refractory kilns. Therefore, today's proposed rule would not establish an emission limit for existing chromium refractory products kilns. Instead, we are requiring the use of natural gas fuel, or the equivalent, as a work practice standard for chromium refractory products kilns.

As is the case for chromium refractory products kilns, the only feasible MACT floor option for controlling emissions of HF and HCl from existing clay refractory products kilns corresponds to the use of natural gas, or the equivalent, as the kiln fuel. We could not establish an emission limit for HF or HCl for this work practice based on the available data.

We next considered beyond-the-floor options for establishing an emission standard for existing clay refractory kilns. Because no existing clay refractory kilns are equipped with APCD that would reduce emissions of HF or HCl, we considered the options used for controlling emissions of HF and HCl from kilns used in the ceramics and brick and structural clay products manufacturing industries. Within the ceramics manufacturing industry, no kilns are equipped with APCD that would be effective in reducing emissions of HF or HCl. Within the brick and structural clay products industry, several kilns are equipped APCD that achieve good control of HF and HCl emissions. We considered establishing a standard that would be more stringent than the MACT floor for existing clay refractory products kilns, based on the use of a DIFF, which is one of the most effective HF/HCl APCD currently in use in the brick and structural clay products industry.

Based on our analyses, we concluded that establishing an emission standard based on the emissions reductions that would be achievable using a DIFF would not be reasonable at this time. Our analysis included estimates of emission reductions that would be achieved by this approach and the cost impacts on the affected facilities. Based on our estimates, the capital costs of installing a DIFF on each of the six existing clay refractory products kilns located at the three facilities that produce clay refractories and are major sources of HAP emissions total $5.5 million. The annualized control costs for these facilities would be $2.2 million per year. Two of these facilities are small businesses and would incur combined capital costs of $2.4 million and combined annualized control costs of more than $1.0 million per year. Based on the cost-to-sales ratios for this option, one of these small businesses would incur significant adverse economic impacts, and the other small business would incur substantial adverse economic impacts. In terms of HAP removal, the annualized control costs overall for the three facilities would total $34,100 per ton of HAP removed. Based on these costs and impacts, we determined that the benefits of installing DIFF on existing clay refractory products kilns do not justify the cost at this time. Therefore, we are not requiring that existing clay refractory kilns meet an emission limit more stringent than the MACT floor level of control. Instead, we are requiring the use of natural gas fuel, or equivalent, as a work practice standard for clay refractory products kilns.

3. How Did We Select the Work Practice Standards?

Under section 112(h) of the CAA, we can establish work practice standards for HAP sources if it is not feasible to establish numerical emission limits for those sources. Emission standards are deemed not feasible when emissions cannot be captured or conveyed to a control device or when it is not practical to measure emissions due to technological and economic limitations. Today's proposed rule would establish work practice standards for four types of existing HAP emission sources: Shape preheaters and pitch working tanks that are used in the production of pitch-impregnated refractory products, chromium refractory products kilns, and clay refractory products kilns.

Hazardous air pollutant emissions from shape preheaters result from the volatilization of POM from the residual pitch on the baskets or containers that are used to hold and transport shapes to and from the autoclave, defumer, and, if applicable, coking oven. Facilities that perform pitch impregnation periodically clean the residual pitch off of these baskets or containers by abrasive blasting. A typical cleaning frequency is once every ten cycles, and that practice is the MACT floor control level for POM emissions from shape preheaters. If the facility operates a coking oven, the holding baskets undergo the coking cycle, which also cleans the baskets or containers by burning off any residual pitch that would volatilize in the shape preheater. Emissions from shape preheaters are likely to vary depending on the amount of residual pitch present, which in turn depends on how many impregnation cycles the baskets have undergone since the baskets were last cleaned. In any case, emissions are likely to be very low and actually may not be detectable in the exhaust stream due to the relatively small amounts of pitch present on basket and container surfaces. For this reason, we believe that it is not feasible to establish a numerical emission limit for shape preheaters, and a work practice standard is appropriate for this type of source.

In addition to coking and abrasive blasting, the other work practice that is used by one facility to control POM emissions from shape preheaters is to exhaust preheater emissions to the defumer control device. We believe that either coking or exhausting emissions to the defumer control device would be as effective as abrasive blasting (the MACT floor control) in controlling POM emissions from shape preheaters. On

this basis, we concluded that it would be reasonable and appropriate to require affected facilities to implement at least one of these three work practices to ensure that POM emissions from shape preheaters are reduced.

We considered beyond-the-floor options for establishing an emission standard for existing shape preheaters. We estimated the costs and emissions reductions associated with controlling preheater emissions with a thermal oxidizer. Based on our analyses, we concluded that establishing an emission standard or work practice standard based on the emissions reductions that would be achieved by controlling preheater emissions with a thermal oxidizer would not be reasonable at this time. Although two existing shape preheaters are controlled with a thermal oxidizer that also controls emissions from a defumer, it generally is not feasible to exhaust uncontrolled shape preheaters to existing defumer controls. The exhaust flow rate from a typical preheater is relatively high compared to defumer exhaust flow rates. As a result, defumer controls generally are undersized for controlling emissions from a defumer and a preheater. Therefore, we concluded that controlling shape preheater emissions would require installing a new thermal oxidizer. Our analysis included estimates of emission reductions and the cost impacts that would result from this approach. Based on our estimates, the annualized costs for this beyond-the-floor approach for a typical shape preheater would be $59,000 per year. The corresponding reductions in POM emissions would total 0.03 tons/yr (60 lb/yr). In terms of HAP removal, the annualized control costs for a typical shape preheater would be $1.9 million per ton of HAP removed. Based on these costs and impacts, we determined that the benefits of this beyond-the-floor control option do not justify the cost at this time. Therefore, we are not requiring affected facilities to control HAP emissions from existing shape preheaters by exhausting preheater emissions to a thermal oxidizer.

Emissions from pitch working tanks result primarily from the displacement of POM from the working tanks as the tanks fill with pitch and from the heating of the pitch in the working tanks, causing the pitch to volatilize and be released as POM. Because pitch working tanks empty and fill with each impregnation cycle, pitch working tank exhaust flow is intermittent. In addition, exhaust flow rates from working tanks are very low. For these reasons, it is not practical to measure working tank emissions, and it is not feasible to establish a numerical emission limit for working tanks. Therefore, we concluded that a work practice standard is appropriate for this type of source.

As discussed previously, the MACT floor for existing pitch working tanks is a work practice that entails exhausting working tank emissions to the defumer thermal oxidizer. We believe that this practice is an effective and appropriate method of controlling POM emissions from working tanks. Consequently, we selected this work practice for existing pitch working tanks.

We considered beyond-the-floor options for establishing a standard for existing pitch working tanks. Defumer thermal oxidizers operate only during impregnation and defuming cycles and do not necessarily operate during all periods when the pitch working tank is in operation. Therefore, as a beyond-the-floor control option for pitch working tanks, we considered requiring affected facilities to use defumer thermal oxidizers to control working tank emissions during all periods when the working tank is operating. We estimated that this requirement would result in operating a typical defumer thermal oxidizer for an additional 2 hours per day. The estimated annualized cost of this additional operating time for a defumer thermal oxidizer that operates at the MACT floor level of control would be $7,900 per year, and the corresponding reductions in POM emissions would be 0.005 tons/yr (9 lb/yr) for a typical pitch working tank. In terms of HAP removal, the annualized control costs for a typical pitch working tank would be $1.7 million per ton of HAP removed. Because the HAP emissions reductions associated with this beyond-the-floor option would be so low (9 lb/yr), we concluded that the benefits of this control option do not justify the cost at this time. For these reasons, we decided against requiring that the defumer APCD, which also controls working tank emissions, be operated during all times when the pitch working tank is in operation.

We decided to require the use of natural gas as the kiln fuel because that work practice is the basis for the MACT floor for existing chromium and clay refractory products kilns. This work practice would prevent the future use of kiln fuels that emit HAP metals, HF, or HCl. In addition, this work practice would impose no additional costs on existing facilities other than the costs associated with the initial notification and recordkeeping requirements.

E. How Did We Select the Emission Limits for New Sources?

For new sources, the CAA requires MACT to be based on the degree of emissions reduction achieved in practice by the best-controlled similar source. Today's proposed rule would establish emission limits for new thermal process sources that emit organic HAP and new clay refractory kilns.

For the subcategories that include thermal process sources that use organic HAP and pitch-impregnated refractory sources, thermal oxidizer control is the MACT floor technology for both existing and new affected thermal process sources or organic HAP. For each group of sources covered by these two subcategories that would be subject to an emission limit (i.e., shape dryers, curing ovens, kilns, defumers, coking ovens, and shape preheaters), the best control is a thermal oxidizer that operates at a higher temperature and longer residence time than does the MACT floor level thermal oxidizer for existing sources. However, when the performance of these best controls is compared to the performance of the MACT floor controls, the Arrhenius equation, which is the basis for the control device rankings, indicates that the best controls and MACT floor controls are indistinguishable with respect to their effectiveness in controlling organic HAP emissions. The available emission data on controlled thermal process sources also show no clear distinctions in performance between the best controls and the MACT floor controls. For these reasons, we concluded that the best-performing sources are comparable to the MACT floor controls, and we decided to require the same emission limits for new sources of organic HAP as would be required for existing affected sources under the proposed rule: no more than 20 ppmvd THC, corrected to 18 percent O_2, or at least 99.8 percent combustion efficiency.

Under today's proposed rule, you would be required to satisfy a work practice standard for existing shape preheaters. However, for new shape preheaters, you would be required to meet the same emission limits that are required for other thermal process sources of organic HAP. That is, you would have to meet either a THC emission concentration of 20 ppmvd, corrected to 18 percent O_2, or a combustion efficiency of at least 99.8 percent. The data indicate that the best-controlled preheaters are equipped with thermal oxidizers that are comparable to the best controls used on the other

thermal process sources of organic HAP. Therefore, we concluded that the same emission limits that apply to other new thermal process sources of organic HAP should apply to new shape preheaters as well.

Pitch working tanks also emit organic HAP. However, we did not establish emission limits for new pitch working tanks because the low and intermittent exhaust flow rates that characterize pitch working tanks preclude accurate measurement of pitch working tank emissions. Therefore, we decided to establish the same work practice for new pitch working tanks as would be required for existing pitch working tanks. That is, the practice of exhausting pitch working tank emissions to the same control device that controls emissions from an affected defumer or coking oven, or to a comparable control device.

The HAP emitted from chromium refractory products kilns include hexavalent chromium, other chromium compounds, and other nonvolatile HAP metals, all of which are emitted in the form of PM. As discussed previously, no chromium refractory products kilns are equipped with an APCD that would be effective in controlling emissions of nonvolatile HAP metals. Furthermore, there are no similar sources equipped with an APCD that would reduce emissions of PM or nonvolatile HAP metals. Consequently, we are not establishing an emission limit for new chromium refractory products kilns. Instead, we are requiring the use of natural gas fuel, or equivalent, as a work practice standard for new chromium refractory products kilns.

No clay refractory kilns currently in operation are equipped with APCD that would be effective in reducing emissions of HF or HCl. However, under Section 112(d) of the CAA, emission standards for new sources can be based on the control levels achieved by similar sources in other industries. Several kilns used in the brick and structural clay products industry are equipped with APCD to reduce emissions of HF and HCl, and emission data are available for some of those controlled kilns. Because brick kilns are similar in design, operation, and emission characteristics to clay refractory kilns, we concluded that the emission data for the best-controlled brick kilns would be representative of the best APCD available for clay refractory kilns.

The brick industry emission data indicate that kilns controlled with a DIFF, DLS/FF, or wet scrubber can achieve production-based HF emission limits of 0.001 kg/Mg (0.002 lb/ton) and an HF control efficiency of 99.5 percent. The brick industry data for HCl emissions indicates that a production-based HCl emission limit of 0.0025 kg/Mg (0.005 lb/ton) and an HCl control efficiency of 98 percent can be achieved by the best-controlled sources. Based on these data, we decided it would be appropriate to establish these same emission limits for new clay refractory products kilns.

F. How Did We Select the Format of the Standard?

In determining the format of the standard for thermal process sources, we considered several alternatives, including an emission concentration, emission rate, emission factor, control efficiency, and combustion efficiency. From our analysis of the available data, we concluded that THC emission concentration and combustion efficiency limits are the most practical and appropriate formats for refractory products thermal process sources.

Due to a lack of HAP emission data on controlled sources, we were unable to establish HAP emission limits for the types of emission sources that would be subject to the proposed rule. Therefore, we considered using THC as a surrogate for organic HAP emissions. We selected a THC emission concentration format because it has several advantages over the other formats considered. The test method for THC, EPA Method 25A, is a relatively straightforward and inexpensive procedure that provides near real-time results. The emission concentration format also eliminates the need to measure control device inlet data, which would be required for a control efficiency standard. In addition, an emission concentration limit of 20 ppmvd THC is consistent with several NESHAP for other source categories that use thermal and catalytic oxidizers for organic HAP control.

As an alternative to the THC emission concentration limit, we considered a combustion efficiency limit format for the standard. Combustion efficiency provides a measure of the extent to which carbon in the exhaust stream, typically in the form of organic compounds, is converted to CO_2. Although it is difficult to correlate combustion efficiency to the extent to which organic compounds are destroyed (i.e., destruction efficiency), a high combustion efficiency is generally accepted as an indication that combustion-based controls are operating properly.

A combustion efficiency format has distinct advantages over other potential formats for the refractory products manufacturing industry. The performance test methods required to show compliance with a combustion efficiency standard are well established, relatively simple, continuous, provide near real-time results, and are relatively inexpensive to perform. A combustion efficiency standard also allows for higher THC concentrations provided that the outlet concentrations of CO are relatively low. For example, if the CO_2 and CO concentrations at the outlet of a thermal oxidizer were 2.0 percent and 10 ppm, respectively, the source would meet the 99.8 percent combustion efficiency with a THC concentration of 30 ppm.

Under today's proposed rule, new clay refractory kilns located at major source facilities would have the option of meeting production-based or percent reduction emission limits for HF and HCl. We selected the production-based format because it accounts for differences in kiln sizes (i.e., kiln production rates) and, thus, does not penalize the use of larger kilns, as would be the case for a mass emission rate format. We included percent reduction emission limits as an alternative to production-based limits. Production-based emission limits may not be achievable for kilns that fire clays that have unusually high fluoride or chloride concentrations. In such cases, affected facilities with good emission controls could still meet percent reduction standards for HF and HCl.

G. How Did We Select the Testing and Initial Compliance Requirements?

We selected EPA Methods 25A for THC, 3A for CO_2, and 10 for CO because they are the appropriate methods for determining THC concentrations and combustion efficiency. All three methods are standard EPA methods that are widely used and relatively inexpensive to perform. In addition, these methods provide continuous, near real-time results.

Several of the performance testing requirements specified in today's proposed rule apply specifically to continuous process sources, and other requirements apply only to batch process sources.

We decided to require batch process sources to meet a rolling average emission limit rather than an block average limit because organic HAP emissions from batch process sources generally vary significantly over the course of a cycle. Organic HAP emissions are likely to be negligible at the start of a cycle, then increase and peak several hours into the cycle. After peaking, organic HAP emissions typically decrease and may become negligible before the cycle is completed. The rolling average format would

eliminate situations where a batch process source far exceeds the emission limit during part of the process cycle, but is in overall compliance simply because the average emissions include several hourly values during which emissions are negligible.

We decided to allow decreasing the operating temperature of (or shut off completely) thermal or catalytic oxidizers before the batch cycle is completed because the cycle time for some sources extends well beyond the period during which an emission control is needed to meet the THC emission limit. We believe that there is no need to operate the control device further if you can demonstrate that the emission limit can be met with the control device off line or operating at a reduced temperature.

Under today's proposed rule, you would be required to conduct performance tests on affected thermal process sources under the conditions that would result in the highest levels of organic HAP emissions. Our objective in specifying this requirement is to ensure continuous compliance with the emission limits; if the source is in compliance with emission limits under such ''worst case'' conditions, it should also be in compliance when refractory shapes that contain other refractory mixes are processed.

We decided to require monitoring of control device operating temperatures because operating temperatures (i.e., thermal oxidizer combustion chamber temperatures or catalytic oxidizer bed inlet temperatures) generally are reliable indicators of the performance of those control devices. We believe that sources that operate thermal and catalytic oxidizers at or above the operating temperatures established during performance tests generally would be meeting the emission limits. Therefore, establishing operating limits on the operating temperatures of thermal and catalytic oxidizers would help assure continuous compliance with the emission limits. We also believe that this requirement is not labor-intensive, does not require expensive or complex equipment, and does not require burdensome recordkeeping.

For affected sources that are subject to the THC emission concentration limit and use alternative control methods, such as process modifications or add-on control devices other than thermal or catalytic oxidizers, we decided to require THC CEMS. Thermal and catalytic oxidizers are the only devices currently used to control organic emissions from refractory thermal process sources. The effectiveness of these controls for organic pollutants, including the types of organic HAP emitted by refractory products sources, is well established. In view of the uncertainty of how well other control methods would perform on refractory thermal process sources, we believe that requiring THC CEMS is warranted for sources that are equipped with other such controls. In most cases, CEMS provide the best indication that a source is complying with emission limits.

The performance specifications established in 40 CFR part 60, appendix B, were developed specifically for providing reasonable assurance that CEMS are installed and operated properly. Therefore, we believe that it is warranted to require that affected thermal process sources equipped with alternative control devices comply with PS–8, which applies specifically to THC CEMS.

We selected EPA Method 26A for demonstrating compliance with HF and HCl emission limits because Method 26A is the standard method for determining emissions of hydrogen halides, including HCl and HF, from stationary sources. We selected operating limits and monitoring requirements that we believe would ensure proper operation of add-on emission control devices that might be used to comply with the proposed requirements for new clay refractory kilns. We believe that sources that operate control devices within the operating limits established during performance tests generally would be meeting the emission limits. Therefore, establishing operating limits on the control devices would help assure continuous compliance with the emission limits. At the same time, the provisions are not labor-intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping. Temperature monitoring and recording equipment and lime injection rate monitoring and recording equipment are standard features on DIFF and DLS/FF systems. Water injection rate monitoring and recording equipment is a standard feature on DLS/FF controls. For wet scrubbers, pressure drop monitors and liquid flow monitors often are part of standard scrubber instrumentation. We decided to require you to conduct performance tests while each affected source is operating at the maximum production level because exceedances of emission limits are more likely to occur when production rates are highest. We believe this requirement helps to ensure that compliance with the emission limits is maintained continuously without being labor-intensive, requiring expensive or complex equipment, and requiring burdensome recordkeeping.

The proposed rule would require all continuous process sources to be tested for at least three test runs of at least 1 hour each because this requirement is specified in 40 CFR 63.7(e)(3) of the General Provisions. Requiring a minimum of three 1-hour test runs is typical for most performance tests required under part 63 for continuous sources.

For affected batch process sources, we decided to require testing during three separate batch cycles because emissions from batch processes can vary significantly over the course of a cycle. Testing during a single cycle might not account for these variations. On the other hand, we believe that testing throughout three complete cycles would be unreasonably costly and unnecessary if test runs could focus on the periods when emissions are greatest. For this reason, we included in the proposed rule alternatives to testing for three complete cycles.

We selected the option of using an emissions profile because such a profile would identify exactly when peak emissions occur. We believe that testing during the period of peak emissions would be adequate for demonstrating compliance with the emission limits. For batch process clay refractory kilns, we selected a 3-hour peak period because we believe that 3 hours is adequate in length for encompassing the peak emissions period. We selected a longer (4-hour) peak period for organic HAP sources because we believe that organic HAP emissions are likely to experience greater fluctuations than would PM or HF emissions. When an emissions profile is used, you would still be required to perform at least three test runs.

We also incorporated the option of allowing the testing of batch process sources to be stopped following the 3-hour period that follows peak process temperature. We decided to include this option because it may be less burdensome than developing an emissions profile for particularly long batch cycles. For thermal process sources of organic HAP, we believe that emissions generally peak within a few hours of the peak process temperature, if not sooner. Therefore, testing for an additional 3 hours after peak process temperature is reached should ensure that the test run encompasses the period of peak emissions. For clay refractory kilns, emissions of HF and HCl begin when the clays are heated to approximately 540°C (1000°F). We assume that HF and HCl emission rates increase for several hours before

peaking and declining. We believe that requiring that the tests be performed for at least 3 hours following peak temperature provides reasonable assurance that the testing period would encompass the peak emissions period.

H. How Did We Select the Continuous Compliance Requirements?

In determining the proposed continuous compliance requirements, we first considered establishing continuous emission limits and requiring the use of CEMS. For thermal processes that emit organic HAP and are equipped with emission controls that were comparable to, or better than, the MACT floor level of control, we were able to obtain continuous THC emission data only for two batch process sources. Both sources were operated with relatively short cycle times, and we concluded that those data were not adequate for establishing a continuous THC emission limit. In addition, we have no continuous emission data for HAP or HAP surrogates for chromium refractory or clay refractory products kilns.

We next considered continuous and periodic monitoring of control device operating parameters. Many plants already perform continuous or periodic monitoring of operating parameters and already have parameter measurement devices in place. Operating limits based on continuous monitoring of APCD operating parameters using CPMS would help to assure that the APCD continuously operates at the same level of performance as it did during the initial performance test during which you meet the emission limits. Therefore, we concluded that continuous monitoring of control device operating parameters would help assure continuous compliance with the emission limits. In addition, in most cases, CPMS are more economical to install and operate compared to the cost of CEMS.

In the case of thermal process sources subject to the THC emission concentration limit that use alternative emission controls, we decided to make an exception to allowing the use of CPMS to demonstrate continuous compliance. Because of the uncertainty in how well other control methods would perform on refractory thermal process sources, we believe that requiring THC CEMS is warranted for sources that are equipped with alternative controls. Furthermore, to provide reasonable assurance that those CEMS are operated and maintained properly, we believe that there is justification for requiring that affected thermal process sources equipped with alternative control devices comply with Procedure 1 of 40 CFR part 60, appendix F.

We decided to require the monitoring and recording of the organic HAP processing rate and process operating temperature hourly because these parameters are the primary determinants of organic HAP emissions. Verifying that the values of these parameters do not exceed the corresponding levels measured during the performance test would help assure continuous compliance with the emission limits.

We selected the requirement for monitoring thermal oxidizer combustion chamber temperature because temperature monitoring is one of the most reliable methods for evaluating the performance of thermal oxidizers. The other parameters that affect thermal oxidizer performance (i.e., the residence time and degree of mixing) are fixed by design and generally do not vary, whereas the combustion chamber temperature can be increased or decreased to influence combustion efficiency and the level of organic pollutant destruction.

We selected the requirement for monitoring the catalyst bed inlet temperature on catalytic oxidizers because the bed inlet operating temperature is a reliable indicator of catalytic oxidizer performance. Although space velocity is also an indicator of the performance of catalytic oxidizers, space velocity is fixed by design and does not generally vary. However, catalyst bed inlet temperature can be regulated to increase or decrease the performance of a catalytic oxidizer. We also decided to require you to maintain the catalyst according to manufacturer's specifications because of the danger of the catalyst being poisoned by contaminants in the exhaust stream. Poisoning can greatly reduce the effective of catalytic oxidizers in controlling organic emissions. Therefore, we believe that maintenance of the catalyst is critical for providing assurance that catalytic oxidizers continue to perform well.

The requirements that we have selected for monitoring thermal and catalytic oxidizer operating temperatures are typical of other NESHAP that regulate organic HAP emissions. The equipment needed for monitoring operating temperature is standard on many thermal and catalytic oxidizers. Furthermore, we believe these requirements are not labor-intensive and do not require burdensome recordkeeping.

For clay refractory kilns that are controlled with a DIFF or DLS/FF, we decided to require bag leak detection systems, monitoring of fabric filter inlet temperature, and periodic checks that lime is free-flowing because we believe that these requirements would help to assure continuous compliance and identify operating problems at the source. At the same time, the provisions are not labor-intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping. Bag leak detection systems are often used as a means of monitoring fabric filter performance. Temperature monitoring and recording equipment and lime injection rate monitoring and recording equipment are standard features on DIFF and DLS/FF systems. For kilns controlled with a DLS/FF, we decided to require monitoring of water injection rates because water injection rate monitoring and recording equipment is a standard feature on DLS/FF controls. For kilns controlled with wet scrubbers, we decided to require monitoring of the pressure drop across the scrubber, scrubber liquid pH, and liquid flow rate because these parameters are good indicators of scrubber performance and the removal of acid gases. In addition, pressure drop monitors and liquid flow monitors often are part of the standard instrumentation for wet scrubbers.

I. How Did We Select the Notification, Reporting, and Recordkeeping Requirements?

We selected the specific notification, reporting, and recordkeeping requirements that would be required under today's proposed rule because these requirements are all specified in the General Provisions to part 63 (subpart A). Selecting requirements that are specified in the General Provisions ensures consistency with other NESHAP.

We selected the specific elements that must be included in your OM&M plan because we believe that having documented procedures and the other information on emission control and monitoring equipment included in the plan is necessary for ensuring compliance and facilitating enforcement. Having a list of affected sources, control devices, CPMS, and recordkeeping procedures is needed for compliance inspections. Monitoring schedules are needed for ensuring that operating limits are maintained. Established maintenance procedures would help to ensure the proper operation of control devices and CPMS. Established corrective action procedures are needed to ensure that, when deviations occur, problems are diagnosed and rectified quickly.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

At the current level of control and 1996 production levels, we estimate nationwide emissions of HAP from the refractory products manufacturing industry to be about 258 Mg/yr (284 tons/yr). For the eight refractory products facilities that we estimate to be major sources, baseline annual HAP emissions are about 161 Mg/yr (177 tons/yr). We estimate that the rule as proposed would reduce nationwide HAP emissions by about 120 Mg/yr (132 tons/yr).

Among the major sources, POM emissions account for approximately 55 percent of the total annual HAP emissions. Hydrogen fluoride, phenol, HCl, and ethylene glycol account for 16 percent, 12 percent, 11 percent, and 6 percent of total annual HAP emissions, respectively. Formaldehyde and chromium compounds each account for less than 1 percent of total baseline annual HAP emissions. The rule as proposed would reduce annual POM emissions by as much as 90 Mg/yr (99 tons/yr). Emissions of phenol and ethylene glycol would be reduced by approximately 19 Mg/yr (21 tons/year) and 11 Mg/yr (12 tons/yr), respectively. Implementing today's rule as proposed would also reduce VOC and CO emissions by 136 Mg/yr (150 tons/yr) and 14 Mg/yr (15 tons/yr), respectively. The rule as proposed would result in an increase in annual NO_X emissions of about 25 Mg/yr (27 tons/yr) due to the operation of additional thermal oxidizers to control organic HAP emissions.

Indirect or secondary air impacts of today's rule as proposed would result from increased electricity usage associated with operation of control devices. Assuming that plants would purchase electricity from a power plant, we estimate that the standards as proposed would increase secondary emissions of criteria pollutants, including PM less than 10 micrometers in aerodynamic diameter (PM_{10}), SO_2, NO_X, and CO from power plants. Under the rule as proposed, secondary PM_{10} emissions would increase by 0.54 Mg/yr (0.6 tons/yr); secondary SO_2 emissions would increase by about 22 Mg/yr (24 tons/yr); secondary NO_X emissions would increase about 11 Mg/yr (12 tons/yr); and secondary CO emissions would increase by about 0.36 Mg/yr (0.4 tons/yr).

We estimate that there will be no new sources within the refractory products manufacturing industry within the next 3 years. Therefore, we are not projecting air impacts for new sources under the proposed rule.

B. What Are the Water and Solid Waste Impacts?

To comply with the rule as proposed, we expect that affected facilities would control organic HAP emissions by installing and operating thermal oxidizers. Therefore, we project that today's rule as proposed would have no water or solid waste impacts.

C. What Are the Energy Impacts?

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that would be required under the proposed rule. Assuming that affected facilities would comply with the rule as proposed by installing and operating thermal oxidizers, we project that today's rule as proposed would require increase overall energy demand (i.e., electricity and natural gas) by about 730 thousand gigajoules per year (690 billion British thermal units per year). Electricity requirements are expected to increase by about 3,910 megawatt-hours per year under the proposed standards. Natural gas requirements would increase by about 18 million cubic meters per year (644 million cubic feet per year) under the rule as proposed.

D. What Are the Cost Impacts?

The estimated total capital costs of today's proposed rule are $3.5 million. These capital costs apply to existing sources and include the costs to purchase and install thermal oxidizers on affected sources that are not currently controlled. The estimated annualized cost of the rule as proposed is $1.6 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping and reporting costs.

E. What Are the Economic Impacts?

The EPA prepared an economic analysis to evaluate the impact the proposed rule would have on the producers and consumers of refractories, and society as a whole. The refractories industry consists of 167 establishments, 8 of which are estimated to be major sources. The total annualized social cost of the proposed rule is $1.4 million (in 1998 dollars). Our analysis indicates that this cost would lead to minimal changes in prices and the quantity of refractories produced in each sector of the refractories market. Prices in the refractory bricks and shapes sector are estimated to increase by 1/10th of one percent while production may decrease by 1/100th of one percent. Prices for monolithics increase negligibly by 1/100th of one percent and the quantity produced is almost unchanged (a decrease of only 12 tons per year). The refractory ceramic fiber sector of the market is not affected by the rule as proposed and, thus, no price or production level changes are predicted. Of the eight major sources of HAP emissions, one facility may close due to regulatory costs. However, EPA recognizes that this facility, as well as the other affected facilities, have several options to change input materials or attributes of their production process such that they could substantially reduce the cost associated with add-on control technology. Without explicit knowledge of decisions to be made by this and other facilities in response to the proposed rule, our analysis assumes only that add-on control technology would be installed. Hence the cost of add-on controls would exceed total revenues of this facility, causing it to close. This estimated facility closure in the market has a minimal influence on prices and productions levels, as is described above.

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 review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a ''significant regulatory action'' because

none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA may also not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule would not have a 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. This determination has been made since none of the affected plant sites under the proposed rule are owned or operated by State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Although section 6 of Executive Order 13132 does not apply to the proposed rule, EPA is providing State and local officials an opportunity to comment on the proposed rule. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking notice.

C. 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.''

The proposed rule would not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No affected plant sites are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to the proposed 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 the proposed rule from tribal officials.

D. 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 the environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost for the proposed refractory products manufacturing standards for any 1 year is estimated at $3.8 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would 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 proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 employees; (2) a small governmental jurisdiction that is a government or 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 a screening of impacts on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. We estimate that, of the facilities affected by the proposed rule, there is one facility owned by a small company. The estimated compliance cost for this company represents less than one-half of one percent (<0.50%) of company sales. The proposed rule would also result in a small increase in revenues and profits for unaffected small entities in the refractories market. This occurs because the overall market price is expected to increase by a minimal amount. Small entities in this market would not incur any additional cost to produce refractories; however, they would be able to increase their prices slightly in response to market changes from the proposed rule. Our analysis estimates that the 58 small entities (owning 76 facilities) operating in the refractories market would increase revenues by a total of $550,000 and increase profits by $85,000 (in 1998 dollars).

H. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2040.01), and a copy may be obtained from Sandy Farmer, by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at *farmer.sandy@epa.gov*; or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rule would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to be 658 labor hours per year at a total annual cost of $32,100. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems; preparation and a one-time submission of an SSMP, with immediate reports for any event when the procedures in the plan were not followed; preparation of an OM&M plan; one-time notifications; semiannual compliance reports; and recordkeeping. Total capital/startup costs associated with the monitoring requirements (e.g., costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the 3-year period of the ICR are estimated at $31,400, with operation and maintenance costs of $730/yr.

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.

Comments are requested on EPA'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. EPA (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street 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 June 20, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by July 22, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rulemaking involves technical standards. The EPA proposes to use the following methods in the proposed rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 10, 25A, and 26A. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, and 2G. The search and review results have been documented and are placed in the docket (Docket No. A–2000–50) for the proposed rule.

The voluntary consensus standard ASME C00031, PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the proposed rule for its manual methods for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME C00031, PTC 19–10–1981—Part 10, is an acceptable alternative to Method 3B.

In addition to the voluntary consensus standards EPA proposes to use in the rule, the search for emissions measurement procedures identified 14 other voluntary consensus standards. The EPA determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, EPA does not propose to adopt these standards for this purpose.

Three of the 18 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Methods 3A and 10.

Table 4 of the today's proposed rule lists the EPA testing methods included in the proposed regulation. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

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

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart SSSSS to read as follows:

Subpart SSSSS—National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

Sec.

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What This Subpart Covers

§ 63.9780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for refractory products manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.9782 Am I subject to this subpart?

You are subject to this subpart if you own or operate a refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A refractory products manufacturing facility is a plant site that manufactures refractory products (refractory bricks, refractory shapes, monolithics, kiln furniture, crucibles, and other materials used for lining furnaces and other high temperature process units). Refractory products manufacturing facilities typically process raw material by crushing, grinding, and screening; mixing the processed raw materials with binders and other additives; forming the refractory mix into shapes; and drying and firing the shapes.

(b) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.9784 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a refractory products manufacturing facility.

(b) The existing affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens that are used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(c) The new or reconstructed affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(d) Shape dryers, curing ovens, kilns, coking ovens, defumers, shape preheaters, and pitch working tanks that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale are not subject to the requirements of this subpart.

(e) A source is a new affected source if you began construction of the affected source after June 20, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(g) An affected source is existing if it is not new or reconstructed.

§ 63.9786 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than [3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) You must be in compliance with this subpart when you conduct a performance test on an affected source.

(d) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (d)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(e) If you have a new area source (i.e., an area source for which construction or reconstruction was commenced after June 20, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(f) You must meet the notification requirements in § 63.9812 according to the schedule in § 63.9812 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9788 What emission limits, operating limits, and work practice standards must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.9790 What are my options for meeting the emission limits?

To meet the emission limits in Table 1 to this subpart, you must use one or both of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an add-on air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use raw materials that have little or no potential to emit HAP during the refractory products manufacturing process or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart without an add-on APCD.

General Compliance Requirements

§ 63.9792 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits and work practice standards) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.9794.

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 11 to this subpart.

§ 63.9794 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each continuous parameter monitoring system (CPMS) required by this subpart, you must develop, implement, make available for inspection, and revise, as necessary, an OM&M plan that includes the information in paragraph (b) of this section.

(b) Your OM&M plan must include, at a minimum, the information in paragraphs (b)(1) through (11) of this section.

(1) A list and identification of each process and add-on APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) Specifications for the sensor, signal analyzer, and data collection system.

(3) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(4) The operating limits for each parameter that represent continuous compliance with the emission limitations in § 63.9788, based on values of the monitored parameters recorded during performance tests.

(5) Procedures for installing the CPMS at a measurement location relative to each process unit or APCD such that measurement is representative of control of emissions.

(6) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(7) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9804.

(8) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(9) Procedures for evaluating the performance of each CPMS.

(10) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (10)(i) through (iii) of this section:

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(11) Procedures for keeping records to document compliance and reporting in accordance with the requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.9796 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.9786 and according to the provisions in § 63.7(a)(2).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test every 5 years following the initial performance test, as part of renewing your 40 CFR part 70 or part 71 operating permit.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 7 of Table 1 to this subpart, you must conduct a performance test before starting production of any refractory product for which the organic HAP processing rate is likely to exceed the maximum organic HAP processing rate established during the most recent performance test.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 4 or 7 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln.

§ 63.9800 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and validate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(e) You must conduct separate test runs for at least the duration specified for each performance test required in this section, as specified in § 63.7(e)(3) and Table 4 to this subpart. For batch process sources, each test run must last an entire batch cycle unless you satisfy the conditions for developing an emissions profile as specified in item 8(a)(i)(3) or 15(b)(i)(3) of Table 4 to this subpart or the conditions for terminating a test run prior to the

completion of a batch cycle as specified in item 8(a)(i)(4) of Table 4 to this subpart.

(f) You must use the data gathered during the performance test and the equations in paragraphs (f)(1) through (4) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC_C} = \frac{2.9 \times C_{THC}}{\left(20.9 - C_{O_2}\right)} \qquad \text{(Eq. 1)}$$

Where:

C_{THCC} = THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC} = THC concentration (uncorrected), ppmvd

$_{CO2}$ = Oxygen concentration, percent.

(2) To determine compliance with the combustion efficiency limit listed in Table 1 to this subpart, you must calculate your combustion efficiency for each test run using Equation 2 of this section:

$$CE = \frac{C_{CO_2}}{\left(C_{CO_2} + C_{CO} + C_{THC}\right)} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = Combustion efficiency, percent

C_{CO2} = Carbon dioxide (CO_2) concentration, ppm

C_{CO} = Carbon monoxide (CO) concentration, ppm

C_{THC} = THC concentration (uncorrected), ppm.

(3) To determine compliance with production-based hydrogen fluoride (HF) and hydrogen chloride (HCl) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 3)}$$

Where:

MP = mass per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER = mass emission rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour

P = average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour.

(4) To determine compliance with any of the emission limits based on percent reduction across an emissions control system in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 4 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i} \times 100 \qquad \text{(Eq. 4)}$$

Where:

PR = percent reduction, percent

ER_i = mass emission rate of specific HAP (HF or HCl) entering the control device, kilograms (pounds) per hour

ER_o = mass emission rate of specific HAP (HF or HCl) exiting the control device, kilograms (pounds) per hour.

(g) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you, as specified in Table 4 to this subpart.

(h) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (h)(1) through (3) of this section.

(1) For sources subject to the THC concentration limit specified in item 3 or 6 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (h)(1)(i) through (iii) of this section.

(i) You must install a THC continuous emission monitoring system (CEMS) at the outlet of the control device or in the stack of the affected source.

(ii) You must meet the requirements specified in Performance Specification (PS) 8 of 40 CFR part 60, appendix B.

(iii) You must meet the requirements specified in Procedure 1 of 40 CFR part 60, appendix F.

(2) For sources subject to the emission limits specified in item 3, 6, 8, or 9 of Table 1 to this subpart, you must submit a request for approval of alternative monitoring methods to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (h)(2)(i) through (v) of this section.

(i) A description of the alternative add-on APCD or process changes.

(ii) The type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, quality assurance and quality control measures, and data recording device.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(v) Averaging time.

(3) You must establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring methods request, and, as applicable, as specified in Table 4 to this subpart.

§ 63.9802 How do I develop an emissions profile?

If you decide to develop an emissions profile for an affected batch process source, as indicated in item 8(a)(i)(3) or 15(b)(1)(3) of Table 4 to this subpart, you must measure and record emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source using the procedures described in paragraphs (a) and (b) of this section.

(a) If your affected batch process source is subject to the THC concentration limit specified in item 5(a), 6, or 7 of Table 1 to this subpart, or to the combustion efficiency limit specified in item 5(b) of Table 1 to this subpart, you must measure and record the concentrations of THC and oxygen using the test methods, averaging periods, and procedures specified in items 9(a) through (e) of Table 4 to this subpart to determine the hourly average THC concentration, corrected to 18 percent oxygen, for each complete hour of the batch process cycle.

(b) If your affected batch process source is subject to the HF and HCl percent reduction emission limits in item 10 of Table 1 to this subpart, you must measure and record the HF and HCl emission rates through a series of 1-hour runs using the test method and

procedures specified in item 15 of Table 4 to this subpart for each complete hour of the batch process cycle.

§ 63.9804 What are my monitoring system installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain CPMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (15) of this section.

(1) You must satisfy all applicable requirements of performance specifications for CPMS specified in 40 CFR part 60, appendix B, upon promulgation of such performance specifications.

(2) You must satisfy all applicable requirements of quality assurance (QA) procedures for CPMS specified in 40 CFR part 60, appendix F, upon promulgation of such QA procedures.

(3) You must install each sensor of your CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(4) You must use a CPMS that is capable of measuring the appropriate parameter over a range that extends from a value that is at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value that is at least 20 percent greater than the highest value that you expect your CPMS to measure.

(5) You must use a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (a)(4) of this section.

(6) You must use a signal conditioner, wiring, power supply, and data acquisition and recording system that are compatible with the output signal of the sensors used in your CPMS.

(7) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(8) You must use a CPMS that is designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out of control periods).

(9) You must record valid data from at least 90 percent of the hours during which the process operated.

(10) You must determine and record the 15-minute block averages of all measurements, calculated after every 15 minutes of operation as the average of the previous 15 operating minutes (not including periods of startup, shutdown, or malfunction).

(11) You must determine and record the 3-hour block averages of all 15-minute recorded measurements, calculated after every 3 hours of operation as the average of the previous 3 operating hours (not including periods of startup, shutdown, or malfunction).

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain the monitoring system including, but not limited to, maintaining necessary parts for routine repairs of the monitoring system.

(14) You must perform an initial validation of your CPMS under the conditions specified in paragraphs (a)(14)(i) of this section.

(i) Prior to the initial performance test on the affected source for which the CPMS is required.

(ii) Within 180 days of your replacing or relocating one or more of the sensors of your CPMS.

(15) Except for redundant sensors, any device that you use to conduct an initial validation or accuracy audit of your CPMS must meet the accuracy requirements specified in paragraphs (15)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology (NIST) standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(b) For each temperature CPMS that is used to monitor the combustion chamber temperature of a thermal oxidizer, the catalyst bed inlet temperature of a catalytic oxidizer, or the inlet temperature of a fabric filter, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Use a temperature CPMS with a minimum accuracy of ±1.0 percent of the temperature measured in degrees Celsius or 2.8 degrees Celsius (°C)(5 degrees Fahrenheit (°F)), whichever is greater.

(2) Use a data recording system with a resolution of ±0.5 percent of the temperature measured in °C or 1.4°C (2.5°F), or better.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (b)(3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your CPMS operating normally, record concurrently and compare the temperatures measured by your temperature CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your temperature CPMS must be within the accuracy specified in paragraph (b)(1) of this section.

(ii) Perform any of the initial validation methods for temperature CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your temperature CPMS at least quarterly, according to the requirements in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) If your temperature CPMS includes a redundant temperature sensor, record three pairs of concurrent temperature measurements within a 24-hour period. Each pair of concurrent measurements must consist of a temperature measurement by each of the two temperature sensors. The minimum time interval between any two such pairs of consecutive temperature measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your temperature CPMS are operating normally. Calculate the mean of the three values for each temperature sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (b)(1) of this section.

(ii) If your temperature CPMS does not include a redundant temperature sensor, place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your temperature CPMS operating normally, record concurrently and compare the temperatures measured by your temperature CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your temperature CPMS

must be within the accuracy specified in paragraph (b)(1) of this section.

(iii) Perform any of the accuracy audit methods for temperature CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the temperature measured by your CPMS exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor.

(6) If your CPMS is not equipped with a redundant temperature sensor, at least quarterly, perform a visual inspection of all components for integrity, oxidation, and galvanic corrosion.

(c) For each pressure CPMS that is used to monitor the pressure drop across a wet scrubber, you must meet the requirements in paragraphs (a) and (c)(1) through (7) of this section.

(1) Use a pressure CPMS with a minimum accuracy of ±5.0 percent or 0.12 kilopascals (kPa) (0.5 inches of water column (in. w.c.)), whichever is greater.

(2) Use a data recording system with a resolution of ±2.5 percent or 0.06 kPa (0.25 in. w.c.), or better.

(3) Perform an initial validation of your pressure CPMS according to the requirements in paragraph (c)(3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your CPMS operating normally, record concurrently and compare the pressure measured by your pressure CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your pressure CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(ii) Perform any of the initial validation methods for pressure CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pressure CPMS at least quarterly, according to the requirements in paragraph (c)(4)(i), (ii), or (iii) of this section.

(i) If your pressure CPMS includes a redundant pressure sensor, record three pairs of concurrent pressure measurements within a 24-hour period. Each pair of concurrent measurements must consist of a pressure measurement by each of the two pressure sensors. The minimum time interval between any two such pairs of consecutive pressure measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your CPMS are operating normally. Calculate the mean of the three pressure measurement values for each pressure sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (c)(1) of this section.

(ii) If your pressure CPMS does not include a redundant pressure sensor, place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your pressure CPMS operating normally, record concurrently and compare the pressure measured by your pressure CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your pressure CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(iii) Perform any of the accuracy audit methods for pressure CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the pressure measured by your CPMS exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant pressure sensor, at least quarterly, perform a visual inspection of all components for integrity, oxidation, and galvanic corrosion.

(d) For each liquid flow rate CPMS that is used to monitor the liquid flow rate in a wet scrubber or the water injection rate for a dry lime scrubber/fabric filter (DLS/FF), you must meet the requirements in paragraphs (a) and (d)(1) through (7) of this section.

(1) Use a flow rate CPMS with a minimum accuracy of ±5.0 percent or 1.9 liters per minute (L/min) (0.5 gallons per minute(gal/min)), whichever is greater.

(2) Use a data recording system with a resolution of ±2.5 percent or 0.95 L/min (0.25 gal/min), or better.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (d)(3)(i) or (ii) of this section.

(i) Use a calibrated flow rate measurement system to measure the liquid flow rate in a location that is adjacent to the measurement location for your flow rate CPMS and is subject to the same environment as your flow rate CPMS. The calibrated flow rate measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your flow rate CPMS operating normally, record concurrently and compare the flow rates measured by your flow rate CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your flow rate CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(ii) Perform any of the initial validation methods for liquid flow rate CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your flow rate CPMS at least quarterly, according to the requirements in paragraph (d)(4)(i), (ii), or (iii) of this section.

(i) If your flow rate CPMS includes a redundant sensor, record three pairs of concurrent flow rate measurements within a 24-hour period. Each pair of concurrent measurements must consist of a flow rate measurement by each of the two flow rate sensors. The minimum time interval between any two such pairs of consecutive flow rate measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your flow rate CPMS are operating normally. Calculate the mean of the three flow rate measurement values for each flow rate sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (d)(1) of this section.

(ii) If your flow rate CPMS does not include a redundant flow rate sensor, place the sensor of a calibrated flow rate measurement device adjacent to the sensor of your flow rate CPMS in a location that is subject to the same environment as the sensor of your flow rate CPMS. The calibrated flow rate measurement device must satisfy the

accuracy requirements of paragraph (a)(15) of this section. With the process and control device that is monitored by your flow rate CPMS operating normally, record concurrently and compare the flow rate measured by your pressure CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your flow rate CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(iii) Perform any of the accuracy audit methods for liquid flow rate CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your flow rate CPMS following any 24-hour period throughout which the flow rate measured by your CPMS exceeds the manufacturer's specified maximum operating range, or install a new flow rate sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant flow rate sensor, at least quarterly, perform a visual inspection of all components for integrity, oxidation, and galvanic corrosion.

(e) For each pH CPMS that is used to monitor the pH of a wet scrubber liquid, you must meet the requirements in paragraphs (a) and (e)(1) through (5) of this section.

(1) Use a pH CPMS with a minium accuracy of ±0.2 pH units.

(2) Use a data recording system with a resolution of 0.1 pH units, or better.

(3) Perform an initial validation of your pH CPMS according to the requirements in paragraph (e)(3)(i) or (ii) of this section.

(i) Perform a single-point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the fluid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the fluid that is monitored is neutral or lies in the basic range (greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of your pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your pH CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(ii) Perform any of the initial validation methods for pH CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pH CPMS at least weekly, according to the requirements in paragraph (e)(4)(i), (ii), or (iii) of this section.

(i) If your pH CPMS includes a redundant pH sensor, record the pH measured by each of the two pH sensors. The measurements must be taken during periods when the process and control device that is monitored by your pH CPMS are operating normally. The two pH values must agree within the required overall accuracy of the CPMS, as specified in paragraph (e)(1) of this section.

(ii) If your pH CPMS does not include a redundant pH sensor, perform a single point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the fluid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the fluid that is monitored is neutral or lies in the basic range (greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of the pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your pH CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(iii) Perform any of the accuracy audit methods for pH CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) If your CPMS is not equipped with a redundant pH sensor, at least monthly, perform a visual inspection of all components for integrity, oxidation, and galvanic corrosion.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997). That document is available from the U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (D205–02), Research Triangle Park, NC 27711 and is also available on the Technology Transfer Network (TTN) at the following address: *http://www.epa.gov/ttn/emc/cem.html.* Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter (PM) emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an alarm system that will be engaged automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily recognized by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime feed rate measurement device that is used to monitor the lime feed rate of a dry injection fabric filter (DIFF) or DLS/FF or the chemical feed rate of a wet scrubber, you must meet the requirements in paragraph (a) of this section.

(h) For each affected source that is subject to the emission limit specified in item 3 or 6 of Table 1 to this subpart,

you must satisfy the requirements of paragraphs (h)(1) through (3) of this section.

(1) Install a THC CEMS at the outlet of the control device or in the stack of the affected source.

(2) Meet the requirements of PS–8 of 40 CFR part 60, appendix B.

(3) Meet the requirements of Procedure 1 of 40 CFR part 60, appendix F.

(i) Requests for approval of alternate monitoring methods must meet the requirements in §§ 63.9800(h)(2) and 63.8(f).

§ 63.9806 How do I demonstrate initial compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 5 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.9800 and Table 4 to this subpart.

(c) You must demonstrate initial compliance with each work practice standard that applies to you according to Table 6 to this subpart.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9812(e).

Continuous Compliance Requirements

§ 63.9808 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) At all times, you must maintain your monitoring systems including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or quality control activities, you must conduct monitoring in continuous operation at all times your affected process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring system malfunction, associated repairs, out of control periods, or required quality assurance or quality control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out of control and data are not available for required calculations constitutes a deviation from the monitoring requirements. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation, and you must notify the Administrator in accordance with § 63.9814(e).

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit specified in Table 1 to this subpart that applies to you according to the requirements specified in Table 7 to this subpart.

(b) You must demonstrate continuous compliance with each operating limit in Table 2 to this subpart that applies to you according to the requirements specified in Table 8 to this subpart.

(c) You must demonstrate continuous compliance with each work practice standard in Table 3 to this subpart that applies to you according to the requirements specified in Table 9 to this subpart.

(d) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart and each operating limit established as required in § 63.9800(h)(3) according to the methods specified in your approved alternative monitoring methods request as described in § 63.9800(h)(2).

(e) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9814.

(1) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9812 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) through (iv) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) Design information and analysis with supporting documentation demonstrating conformance with requirements for capture/collection systems in Table 2 to this subpart.

(iii) A description of the methods used to comply with any applicable work practice standard.

(iv) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.9804(f).

§ 63.9814 What reports must I submit and when?

(a) You must submit each report in Table 10 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 10 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9786 and ending on June 30 or December 31 and lasting at least 6 months but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section. In such cases, you must notify the Administrator of this change.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period, and you took actions consistent with your SSMP and OM&M plan, the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, or work practice standard) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CPMS was out of control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out of control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each startup, shutdown, or malfunction started and stopped.

(3) The date, time, and duration that each CPMS was inoperative.

(4) The date, time and duration that each CPMS was out of control, including the information in § 63.8(c)(8), as required by your OM&M plan.

(5) The date and time that each deviation from an emission limitation (emission limit, operating limit, or work practice standard) started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CPMS.

(12) The date of the latest CPMS certification or audit.

(13) A description of any changes in CPMS, processes, or controls since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 10 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

§ 63.9816 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all

documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 through 9 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (8) of this section.

(1) Records of emission data used to develop an emissions profile, as indicated in items 8(a)(i)(3) and 15(b)(i)(3) of Table 4 to this subpart.

(2) Records that document how you comply with any applicable work practice standard.

(3) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(4) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(5) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit).

(6) Records for any approved alternative monitoring or test procedures.

(7) Records of maintenance and inspections performed on the control devices.

(8) Current copies of the SSMP and the OM&M plan, including any revisions with records documenting conformance.

§ 63.9818 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9820 What parts of the General Provisions apply to me?

Table 11 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9822 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement to this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority to this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.9782 and 63.9784, the compliance date requirements in § 63.9786, and the emission limitations in § 63.9788.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9824 What material is incorporated by reference?

(a) The following material is incorporated by reference in this section: chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, (23rd edition, 1998). The incorporation by reference of this material will be approved by the Director of the Office of the Federal Register as of the date of publication of the final rule according to 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval.

(b) The materials referenced in this section are incorporated by reference and are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, 7th Floor, Washington, DC. The material is also available for purchase from the following address: Customer Service Department, American Conference of Governmental Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240, telephone number (513) 742–2020.

§ 63.9826 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Additive means a minor addition of a chemical, mineral, or metallic substance that is added to a refractory mixture to facilitate processing or impart specific properties to the final refractory product.

Add-on air pollution control device (APCD) means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Autoclave means a vessel that is used to impregnate fired and/or unfired refractory shapes with pitch to form pitch-impregnated refractory products. Autoclaves can also be used as defumers following the impregnation process.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Basket means the metal container used to hold refractory shapes for pitch impregnation during the shape preheating, impregnation, defuming and, if applicable, coking processes.

Batch process means a process in which a set of refractory shapes is acted upon as a single unit according to a predetermined schedule, during which none of the refractory shapes being processed are added or removed. A batch process does not operate continuously.

Binder means a substance added to a granular material to give it workability and green or dry strength.

Catalytic oxidizer means an add-on air pollution control device that is designed specifically to destroy organic

compounds in a process exhaust gas stream by catalytic incineration. A catalytic oxidizer includes a bed of catalyst media through which the process exhaust stream passes to promote combustion and incineration at a lower temperature than would be possible without the catalyst.

Chromium refractory product means a refractory product that contains at least 1 percent chromium by weight.

Clay refractory product means a refractory product that contains at least 10 percent uncalcined clay by weight prior to firing in a kiln. In this definition, the term ''clay'' means any of the following six classifications of clay defined by the U.S. Geologic Survey: ball clay, bentonite, common clay and shale, fire clay, fuller's earth, and kaolin.

Coking oven means a thermal process unit that operates at a peak temperature typically between 540° and 870°C (1000° and 1600°F) and is used to drive off the volatile constituents of pitch-impregnated refractory shapes under a reducing atmosphere.

Combustion efficiency means the ratio of the carbon dioxide concentration to the sum of the concentrations of carbon dioxide, carbon monoxide, and total hydrocarbons in the exhaust stream of a combustion process or combustion-based control device.

Continuous parameter monitoring system (CPMS) means the total equipment that is used to measure and record temperature, pressure, liquid flow rate, gas flow rate, or pH on a continuous basis in one or more locations. ''Total equipment'' includes the sensor, mechanical components, electronic components, data acquisition system, data recording system, electrical wiring, and other components of a CPMS.

Continuous process means a process that operates continuously. In a continuous process unit, the materials or shapes that are processed are either continuously charged (fed) to and discharged from the process unit, or are charged and discharged at regular time intervals without the process unit being shut down. Continuous thermal process units, such as tunnel kilns, generally include temperature zones that are maintained at relatively constant temperature and through which the materials or shapes being processed are conveyed continuously or at regular time intervals.

Curing oven means a thermal process unit that operates at a peak temperature between 90° and 340°C (200° and 650°F) and is used to activate a thermosetting resin, pitch, or other binder in refractory shapes. Curing ovens also perform the same function as shape dryers in removing the free moisture from refractory shapes.

Defumer means a process unit that is used for holding pitch-impregnated refractory products as the products defume or cool immediately following the impregnation process. This definition includes autoclaves that are opened to the atmosphere following an impregnation cycle and used for holding pitch-impregnated refractory products while the products defume or cool.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry injection fabric filter (DIFF) means an add-on air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an add-on air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems may include recirculation of some of the sorbent.

Emission limitation means any restriction on the emissions a process unit may discharge.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering a process exhaust stream through filter or filter media; a fabric filter is also known as a baghouse.

Fired refractory shape means a refractory shape that has been fired in a kiln.

HAP means any hazardous air pollutant that appears in section 112(b) of the Clean Air Act.

Kiln means a thermal process unit that operates at a peak temperature greater than 820°C (1500°F) and is used for firing or sintering refractory, ceramic, or other shapes.

Kiln furniture means any refractory shape that is used to hold, support, or position ceramic or refractory products in a kiln during the firing process.

Maximum organic HAP processing rate means the combination of process and refractory product formulation that has the greatest potential to emit organic HAP. The maximum organic HAP processing rate is a function of the organic HAP processing rate, process operating temperature, and other process operating parameters that affect emissions of organic HAP. (See also the definition of *organic HAP processing rate*.)

Organic HAP processing rate means the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process unit. The organic HAP processing rate is a function of the amount of organic HAP contained in the resins, binders, and additives used in a refractory mix; the amounts of those resins, binders, and additives in the refractory mix; and the rate at which the refractory shapes formed from the refractory mix is processed in an affected thermal process unit. For continuous process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit of time (e.g., pounds per hour). For batch process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit mass of refractory shapes processed in the batch (e.g., pounds per ton).

Particulate matter (PM) means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions as measured by EPA Method 5 of 40 CFR part 60, appendix A.

Peak emissions period means the period of consecutive hourly emissions of the applicable pollutant, measured in the units and format of the applicable emission limit, that is greater than any other period of consecutive hourly emissions for the same pollutant over the course of a specified batch process cycle.

(1) The 4-hour THC peak emissions period is the period of 4 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, for any other period of 4 consecutive hours during the same batch process cycle.

(2) The 3-hour HF peak emissions period is the period of 3 consecutive hours over which the sum of the hourly HF emission rates is greater than the sum of the hourly HF emission rates for

any other period of 3 consecutive hours during the same batch process cycle.

Pitch means the residue from the distillation of petroleum or coal tar.

Pitch-impregnated refractory product means a refractory shape that has been fired in a kiln, then impregnated with heated coal tar or petroleum pitch under pressure. After impregnation, pitch-impregnated refractory shapes may undergo the coking process in a coking oven. The total carbon content of a pitch-impregnated refractory product is less than 50 percent.

Pitch working tank means a tank that is used for heating pitch to the impregnation temperature, typically between 150° and 260°C (300° and 500°F); temporarily storing heated pitch between impregnation cycles; and transferring pitch to and from the autoclave during the impregnation step in manufacturing pitch-impregnated refractory products.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Refractory product means nonmetallic materials having those chemical and physical properties that make them applicable for structures, or as components of systems, that are exposed to environments above 538°C (1000°F). This definition includes, but is not limited to: refractory bricks, kiln furniture, crucibles, refractory ceramic fiber, and other materials used as linings for boilers, kilns, and other processing units and equipment where extremes of temperature, corrosion, and abrasion would destroy other materials.

Refractory products that use organic HAP means resin-bonded refractory products, pitch-bonded refractory products, and other refractory products that are produced using a substance that is an organic HAP, that releases an organic HAP during production of the refractory product, or that contains an organic HAP, such as methanol or ethylene glycol.

Refractory shape means any refractory piece forming a stable mass with specific dimensions.

Research and development process unit means any process unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Administrator;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources (as defined in this subpart) applying for or subject to a title V permit: ''responsible official'' means responsible official as defined in § 63.2.

Shape dryer means a thermal process unit that operates at a peak temperature between 40° and 700°C (100° and 1300°F) and is used exclusively to reduce the free moisture content of a refractory shape. Shape dryers generally are the initial thermal process step following the forming step in refractory products manufacturing. (See also the definition of a *curing oven*).

Shape preheater means a thermal process unit that operates at a peak temperature between 180° and 320°C (350° and 600°F) and is used to heat fired refractory shapes prior to the impregnation step in manufacturing pitch-impregnated refractory products.

Thermal oxidizer means an add-on air pollution control device that includes one or more combustion chambers and is designed specifically to destroy organic compounds in a process exhaust gas stream by incineration.

Uncalcined clay means clay that has not undergone thermal processing in a calciner.

Wet scrubber (WS) means an add-on air pollution control device that removes pollutants from a gas stream by bringing them into contact with a liquid, typically water.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

For . . .	You must meet the following emission limits . . .
1. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 2 through 7 of this table.
2. Continuous process units that are controlled with a thermal or catalytic oxidizer.	a. The 3-hour block average total hydrocarbon (THC) concentration must not exceed 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, at the outlet of the control device; OR

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS—Continued

For . . .	You must meet the following emission limits . . .
	b. If the carbon dioxide (CO_2) concentration at the outlet of the control device does not exceed 3.0 percent, the 3-hour block average combustion efficiency must equal or exceed 99.8 percent at the outlet of the control device, as specified in item 5(d) of Table 4 to this subpart using Equation 2 of § 63.9800(f)(2).
3. Continuous process units that are equipped with a control device other than a thermal or catalytic oxidizer or that use process changes to reduce organic HAP emissions.	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
4. Continuous kilns that are not equipped with a control device	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
5. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The average of the highest rolling 3-hour average THC concentrations must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; OR b. If the CO_2 concentration at the outlet of the control device does not exceed 3.0 percent, the average of the highest rolling 3-hour average combustion efficiencies must equal or exceed 99.8 percent at the outlet of the control device, as specified in item 10(e) of Table 4 to this subpart using Equation 2 of § 63.9800(f)(2).
6. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer or that use process changes to reduce organic HAP emissions.	The average of the highest rolling 3-hour average THC concentrations must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
7. Batch process kilns that are not equipped with a control device	The average of the highest rolling 3-hour average THC concentrations must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
8. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average hydrogen fluoride (HF) emissions must not exceed 0.001 kilograms per megagram (kg/Mg) (0.002 pounds per ton (lb/ton)) of uncalcined clay processed, OR uncontrolled HF emissions must be reduced by at least 99.5 percent; AND b. The 3-hour block average hydrochloric acid (HCl) emissions must not exceed 0.0025 kg/Mg (0.005 lb/ton) of uncalcined clay processed, OR uncontrolled HCl emissions must be reduced by at least 98 percent.
9. Each new batch process kiln that is used to produce clay refractory products.	a. Uncontrolled HF emissions must be reduced by at least 99.5 percent, according to the procedure specified in item 15(d) of Table 4 to this subpart; AND b. Uncontrolled HCl emissions must be reduced by at least 98 percent, according to the procedure specified in item 15(e) of Table 4 to this subpart.

As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table:

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

For . . .	You must . . .
1. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Operate all affected sources according to the requirements to this subpart on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier; AND b. Capture emissions and vent them through a closed system; AND c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in item 13 of Table 4 to this subpart; AND d. Record all operating parameters specified in Table 8 to this subpart for the affected source; AND e. Prepare and implement a written operation, maintenance, and monitoring (OM&M) plan as specified in § 63.9792(d). AND f. Satisfy the applicable operating limits specified in items 2 through 7 of this table.
2. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the level established during the most recent performance test.

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

For . . .	You must . . .
3. Continuous process units that are equipped with a thermal oxidizer ..	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the average hourly operating temperature established during the most recent performance test minus 14° C (25° F).
4. Continuous process units that are equipped with a catalytic oxidizer	Maintain the 3-hour block average operating temperature at the inlet of the catalyst bed of the oxidizer at or above the average hourly operating temperature established during the most recent performance test minus 14° C (25° F).
5. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the level established during the most recent performance test.
6. Batch process units that are equipped with a thermal oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the average hourly operating temperature in the thermal oxidizer combustion chamber at or above the average hourly operating temperature minus 14° C (25° F) established for the corresponding period during the most recent performance test; AND b. For each subsequent hour of the batch cycle, maintain the average hourly operating temperature in the thermal oxidizer combustion chamber at or above the average hourly operating temperature minus 14° C (25° F) established for the corresponding hour during the most recent performance test, as specified in item 11 of Table 4 to this subpart.
7. Batch process units that are equipped with a catalytic oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the average hourly operating temperature at the inlet of the catalyst bed at or above the average hourly operating temperature minus 14° C (25° F) established for the corresponding period during the most recent performance test; AND b. For each subsequent hour of the batch cycle, maintain the average hourly operating temperature at the inlet of the catalyst bed at or above the average hourly operating temperature minus 14° C (25° F) established for the corresponding hour during the most recent performance test, as specified in item 12 of Table 4 to this subpart.
8. Each new kiln that is used to process clay refractory products	Satisfy the applicable operating limits specified in items 9 through 11 of this table.
9. Each affected kiln that is equipped with a DIFF or DLS/FF	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; AND b. Maintain the 3-hour block average fabric filter inlet temperature at or below the average temperature established during the performance test plus 14° C (25° F); AND c. Verify at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; AND d. Record feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test.
10. Each affected kiln that is equipped with a DLS/FF	Maintain the 3-hour block average water injection rate at or above the average water injection rate established during the most recent performance test.
11. Each affected kiln that is equipped with a wet scrubber (WS)	Maintain the 3-hour block average pressure drop across the scrubber, liquid pH, AND liquid flow rate at or above the levels established during the most recent performance test.

As stated in § 63.9788, you must comply with the work practice standards for affected sources in the following table:

TABLE 3 TO SUBPART SSSSS OF PART 63.—WORK PRACTICE STANDARDS

For . . .	You must . . .	According to one of the following requirements . . .
1. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. At least every 10 cycles, remove the residual pitch from the surfaces of the basket or container by abrasive blasting prior to placing the basket or container in the affected shape preheater; OR ii. At least every 10 cycles, subject the basket or container to a thermal process cycle that meets or exceeds the operating temperature and cycle time of the affected preheater, AND is conducted in a process unit that is exhausted to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven; OR iii. Capture emissions from the affected shape preheater and vent them to the control device that is used to control emissions from an affected defumer or coking oven, OR to a comparable thermal or catalytic oxidizer.
2. Each existing and new pitch working tank.	Control POM emissions	Capture emissions from the affected pitch working tank and vent them to the control device that is used to control emissions from an affected defumer or coking oven, OR to a comparable thermal or catalytic oxidizer.
3. Each existing and new chromium refractory products kiln.	Minimize fuel-based HAP emissions.	Use natural gas, or equivalent, as the kiln fuel.
4. Each existing clay refractory products kiln.	Minimize fuel-based HAP emissions.	Use natural gas, or equivalent, as the kiln fuel.

As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests	i. The requirements of the general provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; AND (2) Identify the emission source that is tested; AND (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; AND (4) Conduct a minimum of three separate test runs during the performance test; AND (5) Repeat the performance test at least every 5 years; AND (6) If complying with the THC or combustion efficiency limits specified in items 2 through 7 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2(a)(3) and (4) of this table.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR, part 60, appendix A.	(1) To demonstrate compliance with the control efficiency (percent reduction) limits specified in items 8 and 9 of Table 1 to this subpart, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; AND (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	Measure gas velocities and volumetric flow rates at 1-hr intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	As specified in the applicable test method.
	e. Measure gas moisture content	Method 4 of 40 CFR part 60, appendix A.	As specified in the applicable test method.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests		(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate reasonably expected to occur; AND (2) Define the maximum organic HAP processing rate as the combination of process and product or products having the greatest potential to emit organic HAP; AND (3) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum organic HAP processing rate established during most recent performance test; AND (4) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln.
	b. Satisfy the applicable requirements listed in items 3 through 13 of this table.		
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1, 4 and 5 of this table.	Each test run must be at least 1 hour in duration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311, OR MSDS sheets, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive;. AND Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; AND Process feed rate data (tons per hour).	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product; and the process feed rate; AND (2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; AND (3) Calculate and record the 3-run average organic HAP processing rate as the average of the average organic HAP processing rates for each test run.
	c. Record the operating temperature of the affected source.	Process data.	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2(a), 3, or 4 of Table 1 to this subpart.	a. Measure emissions of THC at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure emissions of O_2 at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minutes measure and record the concentrations of O_2 in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average O_2 concentration.
	c. Determine the average hourly THC concentrati on, corrected to 18 percent O_2.	1. Equation 1 of § 63.9800(f)(1) ...	(1) Calculate the hourly average THC and O_2 concentrations for each hour of the performance test as the average of the 1-minute THC and O_2 measurements; AND (2) Correct the hourly average THC concentration to 18 percent O_2 using Equation 1 of § 63.9800(f)(1).
	d. Determine the 3-hour block average THC emission concentrati on, corrected to 18 percent O_2.	i. The hourly average concentrati on of THC, corrected to 18 percent O_2.	(1) Calculate the hourly THC emission concentration, corrected to 18 percent O_2, for each hour of the performance test; AND (2) Calculate the 3-hour block average THC emission concentration, corrected to 18 percent O_2, as the average of the hourly THC emission concentrations corrected to 18 percent O_2.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
5. Each continuous process unit that is subject to the combustion efficiency limit listed in item 2(b) of Table 1 to this subpart.	a. Measure emissions of THC at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure emissions of CO_2 at the outlet of the control device.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of CO_2 in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average CO_2 concentration; AND (3) Calculate the hourly average CO_2 concentration for each hour of the performance test.
	c. Measure emissions of CO at the outlet of the control device.	i. Method 10 of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of CO in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average CO concentration; AND (3) Calculate the hourly average CO concentration for each hour of the performance test.
	d. Determine the 3-hour block average combustion efficiency.	i. The hourly average concentrations of CO_2, CO, and THC.	(1) Calculate the hourly average combustion efficiency for each hour of the performance test according to Equation 2 of § 63.9800(f)(2); AND (2) Calculate the 3-hour block average combustion efficiency as the average of the three hourly average combustion efficiencies.
6. Continuous process units that are equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; AND (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
7. Continuous process units that are equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum temperature at the inlet of the oxidizer catalyst bed..	i. Continuous recording of the output of the temperature measurement device..	(1) At least every 15 minutes, measure and record the temperature at the oxidizer catalyst bed inlet; AND (2) Provide at least one catalyst bed. bed inlet temperature measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test.
8. Each affected batch process unit.	a. Perform a minimum of 3 test runs.	i. The appropriate test methods specified in ites 1, 9. and 10 of this table.	(1) Each test run must begin with the start of a batch cycle, except as specified in items 8(a)(i)(3) of this table; AND (2) Each test run must continue until the end of the batch cycle, except as specified in items 8(a)(i)(3) and (4) of this table; AND (3) If you develop an emissions profile, as described in § 63.9802(a), you can limit each test run to the 4-hour THC peak emissions period; AND (4) If you do not develop an emissions profile, a test run can be stopped and the results of that run considered complete if you measure emissions continuously until at least 3 hours after the affected process unit reaches maximum temperature, AND emissions of THC are not increasing during the 3-hour period since maximum process temperature was reached, AND the concentration of THC at the inlet to the control device does not exceed 20 ppmvd, corrected to 18 percent oxygen, OR the emission limits listed in items 5 and 6 of Table 1 to this subpart have been met during each of the final three 1-hour periods of the test run, AND, for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311, OR MSDS sheets, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; AND ii. Product forumlation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; AND iii. Batch weight (tons).	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior to processing; AND (2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; AND (3) Calculate and record the 3-run average organic HAP processing rate as the average of the average organic HAP processing rates for each test run.
	c. Record the batch cycle time	Process data	Record the total elapsed time from start to completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour of the performance test.
9. Each batch process unit that is subject to the THC emission limit listed in item 5(a), 6, or 7 of Table 1 to this subpart.	a. Measure emissions of THC at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure emissions of the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of O_2 in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average O_2 concentration.
	c. Determine the average hourly THC concentration, corrected to 18 percent O_2.	i. Equation 1 of § 63.9800(f)(1)	(1) Calculate the hourly average THC and O_2 concentrations for each hour of the performance test as the average of the 1-minute THC and O_2 measurements; AND (2) Correct the hourly average THC concentration to 18 percent O_2 using Equation 1 of § 63.9800(f)(1).
	d. Determine the rolling 3-hour average THC emission concentrations, corrected to 18 percent O_2, for each test run.	The hourly average concentrations of THC, corrected to 18 percent O_2.	Calculate the rolling 3-hour average THC emission concentration as the average of the hourly THC emission concentrations, corrected to 18 percent O_2, for each period of 3 consecutive hours during each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	e. Determine the average of the highest rolling 3-hour average THC concentrations, corrected to 18 percent O_2.	The rolling 3-hour average THC emission concentrations, corrected to 18 percent O_2.	Calculate the average of the highest rolling 3-hour average THC concentrations, corrected to 18 percent O_2, as the average of the highest rolling 3-hour THC emission concentrations, corrected to 18 percent O_2, for each test run.
10. Batch process units that are subject to the combustion efficiency limit listed in item 5(b) of Table 1 to this subpart.	a. Measure emissions of THC at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure emissions of CO_2 at the outlet of the control device.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of CO_2 in the the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average CO_2 concentration; AND (3) Calculate the hourly average CO_2 concentration for each hour of the performance test.
	c. Measure emissions of CO at the outlet of the control device.	i. Method 10 of 40 CFR part 60, appendix A.	(1) Each minute, measure and record, the concentrations of CO in the exhaust stream; AND (2) Provide at least 50 1-minute measurements for each valid hourly average CO concentration; AND (3) Calculate the hourly average CO concentration for each hour of the performance test.
	d. Determine the rollowing 3-hour average combustion efficiencies for each test run.	The hourly average concentrations of CO_2, CO, and THC.	Calculate the the rolling 3-hour average combustion efficiency as theaverage of the hourly combustion efficiencies efficiencies according to Equation 2 of § 63.9800(f)(2) for each period of 3 consecutive hours during each test run.
	e. Determine the average of the highest rolling 3-hour average combustion efficiencies.	The rolling 3-hour average combustion efficiencies.	Calculate the average 3-hour average combustion efficiencies as the average of the highest rolling 3-hour combustion efficiencies for each test run.
11. Batch process units that are equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; AND (2) Provide at least one temperature measure during at least three 15-minute periods per hour of testing; AND (3) Calculate the hourly average temperature for each hour of the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
12. Batch process units that are equipped with a catlytic oxidizer.	a. Establish the operating limits for the minimum temperature at the inlet of the oxidizer catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the oxidizer catalyst bed inlet; AND (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test.
13. Batch process units that are equipped with a thermal and catalytic oxidizer.	a. During each test run, maintain the operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.	.....	(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if at least 3 hours have passed since the affected process unit reached maximum temperature; AND (2) The applicable emission limit specified in items 5(a) and (b) of Table 1 to this subpart is met during each of the previous three 1-hour periods AND (3) Average hourly THC emissions are not increasing during the 3-hour period since maximum process temperature was reached; AND (4) The average THC concentration at the inlet to the oxidizer has not exceeded 20 ppmvd, corrected to 18 percent oxygen, for at least 1 hour, OR the applicable emission limit specified in items 5(a) and (b) of Table 1 to this subpart is met during each of the four 15-minute periods immediately following the oxidizer temperature reduction; AND (5) If the applicable emission limit specifiefd in items 5(a) and (b) of Table 1 to this subpart is not met during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; AND (6) You must continue the test run until the applicable emission limit specified in items 5(a) and (b) of Table 1 to this subpart is met for at least four consecutive 15-minute periods that immediately follow the temperature reduction
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HC.	Method 26A of 40 CFR part 60, appendix A.	Conduct the test while the emissions units is operating at the maximum production level.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Perform a minimum of 3 test runs.	The appropriate test methods specified in items 1 and 14(a) of this table.	Each test run must be at least 1 hour in duration.
	c. If complying with the production—based HF or HCl emission limits specified in items 8(a) and (b) of table 1 to this subpart, record the uncalcined clay processing rate.	i. Production data; ..... AND ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); AND (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run; AND (3) Calculate and record the 3-run average uncalcined clay processing rate as the average of the average uncalcined clay processing rates for each test run.
	d. If complying with the production—based HF emission limit specified in item 8(a) of Table 1 to this subpart, determine the 3-hour block average production-based HF emission rate.	i. The hourly HF emission rate; AND ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emission rate for each test run using Equation 3 of § 63.9800(f)(3); AND (2) Calculate the 3-hour block average production-based HF emission rate as the average of the hourly production-based HF emission rates for each test run.
	e. If complying with the production-based HCl emission limit specified in item 8(b) of Table 1 to this subpart, determine the 3-hour block average production-based HCl emission rate.	i. The hourly HCl emission rate; ... AND ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCl emission rate for each test run using Equation 3 of § 63.9800(f)(3); AND (2) Calculate the 3-hour block average production-based HCl emission rate as the average of the hourly production-based HCl emission rates for each test run.
	f. If complying with the percent HF reduction emission limit specified in item 8(a) of Table 1 to this subpart, determine the 3-hour block average percent HF reduction.	i. The hourly average HF emission rates at the inlet and outlet to the control device.	(1) Calculate the hourly percent HF reduction using Equation 4 of § 63.9800(f)(4); AND (2) Calculate the 3-hour block average HF percent reduction as the average of the hourly HF reductions.
	g. If complying with the percent HCl reduction emission limit specified in item 8(b) of Table 1 to this subpart, determine the 3-hour block average percent HCl reduction.	i. The hourly average HCl emission rates at the inlet and outlet to the control device.	(1) Calculate the hourly percent HCl reduction using Equation 4 of § 63.9800(f)(4); AND (2) Calculate the 3-hour block average HCl percent reduction as the average of the hourly percent HCl reductions.
15. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl.	Method 26A of 40 CFR part 60, appendix A.	Conduct the test while the emissions units is operating at the maximum production level.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Perform a minimum of 3 test runs.	i. The appropriate test methods specified in items 1 and 15(a) of this table.	(1) Each test run must consist of a series of 1-hour Method 26A runs, beginning with the start of a batch cycle, except as specified in item 15(b)(i)(3) of this table; AND (2) Each test run must continue until the end of the batch cycle, except as specified in item 15(b)(i)(3) of this table; AND (3) If you develop an emissions profile, as described in § 63.9802(b), you can limit each test run to the 3-hour HF peak emissions period.
	c. Record the average uncalcined clay processing rate.	i. Batch weight data; ..... AND ii. Product formulation data that specify the mass fraction of uncalcined clay in the refractory products processed during the performance test	(1) Record the batch weight (tons per batch); AND (2) Calculate and record the average rate at which uncalcined clay is processed (tons per batch) for each test run; AND (3) Calculate and record the 3-run average uncalcined clay processing rate as the average of the average uncalcined clay processing rates for each test run.
	d. Determine the 3-run block average percent HF reduction for the 3-hour HF peak emissions period.	i. The hourly average HF emission rates at the inlet and outlet to the control device.	(1) For each test run, determine the 3-hour HF peak emissions period, as defined in § 63.9826. (2) Calculate the percent HF reduction for each hour of the 3-hour HF peak emissions period using Equation 4 of § 63.9800(f)(4); AND (3) Calculate the average percent HF reduction for each test run as the average of the hourly percent HF reductions for the 3-hour HF peak emissions period for that run; AND (4) Calculate the 3-run block average HF percent reduction as the average of the percent HF reductions for each run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	e. Determine the 3-run block average percent HCl reduction for the 3-hour HF peak emissions period.	i. The hourly average HCl emission rates at the inlet and outlet to the control device.	(1) For each test run, determine the 3-hour HF peak emissions period, as defined in § 63.9826. (2) Calculate the percent HCl reduction for each hour of the 3-hour HF peak emissions period using Equation 4 of § 63.9800(f)(4); AND (3) Calculate the average percent HCl reduction for each test run as the average of the hourly percent HCl reductions for the 3-hour HF peak emissions period for that run; AND (4) Calculate the 3-run block average HCl percent reduction as the average of the percent HCl reductions for each run.
16. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system.	Data from installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
	b. Establish the operating limit for the maximum average fabric filter inlet temperature.	i. Data from the temperature measurement device during the performance test.	(1) At least every 15 minutes, measure and record the temperature at the inlet to the fabric filter; AND (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the hourly average temperature for each hour of the performance test; AND (4) Calculate and record the 3-hour block average temperature as the average of the hourly average temperatures.
	c. Establish the operating limit for the lime feeder setting.	i. Data from the lime feeder during the performance test.	(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; AND (2) Record the feeder setting for the three test runs; AND (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate from the three test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
17. Each new kiln that is used to process clay refractory products and is equipped with a DLS/FF.	a. Establish the operating limit for the minimum average water injection.	i. Data from the water injection rate measurement device during the performance test.	(1) At least every 15 minutes, measure the water injection rate; AND (2) Provide at least one water injection rate measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate and record the 3-hour block average water injection rate as the average of the hourly average water injection rates.
18. Each new kiln that is used to process clay refractory products and is equipped with a WS.	a. Establish the operating limit for the minimum average scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber pressure drop; AND (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the average hourly pressure drop for each hour of the performance test; AND (4) Calculate and record the 3-hour block average pressure drop as the average of the hourly average pressure drops.
	b. Establish the operating limit for the minimum average scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; AND (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the average hourly pH values for each hour of the performance test; AND (4) Calculate and record the 3-hour block average liquid pH as the average of the hourly average pH measurements.
	c. Establish the operating limit for the minimum average scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; AND (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the average hourly liquid flow rate for each hour of the performance test; AND (4) Calculate and record the 3-hour block average liquid flow rate as the average of the average hourly liquid flow rates.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	d. Establish the operating limit for the minimum average scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; AND (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; AND (3) Calculate the average hourly chemical feed rate for each hour of the performance test; AND (4) Calculate and record the 3-hour block average chemical feed rate as the average of the hourly average chemical feed rates.

As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Emissions measured using the test methods specified in Table 4 to this subpart satisfy the applicable emission limits specified in Table 1 to this subpart; AND ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the performance test period; AND iii. You report the results of the performance test in the Notification of Compliance Status, as specified by § 63.9812 (e)(1) and (2).
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 and 4 of this table	You have satisfied the applicable requirements specified in items 3 and 4 of this table.
3. Each affected continuous process unit that is subject to the THC emission concentration limit listed in item 2(a), 3, or 4 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent O_2.	The 3-hour block average THC emission concentration measured during the performance test using Method 25A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
4. Each affected continuous process block unit that is subject to the combustion efficiency limit listed in item 2(b) of Table 1 to this subpart.	The average combustion efficiency must equal or exceed 99.8 percent.	The 3-hour average combustion efficiency measured during the performance test using Methods 3A, 10, and 25A and calculated using Equation 2 in § 63.9800(f) is equal to or greater than 99.8 percent.
5. Each affected batch process unit subject to the THC emission concentration limit listed in item 5(a), 6, or 7 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent O_2.	The average of the highest rolling 3-hour average THC emission concentrations measured during the performance test using Method 25A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
6. Each affected batch process unit that is subject to the combustion efficiency limit listed in item 5(b) of Table 1 to this subpart.	The average combustion efficiency must equal or exceed 99.8 percent.	The average of the highest rolling 3-hour average combustion efficiencies measured during the performance test using Methods 3A, 10, and 25A and calculated using Equation 2 in § 63.9800(f) is equal to or greater than 99.8 percent.
7. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	a. The average THC concentration must not exceed 20 ppmvd.	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; AND ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
8. Each new kiln that is used to process clay refractory products.	As specified in items 9 and 10 of this table	You have satisfied the applicable requirements specified in items 9 and 10 of this table.
9. Each affected continuous kiln	a. The average HF emissions must not exceed 0.001 kg/Mg (0.002 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 99.5 percent.	i. The average HF emissions measured during the performance test using Method 26A is equal to or less than 0.001 kg/Mg (0.002 lb/ton) of fired product; OR ii. The HF emission reduction measured during the performance test is equal to or greater than 99.5 percent.
	b. The average HCl emissions must not exceed 0.0025 kg/Mg (0.005 lb/ton) uncalcined clay processed, OR the average uncontrolled HCl emissions must be reduced by at least 98 percent.	i. The average HCl emissions measured during the performance test using Method 26A is equal to or less than 0.0025 kg/Mg (0.005 lb/ton) of fired product; OR ii. The HCl emission reduction measured during the performance test is equal to or greater than 98 percent.
10. Each affected batch process kiln	a. The average uncontrolled HF emissions must be reduced by at least 99.5 percent.	The HF emission reduction measured during the performance test is equal to or greater than 99.5 percent.
	b. The average uncontrolled HCl emission must be reduced by at least 98 percent.	The HCl reduction emissions measured during the performance test is equal to or greater than 98 percent.

As stated in § 63.9806, you must show initial compliance with the work practice standards for affected sources according to the following table:

TABLE 6 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 3 to this subpart.	a. Each applicable work practice standard listed in Table 3 to this subpart.	i. You have selected a method for performing each of the applicable work practices listed in Table 3 to this subpart. AND ii. You have included in your Initial Notification a description of the method selected for complying with any applicable work practice standard, as required by § 63.9(b); AND iii. You submit a signed statement with the Notification of Compliance Status that you have implemented the applicable work practices listed in Table 3 to this subpart; AND iv. You have described in your OM&M plan the method for complying with each applicable work practice standard specified in Table 3 to this subpart.

TABLE 6 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	For the following standard . . .	You have demonstrated initial compliance if . . .
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. You have implemented at least one of the work practices listed in item 1 of Table 3 to this subpart; AND ii. You have established a system for recording the date and cleaning method for each time you clean an affected basket or container.
3. Each affected existing and new pitch working tank.	Control POM emissions	You have captured and vented emissions from the affected pitch working tank to the device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each existing and new chromium refractory products kiln.	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.

As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Collecting and recording the monitoring and process data listed in Table 2 (operating limits) to this subpart; AND ii. Reducing the monitoring and process data associated with the operating limits specified in Table 2 to this subpart; AND iii. Recording the results of any control device inspections.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 though 6 of this table	Satisfying the applicable requirements specified in items 3 through 6 of this table.
3. Each affected process unit that is equipped with a thermal or catalytic oxidizer.	a. The average THC concentration must not exceed 20 ppmvd; OR b. The average combustion efficiency must equal or exceed 99.8 percent	i. Collecting the applicable data measured by the control device temperature monitoring system, as specified in items 4, 5, 7, and 8 of Table 8 to this subpart; AND ii. Reducing the applicable data measured by the control device temperature monitoring system, as specified in items 4, 5, 7, and 8 of Table 8 to this subpart; AND iii. Maintaining the average hourly control device operating temperature at or above the average hourly temperature established during the most recent performance test minus 14°C (25°F); AND

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
		iv. Reporting, in accordance with § 9814(e), any average hourly operating temperatures below the control device average hourly operating temperature measured during the most recent performance test minus 14°C (25°F).
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
5. Each affected continuous process unit	a. The average THC concentration must not exceed 20 ppmvd;. OR b. The average combustion efficiency must equal or exceed 99.8 percent	Recording the organic HAP processing rate (pounds per hour) AND the operating temperature of the affected source, as specified in items 3(b) and (c) of Table 4 to this subpart.
6. Each affected batch process unit	a. The average THC concentration must not exceed 20 ppmvd;. OR b. The average combustion efficiency must equal or exceed 99.8 percent	Recording the organic HAP processing rate (pounds per batch); AND process cycle time for each batch cycle; AND average hourly operating temperature of the affected source, as specified in items 8(b) through (d) of Table 4 to this subpart.
7. Each new kiln that is used to process clay refractory products.	As specified in items 8 through 10 of this	Satisfying the applicable requirements specified in items 8 through 10 of this table.
8. Each affected kiln that is equipped with a DIFF or DLS/FF.	a. The average HF emissions must not exceed 0.001 kg/Mg (0.002 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 99.5 percent; AND b. the average HCl emissions must not exceed 0.0025 kg/Mg (0.005 lb/ton) of uncalcined clay processed, OR the average uncontrolled HCl emissions must be reduced by at least 98 percent	i. Maintaining the average fabric filter inlet temperature at or below the average temperature established during the performance test plus 14°C (25°F); AND ii. Verifying at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement systems; AND iii. Recording feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance tests; AND iv. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions the OM M plan; operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.
9. Each affected kiln that is equipped with a DLS/FF.	a. The average HF emissions must not exceed 0.001 kg/Mg (0.002 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 99.5 percent; AND b. The average HCl emissions must not exceed 0.0025 kg/Mg (0.005 lb/ton) of uncalcined clay processed, OR the average uncontrolled HCl emissions must be reduced by at least 98 percent	Maintaining the average water injection rate at or above the average water injection rate established during the most recent performance test.
10. Each affected kiln that is equipped with a WS.	a. The average HF emissions must not exceed 0.001 kg/Mg (0.002 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 99.5 percent; AND b. The average HCl emissions must not exceed 0.0025 kg/Mg (0.005 lb/ton) of uncalcined clay processed, OR the average uncontrolled HCl emissions must be reduced by at least 98 percent	Maintaining the pressure drop across the scrubber, liquid pH, AND liquid flow rate at or above the levels established during the most recent performance test.

As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 2 to this subpart.	a. Each applicable operating limit listed in Table 2 to this subpart.	Maintaining all applicable process and control device operating parameters within the limits established during the most recent performance test.
	b. Prepare and implement a written OM&M plan.	Conducting annually an inspection of all duct work, vents, and capture devices to verify that no leaks exist and that the capture device is operating such that all emissions are properly vented to the control device in accordance with the OM&M plan.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 8 of this table	Satisfying the applicable requirements specified in items 3 through 8 of this table.
3. Each affected continuous process unit	a. Maintain process operating parameters within the limits established during the performance test.	i. Recording the organic HAP processing rate (pounds per hour); AND ii. Recording the operating temperature of the affected source at least hourly; AND iii. Maintaining the organic HAP processing rate at or below the levels established during the most recent performance test.
4. Continuous process units that are equipped with a thermal oxidizer.	a. Maintain the average hourly operating temperature in the thermal oxidizer combustion chamber at or above the average hourly operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; AND ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; AND iii. Maintaining the thermal oxidizer combustion chamber temperature for each 1-hour block period at or above the temperature established during the most recent performance test minus 14°C (25°F); AND iv. Reporting, in accordance with § 63.9814(e), any temperature measurements below the thermal oxidizer combustion chamber temperature measured during the most recent performance test minus 14°C (25°F).

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
5. Continuous process units that are equipped with a catalytic oxidizer.	a. Maintain the average hourly temperature at the inlet of the catalyst bed of the oxidizer at or above the corresponding average hourly temperature established during the most recent performance test.	i. Measuring and recording the temperatures at the inlet of the catalyst bed of the oxidizer at least every 15 minutes; AND ii. Calculating the hourly average temperature at the inlet of the catalyst bed of the oxidizer; AND iii. Maintaining the temperature at the inlet of the catalyst bed of the oxidizer for each 1-hour block period at or above the corresponding temperature established during the most recent performance test minus 14°C (25°F); AND iv. Reporting, in accordance with § 63.9814(e), any oxidizer catalyst bed inlet temperature measurements below the corresponding temperatures measured during the most recent performance test minus 14°C (25°F).
6. Each affected batch process unit	a. Maintain process operating parameters within the limits established during the performance test.	i. Recording the organic HAP processing rate (pounds per batch); AND ii. Recording the average hourly operating temperature of the affected source; AND iii. Recording the process cycle time for each batch cycle; AND iv. Maintaining the organic HAP processing rate at or below the level established during the most recent performance test.
7. Batch process units that are equipped with a thermal oxidizer.	a. Maintain the average hourly temperature in the thermal oxidizer combustion chamber at or above the average hourly temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; AND ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; AND iii. Maintaining the thermal oxidizer combustion chamber temperature for each 1-hour block period at or above the temperature established for the corresponding 1-hour period of the cycle during the most recent performance test; AND iv. Reporting, in accordance with § 63.9814(e), any temperature measurements below the corresponding thermal oxidizer combustion chamber temperature measured during the most recent performance test minus 14°C (25°F).
8. Batch process units that are equipped with a catalytic oxidizer.	a. Maintain the average hourly temperature at the inlet of the catalyst bed of the oxidizer at or above the corresponding average hourly temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording the temperatures at the inlet of the catalyst bed of the oxidizer at least every 15 minutes; AND ii. Calculating the hourly average temperature at the inlet of the catalyst bed of the oxidizer; AND iii. Maintaining the temperature at the inlet of the catalyst bed for each 1-hour block period at or above the corresponding temperature established for the corresponding 1-hour period of the cycle during the most recent performance test minus 14°C (25°F); AND

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
		iv. Reporting, in accordance with § 63.9814(e), any oxidizer catalyst bed inlet temperature measurements below the corresponding temperatures measured during the most recent performance test minus 14°C (25°F).
9. Each new kiln that is used to process clay refractory products.	As specified in items 10 through 12 of this table.	Satisfying the applicable requirements specified in items 10 through 12 of this table.
10. Kilns that are equipped with a DIFF or DLS/FF.	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; and operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with the OM&M plan; AND ii. Operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm shall be counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.
	b. Maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature established during the performance test plus 14°C (25°F).	i. Collecting the fabric filter inlet temperature data, as specified in item 16(b) of Table 4 to this subpart; AND ii. Reducing the fabric filter inlet temperature data to 1-hour and 3-hour block averages; AND iii. Maintaining the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature established during the performance test plus 14°C (25°F).
	c. Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; and maintain feeder setting at or above the level established during the performance test for continuous injection systems.	i. Verifying at least once each 8-hour shift that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions; AND ii. Recording the feeder setting once each day of operation to verify that the feeder setting is being maintained at or above the level established during the performance test.
11. Kilns that are equipped with a DLS/FF	a. Maintain the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test.	i. Collecting the water injection rate data, as specified in item 17 of Table 4 to this subpart; AND ii. Reducing the water injection rate data to 1-hour and 3-hour block averages; AND iii. Maintaining the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
12. Each new kiln that is used to process clay refractory products and is equipped with a WS.	a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test.	i. Collecting the scrubber pressure drop data, as specified in item 18(a) of Table 4 to this subpart; AND ii. Reducing the scrubber pressure drop data to 1-hour and 3-hour block averages; AND iii. Maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test.
	b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test.	i. Collecting the scrubber liquid pH data, as specified in item 18(b) of Table 4 to this subpart; AND ii. Reducing the scrubber liquid pH data to 1-hour and 3-hour block averages; AND iii. Maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test.
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test.	i. Collecting the scrubber liquid flow rate data, as specified in item 18(c) of Table 4 to this subpart; AND ii. Reducing the scrubber liquid flow rate data to 1-hour and 3-hour block averages; AND iii. Maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test.

As stated in § 63.9810, you must show continuous compliance with the work practice standards for affected sources according to the following table:

TABLE 9 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 3 to this subpart.	a. Each applicable work practice requirement listed in Table 3 to this subpart.	i. Performing each applicable work practice standard listed in Table 3 to this subpart; AND ii. Maintaining records that document the method and frequency for complying with each applicable work practice standard listed in Table 3 to this subpart, as required by §§ 63.10(b) and 63.9816(c)(2).
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. Controlling emissions from the volatilization of residual pitch by implementing one of the work practices listed in item 1 of Table 3 to this subpart; AND ii. Recording the date and cleaning method each time you clean an affected basket or container.
3. Each existing and new pitch working tank	Control PM emissions	Capturing and venting emissions from the affected pitch working tank to the control device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each existing and new chromium refractory products kiln.	Minimize fuel-based HAP emissions	Using natural gas, or equivalent, as the kiln fuel.
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	Using natural gas, or equivalent, as the kiln fuel.

As stated in ¶63.9814, you must comply with the requirements for reports in the following table:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(a) through (f)	Semiannually according to the requirements in § 63.9814(a) through (f).
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.9818, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 63.3	Units and Abbreviations		Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention, severability	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; Upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards.		Not applicable.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category	Yes.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	§ 114 Authority	Administrator may require a performance test under CAA § 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities		Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No, § 63.9800 specifies requirements; Yes; Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to subpart and EPA test methods unless Administrator approves alternatives.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; Compliance is based on arithmetic mean of three runs; Conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources of organic HAP; Yes.
§ 63.7(f)	Alternative Test Method		Yes.
§ 63.7(g)	Performance Test Data Analysis.		Yes.
§ 63.7(h)	Waiver of Test		Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.		Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring with Flares		Not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring system.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		No, § 63.9808 specifies requirements.
§ 63.8(c)(5)	COMS Minimum Procedures		Not applicable.
§ 63.8(c)(6)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(A)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(B)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(C)	CMS Requirements		Not applicable.
§ 63.8(c)(7)(ii)	CMS Requirements	Corrective action required when CMS is out of control.	Yes.
§ 63.8(c)(8)	CMS Requirements		Yes.
§ 63.8(d)	CMS Quality Control		Applies only to sources required to install and operate a THC CEMS.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.8(e)	CMS Performance Evaluation		Applies only to sources required to install and operate a THC CEMS
§ 63.8(f)(1)–(5)	Alternative Monitoring Method		Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.		Yes.
§ 63.8(g)	Data Reduction		Not applicable.
§ 63.8(g)	Data Reduction		Applies only to sources required to install and operate THC CEMS.
§ 63.9(a)	Notification Requirements		Yes.
§ 63.9(b)(1)–(5)	Initial Notifications		Yes.
§ 63.9(c)	Request for Compliance Extension.		Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.		Not applicable.
§ 63.9(g)	Additional Notifications When Using CMS.		Applies only to sources required to install and operate a THC CEMS.
§ 63.9(h)	Notification of Compliance Status.		Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.		Yes.
§ 63.9(j)	Change in Previous Information.		Yes.
§ 63.10(a)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.		Yes.
§ 63.10(b)(2)(vi) and (x–xi)	CMS Records		Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emission limitations; Performance test, performance evaluation, and visible emission observation results; Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Not applicable.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15)	Records	Additional Records for CMS	Not applicable.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No, § 63.9816 specifies requirements.
§ 63.10(d)(1)	General Reporting Requirements.	Requirements for reporting	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.		Not applicable.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports..	Contents and submission.	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports		Applies only to sources required to install and operate a THC CEMS.
§ 63.10(e)(3)	Reports		No, § 63.9814 specifies requirements.
§ 63.10(e)(4)	Reporting COMS data		Not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.		Yes.
§ 63.11	Flares		Not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information		Yes.

[FR Doc. 02–13979 Filed 6–19–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
June 20, 2002

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Electronic Posting of Proposed Rulemaking Withdrawals; Proposed Rule

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Electronic Posting of Proposed Rulemaking Withdrawals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of electronic posting of proposed rulemaking withdrawals.

SUMMARY: The Civilian Agency Acquisition Council Chairman and the Defense Acquisition Regulations Council Chairman (Councils) are giving notice that proposed rule withdrawals will be electronically posted at *http://www.acq.osd.mil/dp.dars* ''Defense Acquisition Regulations Directorate, Management Status Reports.''

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite electronic posting of proposed rulemaking withdrawals.

SUPPLEMENTARY INFORMATION:

Background

The Councils post management and case status reports on FAR cases at *http://www.acq.osd.mil/dp.dars.* Management status reports provide a snapshot summary of all open cases. They are updated monthly. Specific case status reports provide additional detail on individual cases and are updated daily. This effort is part of an overall initiative to distribute acquisition-related information to industry more quickly and economically. The electronic posting of withdrawal notices of proposed rulemaking further promotes the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. Proposed rule withdrawal notices are and will continue to be included in the semi-annual **Federal Register** publication of the ''Unified Agenda of Federal Regulatory and Deregulatory Actions.''

Dated: June 17, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–15629 Filed 6–19–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
June 20, 2002

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 31, and 35

Federal Acquisition Regulation; Definitions of "Applied Research" and "Development"; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 31, and 35

[FAR Case 2000–401]

RIN 9000–AI91

Federal Acquisition Regulation; Definitions of ''Applied Research'' and ''Development''

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Civilian Agency Acquisition Council Chairman and the Defense Acquisition Regulations Council Chairman (Councils) have agreed to withdraw Federal Acquisition Regulation (FAR) case 2000–401, Definitions of ''Applied Research'' and ''Development,'' which was published in the **Federal Register** at 65 FR 54940, September 11, 2000. No public comments were received on the case. The proposed rule combined and moved the two separate definitions of ''Applied research'' and ''Development'' into the definitions area of the FAR.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–401, withdrawal.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule was published in the **Federal Register** at 65 FR 54940, September 11, 2000. The rule would have reorganized FAR coverage to consolidate the two separate definitions of ''Applied Research'' and ''Development'' currently found in FAR 31.205 and 35.001 into the definitions section at FAR 2.101. The Councils viewed this revision as administrative. No public comments were received. After further review, the Councils have concluded that the current coverage is clear and the proposed reorganization is unnecessary. Therefore, the Councils have agreed to withdraw the proposed rule.

List of Subjects in 48 CFR Parts 2, 31, and 35

Government procurement.

Dated: June 17, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–15630 Filed 6–19–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
June 20, 2002

Part V

The President

Proclamation 7574—Father's Day, 2002

Federal Register
Vol. 67, No. 119
Thursday, June 20, 2002

Presidential Documents

Title 3—

The President

Proclamation 7574 of June 14, 2002

Father's Day, 2002

By the President of the United States of America

A Proclamation

Fathers play a unique and important role in the lives of their children. As mentor, protector, and provider, a father fundamentally influences the shape and direction of his or her child's character by giving love, care, discipline, and guidance.

As we observe Father's Day, our Nation honors fatherhood and urges fathers to commit themselves selflessly to the success and well-being of their children. And we reaffirm the importance of fathers in the lives of their children.

Raising a child requires significant time, effort, and sacrifice; and it is one of the most hopeful and fulfilling experiences a man can ever know. A father can derive great joy from seeing his child grow from infancy to adulthood. As a child matures into independence and self reliance, the value of a parent's hard work, love, and commitment comes to fruition.

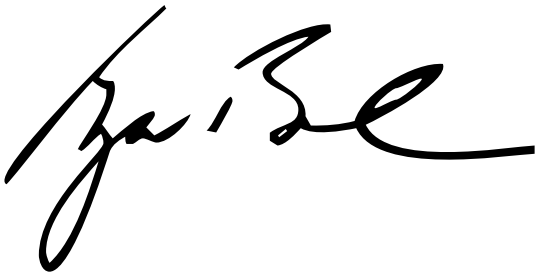
Responsible fatherhood is important to a healthy and civil society. Numerous studies confirm that children whose fathers are present and involved in their lives are more likely to develop into prosperous and healthy adults. Children learn by example; and they need their father's presence as examples of virtue in their daily lives. A child's sense of security can be greatly enhanced by seeing his parents in a loving and faithful marriage.

My Administration strongly supports initiatives to strengthen fatherhood, promote stable families, and increase the ease of adoptions. We must also continue to enlist the help of citizens and community groups who reach out to father less or neglected children through mentoring and other acts of compassion.

On this Father's Day, we acknowledge and honor the love of our own fathers. I encourage all fathers to commit themselves to the continuing love and care of their children and their families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 16, 2002, as Father's Day. I encourage all Americans to express love, admiration, and thanks to their fathers for their contributions to our lives and to society. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

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



[FR Doc. 02–15823
Filed 6–19–02; 8:47 am]
Billing code 3195–01–P

Federal Register

Thursday,
June 20, 2002

Part VI

The President

Notice of June 18, 2002—Continuation of the National Emergency with Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation

Federal Register
Vol. 67, No. 119
Thursday, June 20, 2002

Presidential Documents

Title 3—

The President

Notice of June 18, 2002

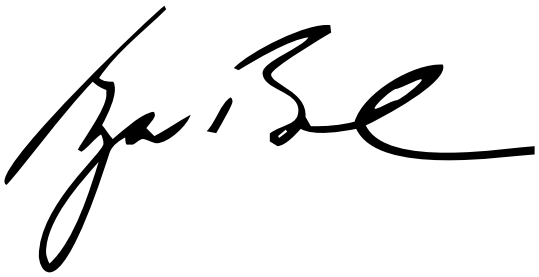
Continuation of the National Emergency with Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation

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

A major national security goal of the United States is to ensure that fissile material removed from Russian nuclear weapons pursuant to various arms control and disarmament agreements is dedicated to peaceful uses (such as downblended to low enriched uranium for peaceful commercial uses), subject to transparency measures, and protected from diversion to activities of proliferation concern. Pursuant to the HEU Agreements, weapons-grade uranium extracted from Russian nuclear weapons is converted to low enriched uranium for use as fuel in commercial nuclear reactors. The Order blocks and protects from attachment, judgment, decree, lien, execution, garnishment, or other judicial process the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2002, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to weapons-usable fissile material

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



THE WHITE HOUSE,
June 18, 2002.

[FR Doc. 02–15838
Filed 6–19–02; 11:19 am]
Billing code 3195–01–P

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Thursday, June 20, 2002

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