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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 01–093–2]**

### Mediterranean Fruit Fly; Removal of Quarantined Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that the quarantine and restrictions are no longer necessary. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

**DATES:** This interim rule was effective June 27, 2002. We will consider all comments that we receive on or before September 3, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–093–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–093–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–093–2'' 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. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective October 15, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53123–53124, Docket No. 01–093–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by the Animal and Plant Health Inspection Service and California State and county inspectors, we have determined that the Medfly has been eradicated from the quarantined area in Los Angeles County, CA. The last finding of Medfly in that portion of Los Angeles County, CA, was September 5, 2001. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Los Angeles County, CA, from the list in § 301.78–3(c) of areas quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Medfly.

#### Immediate Action

Immediate action is warranted to remove restrictions that are no longer necessary. The portion of Los Angeles County, CA, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because we have determined that the Medfly has been eradicated from this area, immediate action is necessary to remove the quarantined status of that portion of Los Angeles County, CA, and to relieve restrictions on the interstate movement of regulated articles from that area. 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 action 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 under Executive Order 12866.

In an interim rule effective October 15, 2001, and published in the **Federal Register** on October 19, 2001 (66 FR 53123–53124, Docket No. 01–093–1), we added a portion of Los Angeles County,

CA, to the list of areas quarantined because of Medfly. At the time that October 2001 interim rule was published, we did not have all the data necessary for a comprehensive analysis of the effects of that interim rule on small entities. As a result, we performed an initial regulatory flexibility analysis and solicited comments regarding the effects of that action on small entities. Comments on the October 2001 interim rule were required to be received by December 18, 2001. We did not receive any comments.

This interim rule amends the regulations by removing the portion of Los Angeles County, CA, that was added to the list of quarantined areas in the October 2001 interim rule. The economic analysis contained in this interim rule is based on the information provided in the October 2001 interim rule. However, to ensure that our analysis is comprehensive, we are inviting comments on the economic analysis contained in this interim rule. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

This action affects the interstate movement of regulated articles from the portion of Los Angeles County, CA, that had been quarantined because of Medfly. That area is a predominantly residential area with many apartment buildings. Available information indicates that there are no entities in the quarantined area that sell, process, handle, or move regulated articles. Such entities would include fruit sellers, nurseries, growers, packinghouses, certified farmers markets, and swapmeets.

The effect of this action on affected entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, the termination of the quarantine on that portion of Los Angeles County, CA, should have only a minimal economic effect on any affected entities operating in this area. We anticipate that the economic effect of lifting the quarantine, though positive, will be no more significant than was the minimal effect of its imposition.

The alternative to this interim rule was to make no changes in the regulations. After consideration, we rejected this alternative because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Los Angeles County, CA, would impose unnecessary regulatory restrictions on any affected entities.

This interim rule contains no information collection or recordkeeping requirements.

### 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 § 301.78–3, paragraph (c) is revised to read as follows:

**§ 301.78–3 Quarantined areas.**

* * * * *

(c) There are no areas in the continental United States quarantined because of the Mediterranean fruit fly.

Done in Washington, DC, this 27th day of June, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–16683 Filed 7–2–02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 94

**[Docket No. 01–059–2]**

## Change in Disease Status of Greece With Regard to Foot-and-Mouth Disease

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to add Greece to the list of regions that are considered free of rinderpest and foot-and-mouth disease. We are taking this action because we have determined that Greece is now free of foot-and-mouth disease. We are also adding Greece to the list of regions that are subject to certain import restrictions on meat or meat products because of their proximity to or trading relationships with rinderpest-or foot-and-mouth-disease-affected regions. These actions update the disease status of Greece with regard to foot-and-mouth disease while continuing to protect the United States from an introduction of this disease by providing additional requirements for any meat and meat products imported into the United States from Greece.

**EFFECTIVE DATE:** July 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 lists regions of the world that are declared to be free of rinderpest or free of both rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) considers rinderpest or FMD to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that APHIS has determined to be free of rinderpest and FMD, but that are subject

to certain restrictions because of their proximity to or trading relationships with rinderpest-or FMD-affected regions.

On March 21, 2002, we published in the **Federal Register** (67 FR 13105–13108, Docket No. 01–059–1) a proposal to amend the regulations to add Greece to the list in § 94.1(a) of regions that are considered free of rinderpest and FMD while removing Greece from the list of regions considered free of rinderpest only, also contained in § 94.1(a). In that document, we also proposed to add Greece to the list in § 94.11(a) of regions declared free of rinderpest and FMD, but that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with rinderpest-or FMD-affected countries.

We solicited comments concerning our proposal for 60 days ending March 20, 2002. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

**Effective Date**

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule adds Greece to the list of regions considered free of rinderpest and FMD. We have determined that approximately 2 weeks are needed to ensure that APHIS personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the **Federal Register**.

**Executive Order 12866 and Regulatory Flexibility Act**

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

We are amending the regulations to add Greece to the list of regions that are considered free of rinderpest and FMD. We are taking this action because we have determined that Greece is now free of FMD. We are also adding Greece to the list of regions that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected countries. These actions update the disease status of Greece with regard to FMD while continuing to protect the United States from an introduction of rinderpest and FMD by providing additional requirements for any meat and meat products imported into the United States from Greece.

The following analysis addresses the potential economic effects of this rule as required by the Regulatory Flexibility Act.

From an economic standpoint, this rule is likely to have little or no impact on U.S. animal stock and commodities. There are two reasons. First, this rule will not remove other disease-based restrictions on the importation of ruminants or swine (and certain meat and other products from those animals) from Greece into the United States. Because bovine spongiform encephalopathy is considered to exist in Greece, the importation of ruminants and meat, meat products, and certain other products of ruminants that have been in Greece is prohibited. Furthermore, because hog cholera (also known as classical swine fever) and swine vesicular disease are also considered to exist in Greece, the importation of swine from that region into the United States is prohibited, and the importation of pork and pork products is subject to restrictions.

Second, it appears unlikely that the volume of animals and animal products that will be eligible for importation into the United States from Greece under this rulemaking will be sufficient to have a significant impact on the U.S. market. In 2000, Greece produced 287,765 metric tons of beef, veal, mutton, lamb, and pig meat, representing less than 1.5 percent of the comparable U.S. production that year. Similarly, Greece's production of whole, fresh cow milk was 770,000 metric tons, only 1 percent of the comparable U.S. production during that period. Finally, in 1999, live cattle and pig stock in Greece was 1,510,000 head, less than 1 percent of the comparable stock in the United States that year.[1]

Besides cow milk, Greece also produces sheep and goat milk. In 2000, Greece produced 670,000 metric tons of sheep milk and 450,000 metric tons of goat milk. However, there appears to be no significant market in the United States for those commodities, or products made from them, such as cheese, as evidenced by the fact that no sheep or goat milk or cheese is commercially produced in the United States, and U.S. imports of those commodities are relatively minor. In 1999, for example, U.S. imports of cheese made from sheep and goat milk from all countries totaled 32,505 metric tons, less than 1 percent of the total U.S. cheese production.

In 1999, the stock of live sheep and goats in Greece was 14,276,000 head, or 66 percent more than the comparable stock in the United States that year. Here again, however, there appears to be no significant market in the United States for those animals, as evidenced by the fact that the United States imported only 53,165 live sheep and goats from all countries in 1999, which represents less than 1 percent of the sheep and goat stock in the United States that year and less than 1 percent of U.S. imports of all live animals from all countries in 1999.[2]

Entities potentially affected by this rule include U.S. import brokers, agents, and others involved in the sale of animals or animal products from Greece that will no longer be prohibited, or that will be possible to import under less restrictive conditions than they were prior to this rulemaking. The number and size of entities that will be directly involved in the importation and sale of such animals or animal products from Greece is unknown, but it is likely that these entities will be small, based on the U.S. Small Business Administration's (SBA) size standards.[3] Given the disease-based restrictions discussed previously that will remain in place and the minimal level of U.S. imports of animals and animal products that will be eligible for importation from Greece, we expect that declaring Greece free of FMD will have only a negligible effect on U.S. entities, large or small.

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

**Executive Order 12988**

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

**Paperwork Reduction Act**

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

[1] Food and Agriculture Organization of the United States.

[2] Food and Agricultural Organization of the United Nations.

[3] The overwhelming majority of U.S. business entities are small under the SBA's standards.

**Lists of Subjects in 9 CFR Part 94**

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

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

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

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

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

**§ 94.1 [Amended]**

2. Section 94.1 is amended as follows:

a. In paragraph (a)(2), by adding, in alphabetical order, the word ''Greece,''.

b. In paragraph (a)(3), by removing the words ''Greece and the'' and adding the word ''The'' in their place.

**§ 94.11 [Amended]**

3. In § 94.11, paragraph (a), the first sentence is amended by adding, in alphabetical order, the word ''Greece,''.

Done in Washington, DC, this 27th day of June, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–16682 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–34–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 261a

**[Docket No. R–1126]**

## Privacy Act of 1974; Implementation

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is amending its Rules Regarding Access to Personal Information under the Privacy Act (Privacy Act Rules) to reflect the implementation of a new system of records. Notice of this new system of records, entitled Visitor Log (BGFRS–32) is published in an adjacent notice.

**EFFECTIVE DATE:** August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** In light of the heightened concerns regarding security of Federal government personnel and buildings, the Board is implementing a procedure to screen visitors to the Board's premises before admission to those premises. To conduct this screening, the Board will request, in advance, that each visitor provide his or her name, date of birth, and social security number. Persons who refuse to provide the requested information may be denied admittance to the premises. Using the requested information, the Board will run a brief check through law enforcement data bases to determine whether the visitor may present a risk to the security of the Board. Thus, these records may contain information provided by law enforcement agencies that is exempt from certain provisions of the Privacy Act, including the access provisions, pursuant to section (k)(2), 5 U.S.C. 552a(k)(2).

The Board's Privacy Act Rules must be amended to include this system of records in the list of ''exempt'' systems of records. The Visitor Log system of records is exempt from certain provisions of the Privacy Act, including those regarding accounting of disclosures and access to records.

**Regulatory Flexibility Act**

In accordance with 5 U.S.C. 605, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Administrative Procedure Act**

This rule is exempt from the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553, and the Congressional Review Act, pursuant to 5 U.S.C. 804(3)(B) and (C), because it is a rule relating to agency management or personnel and a rule of agency procedure that does not substantially affect the rights or obligations of non–agency parties.

**List of Subjects in 12 CFR part 261a**

Federal Reserve System, Privacy.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261a as follows:

## PART 261a—RULES REGARDING ACCESS TO PERSONAL INFORMATION UNDER THE PRIVACY ACT OF 1974

1. The authority citation for part 261a continues to read as follows:

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

2. In § 261a.13, add a new paragraph (b)(10) to read as follows:

**§ 261a.13 Exemptions.**

* * * * *

(b) * * *

(10) BGFRS—32 Visitor Log.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 27, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–16725 Filed 7–2–02; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–36–AD; Amendment 39–12735; AD 2002–09–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc. Tay Model 650–15 and 651–54 Turbofan Engines; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2002–09–02, applicable to Rolls-Royce plc. (RR) Tay Model 650–15 and 651–54 turbofan engines. AD 2002–09–02 was published in the **Federal Register** on May 2, 2002 (67 FR 21979). Note 3 in the Alternative Method of Compliance section is incorrect. This document corrects Note 3. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive FR DOC. 02–10549, applicable to RR Tay Model 650–15 and 651–54 turbofan engines, was published in the **Federal Register** on May 2, 2002 (67 FR 21979). The following correction is needed:

**§ 39.13 [Corrected]**

On page 21981, in the first column, in AD 2002–09–02, in the ALTERNATIVE METHOD OF COMPLIANCE Section, ''**Note 3:** These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS and the MSS of the Instructions for Continued Airworthiness in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals as provided in paragraph (a) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement'' is corrected to read ''**Note 3:** The requirements of this AD have been met when the engine shop manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine shop manuals''.

Issued in Burlington, MA, on June 20, 2002.

**Francis A. Favara,**

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

[FR Doc. 02–16534 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–ANE–43–AD; Amendment 39–12797; AD 2002–13–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD adds additional critical life-limited parts for enhanced inspection. This AD is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this AD are intended to prevent the failure of critical, life-limited, rotating engine parts, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Effective date December 30, 2002.

**ADDRESSES:** The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7175, fax 781–238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–21–07, Amendment 39–11939, which is applicable to Pratt & Whitney (PW) JT8D–200 turbofan engines, was published in the **Federal Register** on October 24, 2000 (65 FR 63540) to require revisions to the Time Limits Section (TLS) of the PW JT8D–200 series Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed by PW.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Removal of HPT Assembly Inspection From AD

One commenter suggests that the HPT assembly inspection be removed from the AD because the part is not at piece part level and the prototype cleaning procedures are inadequate. The FAA disagrees. After assembly at manufacture, the HPT disk and shaft essentially can be treated as a single part. The HPT disk and shaft are not required to be separated at overhaul unless there is unrepairable damage to one of the parts or one of the parts has reached a time limit. Further, separation of the parts can cause mechanical damage to the tie rod holes that requires additional repair. The FAA does not want to force the separation of the disk and shaft at every overhaul but does want to have the HPT disk inspected at each opportunity throughout the life of the disk. Therefore, in order to provide a sufficient number of opportunity inspections over the life of the HPT disk, the original equipment manager (OEM) developed an inspection of the disk and shaft assembly. Further, the OEM has addressed problems associated with the prototype process in the final approved inspection process for the disk and shaft assembly. Accordingly, this AD requires changes to the life-limits section that incorporate that inspection of the disk and shaft assembly.

### Publication of NPRM

One commenter objects to the publication of the NPRM prior to having the inspection procedure available in the Engine Manual. The commenter states that air carriers that use the affected engines may not have had an opportunity to comment on the inspection procedure. The FAA disagrees. The FAA believes that the nature and scope of the added inspections will not differ significantly from existing inspection procedures. In addition, the FAA has set the effective date of this AD at 180 days after publication to allow time for the manufacturer to include these specific inspection procedures in the next revision of the Engine Manual. Operators may submit additional comments on those inspection procedures and the FAA will consider either extending the effective date further or additional rulemaking, as necessary. The FAA does not believe, however, that this final rule need be delayed pending publication of the inspection procedures.

### Effective Date of AD

One commenter requests a 180-day period between the issue date and the effective date of the AD similar to that permitted by the previous rule. The FAA agrees and the effective date of this AD has been extended to 180 days after publication to allow time for the specific procedures to be published. The extra time until the AD becomes effective should allow the manufacturer to issue a manual revision.

### Removal of Part Numbers

One commenter believes that the FAA has reversed its position relative to not incorporating part numbers in the AD. The FAA agrees in part. As the commenter notes, the FAA had previously viewed the engine manual for this engine model to be structured so as to make reference to ''all'' part numbers impractical. The FAA has reviewed the engine manual again and the proposed new changes and determined that individual part numbers may be removed. Therefore, this AD references ''all'' part numbers,

as with other engine lines. The decision not to include part numbers was originally made to accommodate the industry. The removal of part numbers eliminates the requirement to modify the TLS and Continuous Airworthiness Maintenance programs every time a new part number is introduced by the manufacturer for those parts covered by the AD.

### Typographical Error

One commenter notes that a typographical error ''JT8D/09200,'' occurs in paragraphs (a) and (e) of the Compliance Section of the NPRM and should be changed to read ''JT8D–200.'' The FAA agrees and the change has been made to the rule.

No comments were received on the economic analysis contained in the proposed rule. Based on that analysis, the FAA has determined that the annual per engine cost of $480 does not create a significant economic impact on small entities.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

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, 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 39–11939 (65 FR 63540, October 24, 2000), and by adding a new airworthiness directive, Amendment 39–12797, to read as follows:

**AD 2002–13–09 Pratt & Whitney:** Amendment 39–12797. Docket No. 98ANE–43AD. Supersedes AD 2000–21–07, Amendment 39–11939.

*Applicability:* Pratt & Whitney (PW) JT8D–200 series turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series airplanes.

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

*Compliance:* Required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, do the following:

**Inspections**

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements:

(1) This section contains the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection.

**Note:** Piece part is defined as any of the listed parts with all the blades removed.

| Description | Engine manual | |
|---|---|---|
| | Section | Inspection No. |
| Hub (Disk), 1st Stage Compressor: | | |
| Hub Detail—All P/N's. | 72–33–31 | –02, –03 |
| Hub Assembly—All P/N's. | 72–33–31 | –02, –03 |
| Disk, 13th Stage Compressor—All P/N's. | 72–36–47 | –02 |
| HP Turbine, First Stage: | | |
| Rotor Assembly—All P/N's. | 72–52–02 | –04 |
| Disk—All P/N's ..... | 72–52–02 | –03 |
| Disk, 2nd Stage Turbine—All P/N's. | 2–53–16 | –02 |
| Disk, 3rd Stage Turbine—All P/N's. | 72–53–17 | –02 |
| Disk, 4th Stage Turbine—. | 72–53–18 | –02'' |

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections must be performed using the TLS of the PW JT8D–200 Turbofan Engine Manual.

**Alternative Methods of Compliance**

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

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

**Ferry Flights**

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

**Continuous Airworthiness Maintenance Program**

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D–200

Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternatively, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

**Note 3:** The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

**Effective Date**

(f) This amendment becomes effective on December 30, 2002.

Issued in Burlington, Massachusetts, on June 18, 2002.

**Jay J. Pardee,**

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

[FR Doc. 02–16535 Filed 7–2–02; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 284

**[Docket No. RM96–1–021; Order No. 587–P]**

## Standards for Business Practices of Interstate Natural Gas Pipelines

June 26, 2002.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order denying rehearing.

**SUMMARY:** This order denies rehearing of the final rule issued on March 11, 2002 (67 FR 11906, March 18, 2002) requiring that interstate natural gas pipelines permit releasing shippers, as a condition of their capacity release, to recall released capacity and renominate that recalled capacity at each nomination opportunity. In particular, the order denies rehearing of the interim schedule for recalls implemented by the Commission in the final rule.

**EFFECTIVE DATE:** The regulations became effective April 17, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294;

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283;

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

**SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

### Order Denying Rehearing

1. In Order No. 587–N,[1] the Federal Energy Regulatory Commission (Commission) amended § 284.12(b)(1)(ii) of its open access regulations to require that interstate pipelines permit releasing shippers to recall released capacity and renominate that recalled capacity at each nomination opportunity. The Commission established a two-phase implementation schedule: under the first phase, the Commission established an interim schedule under which recalls would be permitted at two (of the four) nomination cycles and for any unscheduled capacity; in the second phase, the Commission provided the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) with six months in which to develop standards governing partial day or flowing day recalls.

2. Duke Energy Trading and Marketing LLC and Dynegy Marketing and Trade (DETM) seek rehearing of the interim schedule adopted by the Commission and seek clarification regarding the determination of when capacity is unscheduled for the purposes of allowing recalls of capacity. For the reasons discussed below, the Commission denies the request for rehearing and provides clarification regarding when capacity is deemed unscheduled for the purposes of allowing a recall.

### Background

3. In Order No. 636, the Commission adopted regulations permitting shippers (releasing shippers) to release their capacity to other shippers (replacement shippers).[2] Under these regulations, releasing shippers were permitted to ''release their capacity in whole or in part, on a permanent or short-term basis, without restriction on the terms and conditions of the release.'' [3] The regulation permits releasing shippers to impose terms for a release transaction under which the releasing shipper reserves the right to recall that capacity to use the capacity itself.[4]

4. Beginning with Order No. 587,[5] the Commission has incorporated by reference consensus standards approved by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) (formerly the Gas Industry Standards Board) designed to standardize business practices and communication protocols of interstate pipelines in order to create a more integrated and efficient pipeline grid. NAESB is a private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry. Although the Commission places great reliance on NAESB's development of consensus standards,[6] the Commission has found it necessary to resolve disputes between industry segments when NAESB has been unable to reach consensus on issues concerning Commission policy, so that the standards development process can proceed in line with Commission policies.[7]

5. In 1996, in NAESB's first set of standards, it adopted standards providing that releasing shippers could recall capacity only if they provided notification to the pipeline by 8 a.m.

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶31,125 (Mar. 11, 2002).

[2] 18 CFR 284.8 (2001).

[3] 18 CFR 284.8(b).

[4] As an example, a shipper might include a recall condition in the event that temperature drops below a pre-determined level. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–1996] ¶30,939, at 30,418 (Apr. 8, 1992).

[5] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996).

[6] Order No. 587, 61 FR at 39057 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,038, at 30,059

[7] Order No. 587–G, 63 FR at 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996-December 2000] ¶ 31,062, at 30,668–72 (Apr. 16, 1998) (resolving dispute over bumping of interruptible service by firm service).

CCT [8] and that releasing shippers could not engage in partial or flowing day recalls.[9] At the time NAESB adopted these standards, its standards provided for one nomination, at 11:30 a.m. CCT for the next gas day and only one intra-day nomination at an indeterminate time. However, since that time, NAESB expanded its nomination opportunities to permit four nomination opportunities:

| | Nomination deadline | Effective Time |
|---|---|---|
| Timely Nomination | 11:30 a.m. | 9 a.m. next gas day. |
| Evening Nomination | 6 p.m. | 9 a.m. next gas day. |
| Intra-Day 1 | 10 a.m. | 5 p.m. same gas day. |
| Intra-Day 2 | 5 p.m. | 9 p.m. same gas day |

NAESB, however, did not amend its capacity release recall standards to take into account this expansion of nomination opportunities, and when the recall issue was raised at NAESB, NAESB was unable to come to consensus on whether to expand releasing shippers' recall opportunities.

6. In Order No. 587–N, the Commission determined that permitting an expansion of recall opportunities to match the enhanced nomination schedule adopted by NAESB was consistent with the original intent of the Commission's capacity release regulations and would foster greater efficiency by providing releasing shippers with the flexibility to structure capacity release transactions that best fit their business needs, providing greater incentives for releasing shippers to release capacity, and fostering greater competition for pipeline capacity by creating parity between scheduling of capacity release transactions and pipeline interruptible service. As a result, the Commission adopted § 284.12(b)(1)(ii)(B) of its regulations which requires pipelines to permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity according to the notice and bumping provisions applicable to interruptible shippers. Under this regulation, recalls of released capacity will not be permitted to reduce (bump) volumes that are already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[10]The use of recall rights under this provision is voluntary, and depends on the agreement between the releasing and the replacement shipper as to when recall conditions apply.

7. The Commission adopted a two-phase implementation for this regulation. This two-phase approach was designed to ensure an expeditious implementation of recalls that do not raise operational concerns, while at the same time providing time for NAESB to further consider standards to address the operational issues raised. Under this schedule, each pipeline is required to make a compliance filing, by May 1, 2002, to be effective July 1, 2002, that will permit shippers to recall scheduled and unscheduled capacity at both the Timely Nomination Cycle and the Evening Nomination Cycle and to recall capacity at any nomination time if the capacity has not been previously scheduled by the replacement shipper. To ease the compliance and review process, the Commission established a standard tariff provision providing a notification schedule for these recalls. Second, the Commission provided NAESB, and the industry, six months in which to develop standards to apply to the operational details involved in allowing partial or flowing day recalls.

8. The interim recall schedule adopted by the Commission is as follows:

| Nomination cycle (all times in CCT) | Receipt scheduled volumes (from prior nomination cycle) | Recall notification to pipeline | Pipeline notification to replacement shipper of recall | Nomination to time (same day) |
|---|---|---|---|---|
| Timely | NA | 8:00 a.m | 9:00 a.m | 11:30 a.m. |
| Evening | 4:30 p.m CCT same day | 5:00 p.m | 6:00 p.m | 6:00 p.m. |
| Intra-Day 1 | 10:00 p.m CCT prior day | 8:00 a.m | 9:00 a.m | 10 a.m. |
| Intra-Day 2 | 2:00 p.m CCT same day | 3:00 p.m | 4:00 p.m | 5:00 p.m. |

9. The Commission found that the fundamental precept underlying this schedule is to provide releasing shippers with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall. The Commission found that releasing shippers, such as LDCs, need to be aware of the scheduled volumes for their systems prior to determining whether they will need to recall capacity. Thus, the advance notification period is designed to give releasing shippers the time to evaluate the scheduled quantities information before having to submit recall notices.[11]

[8] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. *See* 18 CFR § 284.12(b)(1)(i), Nominations Related Standards 1.3.1.

[9] A partial or flowing day recall refers to a recall condition that applies only to part of a gas day, rather than the full gas day. Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i). Nominations Related Standards 1.3.1.

[10] Under the regulation, the releasing shipper can recall scheduled capacity at the Evening Nomination Cycle because the replacement shipper has two opportunities to reschedule capacity (the Intra-Day 1 and Intra-Day 2 cycles). Similarly, a replacement shipper whose scheduled capacity is bumped at the Intra-Day 1 cycle has the opportunity to reschedule the bumped capacity at the Intra-Day 2 cycle. Whether a partial day recall of scheduled volumes can be permitted at the Intra-Day 2 cycle depends on whether the notification schedule permits a replacement shipper sufficient time to reschedule its capacity. Order No. 587–N, at P. 37.

[11] For example, under the Timely Nomination cycle, scheduled volumes are provided at 4:30 p.m. Releasing shippers need sufficient time to evaluate this information before determining whether to

10. On April 10, 2002, DETM filed a request for rehearing and clarification. It argues that the Commission's interim schedule for recalls makes it impossible for replacement shippers to acquire and nominate substitute release capacity for the upcoming nomination cycle. It requests that the Commission defer implementation of the interim timeline until NAESB adopts comprehensive guidelines governing partial day recalls. It also requests clarification as to the determination of the amount of a replacement shipper's unscheduled capacity that is subject to recall by the releasing shipper at all nomination cycles.[12]

**Discussion**

11. The Commission denies rehearing with respect to the interim schedule and provides clarification as to the determination of the amount of a replacement shipper's unscheduled capacity, subject to recall.

*A. Interim Schedule*

12. DETM maintains that the interim schedule developed by the Commission makes it impossible for replacement shippers whose capacity is recalled to renominate that capacity. It asserts, for example, that under Version 1.5 of NAESB's standards, a shipper must post a non-biddable release at 5 p.m. for the Evening Cycle, but that under the Commission's interim schedule for recalls, the replacement shipper is not notified of a recall until 6 p.m. DETM argues that a replacement shipper is unable to arrange for a substitute capacity release transaction in time to submit a nomination for the 6 p.m. Evening Nomination Cycle. DETM maintains that the Commission should therefore defer implementation of the interim cycle until NAESB crafts comprehensive guidelines governing recalls and the acquisition of released capacity.

13. The Commission denies the request for rehearing. The Commission adopted the interim schedule to provide releasing shippers with enhanced recall rights so that they will be able to use their capacity as flexibly as possible while the longer process of establishing procedures for flowing day recalls is underway. As the Commission found in Order No. 587–N, enhanced recall rights provide a greater incentive for releasing shippers to release capacity (which they otherwise might not release at all) and will create a more vibrant and competitive capacity market, with more released capacity available to compete with pipeline services.[13] The interim schedule is a way to achieve these benefits immediately, while the industry considers standards to provide for flowing day recalls, and the Commission finds no basis to defer implementation of the interim recall schedule until NAESB's deliberations are complete.

14. As DETM notes, the Commission's policy is that a recall cannot reduce (bump) volumes already scheduled for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes.[14] The Commission adopted this policy so that replacement shippers receive protection against loss of scheduled service similar to that interruptible shippers currently receive.[15]

15. The Commission's interim schedule fully achieves that goal. Using DETM's example of a recall for the 6 p.m. Evening Cycle, if a releasing shipper recalls capacity for the Evening cycle, the replacement shipper has two additional opportunities (Intra-Day 1 and Intra-Day 2 cycles) to reschedule any of its scheduled gas that has been bumped. This is the same right that an interruptible shipper has to reschedule gas that is bumped at the Evening cycle.[16]

16. DETM's example incorrectly assumes that, under the Commission's policy, the replacement shipper must have the opportunity to reschedule bumped gas at the same nomination cycle at which the bump notice is received. But the Commission's policy (and the current NAESB standards) do not assure that a bumped shipper will be able to renominate at the same nomination cycle at which the bump has taken place. Interruptible shippers, for example, that are bumped at the Evening Nomination Cycle cannot nominate until the next nomination cycle (Intra-Day 1 Cycle).[17] The interim recall schedule adopted by the Commission, therefore, provides replacement shippers with the same protection against bumping as interruptible shippers have, in accordance with Commission policy.

17. In the alternative, DETM seeks a revision in the Commission's interim schedule. DETM's schedule provides, in its most relevant part, that a releasing shipper would receive scheduled volumes from the pipeline at 4:30 p.m., submit its recall notice at 4:30 p.m., with the pipeline notifying the replacement shipper of the recall at 4:30 p.m., so that the replacement shipper can post a new release at 5 p.m. and nominate under that release at 6 p.m.[18]

| Nomination cycle (all times in CCT) | Receipt of scheduled volumes (from prior nomination cycle) | Recall notification to pipeline | Pipeline notification to replacement shipper of recall | Posting prearranged releases (version 1.5) | Nomination time (same day) |
|---|---|---|---|---|---|
| Evening | 4:30 p.m same day | 4:30 p.m | 4:30 p.m | 5:00 p.m | 6:00 p.m. |

recall capacity for the 6 p.m. Evening Nomination cycle.

[12] On April 25, 2002, Keyspan Delivery Companies (Keyspan) filed a motion for leave to file an answer and answer to DETM's rehearing request and an answer to DETM's request for clarification, and Consolidated Edison Company of New York and Orange and Rockland Utilities filed an answer to DETM's request for clarification. Under Commission regulations, answers are not permitted to rehearing requests (Rules 213(a)(2) and 713 (d)(1)), and Keyspan's motion is accordingly denied. The answers to the request for clarification are accepted.

[13] Order No. 587–N, P. 27–29.

[14] Order No. 587–N, P. 17. Under this standard, if a replacement shipper fails to nominate under a released capacity contract, then the releasing shipper can recall capacity at any of the nomination times.

[15] Order No. 587–N, P. 30.

[16] *See* Order No. 587–G, 63 FR at 20078, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062, at 30,671 (interruptible shippers bumped at 6 p.m. Evening Nomination have two opportunities to renominate); 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.2. (Version 1.5) (interruptible shipper, whose gas has been bumped by a firm shipper's Evening Nomination, is notified of the bump at 9 p.m. and is able to renominate its gas for the next day at the Intra-Day 1 and Intra-Day 2 cycles).

[17] *See* note 17, *supra*. Similarly, interruptible shippers bumped at the Intra-Day 1 cycle have the opportunity to renominate at the Intra-Day 2 cycle; replacement shippers bumped by a recall at the Intra-Day 1 cycle will have the same ability to reschedule their gas at the Intra-Day 2 cycle.

[18] While DETM's proposed schedule also addresses recalls and notices of recalls at the Intra-Day 1 and Intra-Day 2 cycles, these provisions are of less importance, because under the Commission's interim schedule, replacement shippers' scheduled volumes cannot be bumped at the Intra-Day 1 and Intra-Day 2 cycles.

18. But DETM's proposed schedule fails to adhere to the fundamental precept adopted by the Commission in establishing its interim schedule: that releasing shippers must be provided with sufficient time after receipt of scheduled quantities to inform the pipeline of a recall.[19] Under DETM's proposal, three actions must occur concurrently: The releasing shipper must receive scheduled quantities from the pipeline at 4:30 pm. CCT; immediately determine whether it needs to recall capacity and notify the pipeline by 4:30 p.m. CCT; and the pipeline, also by 4:30 p.m. CCT, must notify the replacement shipper. The schedule provides the releasing shipper with no opportunity to consider or process the scheduled quantity information provided by the pipeline. Further, DETM's proposed schedule fails to provide the pipelines with any opportunity to process the recall before sending out the notice to the replacement shipper, since, under DETM's schedule, the notification to the replacement shipper must be made simultaneously with the recall notice. Thus, the Commission finds that DETM's proposed schedule is not an adequate substitute for the interim schedule adopted by the Commission.

19. NAESB is considering developing a timeline for partial day recalls. Until NAESB acts, however, the interim schedule adopted by the Commission fairly balances the interests of the releasing and replacement shippers by providing releasing shippers with enhanced recall rights immediately while ensuring that bumped replacement shippers are still provided with an opportunity to reschedule any scheduled capacity that is bumped.

20. Moreover, the Commission finds no reason to defer or amend its interim schedule at this point, because DETM is not bound to accept recall conditions in its capacity release transactions. As the Commission made clear in Order No. 587–N, the Commission's regulation and interim schedule applies only to those situations in which a replacement shipper has agreed to purchase capacity subject to an intra-day recall. The Commission made clear that a releasing shipper's ability to recall capacity during the gas day is prospective only and is based on the terms of the capacity release agreement.[20] Thus, DETM is fully able to protect against intra-day recalls by not purchasing released capacity unless a limitation on recall rights is included in the terms and conditions of the release. For example, DETM could enter into release contracts under which a releasing shipper is obligated to provide DETM with earlier notice of recalls than the notice provided by the Commission's interim schedule.

*B. Determination of Unscheduled Capacity*

21. In Order No. 587–N, the Commission provided that releasing shippers could recall capacity at any of the four nomination cycles if the capacity has not been previously scheduled for the gas day by the replacement shipper. DETM requests clarification that a replacement shipper who has scheduled all or any portion of its acquired capacity during the gas day will be considered to have previously scheduled that capacity even if that capacity is not scheduled and flowing at the precise time the releasing shipper submits its recall notice. DETM maintains that this clarification is necessary because gas markets do not take gas on a predictable even-flow basis. DETM states, for example, that electric generation loads nearly always burn gas for only part of the gas day, and at flow rates exceeding a uniform-hourly flow of 1/24 of contract demand. DETM maintains its clarification will better reflect these flexible load profiles.

22. DETM's clarification request and example are not entirely clear, because they do not appear to reflect the way in which the scheduling standards operate. Under the scheduling standards, shippers are required to schedule gas for an entire gas day; they do not schedule gas for specific hourly flows.[21] The scheduled quantity reflects the total quantity of gas the shipper will use that day, regardless of its flow rate. Determinations of flow rate are left to the determination of the interconnected parties, and whether a shipper can exceed a uniform hourly flow depends on the individual pipeline's tariff.[22] Thus, even in the situation posited by DETM, where a market, such as electric generation, may have fluctuating hourly flow requirements, a daily quantity must be scheduled, and the replacement shipper cannot schedule different quantities for specific hours, as implied by DETM's example.

23. Although the predicate for DETM's requested clarification is unclear, the Commission will provide clarification as to how its unscheduled capacity should be determined based on the daily quantity scheduled. Under the Commission's policy, if a replacement shipper has not scheduled its full contract quantity for a gas day, the releasing shipper can recall and reschedule any portion of the unscheduled capacity at the next intra-day nomination opportunity. To provide a specific example, suppose a replacement shipper has a release contract for 1000 Dth/day of capacity, and has scheduled 500 Dth of that contract at the Evening Nomination Cycle for the next gas day. The releasing shipper can then recall, and renominate, the unscheduled quantity (500 Dth) at the first Intra-Day Nomination Cycle. Since the replacement shipper has not scheduled its released capacity, the replacement shipper is not having scheduled gas bumped by the releasing shipper's recall. In effect, the replacement shipper would be in no different position than an interruptible shipper which has not scheduled capacity for that day. The interruptible shipper cannot count on being able to submit an intra-day nomination to increase its daily scheduled quantity, since its intra-day nomination is lower in priority than that of a firm shipper. By the same token, a replacement shipper that has failed to schedule gas under a release contract should not be able to rely on its ability to submit an intra-day nomination to increase its scheduled quantity. If, however, DETM faces specific situations in which it needs to reserve the right to make an intra-day nomination (when it has not scheduled its full contract quantity), DETM can seek to have such a limitation on recall rights included as a term of the release agreement.[23]

*The Commission Orders*

The request for rehearing is denied, and clarification is provided as discussed in the body of the order.

By the Commission.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–16681 Filed 7–2–02; 8:45 am]

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[19] Order No. 587–N, P. 39.

[20] Order No. 587–N, P. 17 n. 26, P. 61.

[21] 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1, 1.3.9 (all nominations including intra-day nominations should be based on a daily quantity; thus an intra-day nominator need not submit an hourly nomination).

[22] 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.9 (the interconnected parties should agree on the hourly flows of the intra-day nomination, if not otherwise addressed in the transporter's contract or tariff).

[23] See discussion in P. 20, *supra.*

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1915**

## Occupational Safety and Health Standards for Shipyard Employment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is publishing technical amendments to its Shipyard Employment standards. These standards contain a number of minor typographical, grammatical and other errors. This document corrects those errors, as well as several inaccurate cross-references in these standards. The cross-references are being changed because the referenced section numbers have changed or been removed as a result of prior revisions to OSHA's Shipyard Employment rules. The technical amendments and corrections being published today are not substantive in nature; they will not impose additional compliance obligations on employers or reduce the protections provided to workers by these standards.

**DATES:** Effective on July 3, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Amy Agro Wangdahl, Office of Maritime Safety Standards, Room N 3609, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2060 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** This document makes technical amendments and corrections to various standards codified in 29 CFR Part 1915. In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553) and 29 CFR 1911.5, OSHA hereby finds good cause to publish these amendments and corrections without any further delay or public procedure.

The types of amendments addressed in this correction notice fall into four basic categories. However, a majority of the amendments contain more than one correction, and may thus fall into more than one of these categories.

The first category involves the correction of errors where text was inadvertently omitted or words were incorrectly spelled. In these editorial corrections, words such as ''a,'' ''the,'' ''or,'' ''are,'' and ''an'' are added to make complete sentences. Spelling and grammatical errors such as inappropriate hyphens, missing periods, misplaced quotation marks and misspelled words are also corrected. In addition, section headings and other portions of the standards are made consistent with each other. The second category consists of corrections of incorrect citations or cross-references. Some of these errors occurred in 1995 when OSHA published the revised Subpart I, Personal Protective Equipment 61 FR 26352 ).

The third category includes minor clarifications of regulatory text to reflect the Agency's regulatory intent more accurately. Amendments in this category include, for example, the addition of a word to clarify the meaning of a regulatory provision. For example, in § 1915.165(a), the phrase ''also know as chain stoppers'' was inserted after ''devil claws'' for further clarification. The fourth category of amendments includes corrections of errors that were made when converting from English units of measure to metric units. These include corrections of errors in conversion calculations, changes in units of measure for consistency, and changes to report the results of calculations to the second decimal place for the sake of consistency.

*Technical Amendments:* The amendments and corrections made to the Shipyard Employment Standards are explained below in two tables. The first table includes miscellaneous corrections of typographical, grammatical and metric conversion errors. The second table includes the remainder of the amendments, which correct incorrect citations and cross references and clarify regulatory text. In both tables, the changes will be highlighted.

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES

| Current text | Amended text |
|---|---|
| § 1915.4 (k) The term ''shipbuilding'' ns the construction of a vessel including the installation of machinery and equipment. | (k) The term ''shipbuilding'' means the construction of a vessel including the installation of machinery and equipment. |
| § 1915.5(d)(1)(v) ANSI 87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(2). | (d)(1)(v) ANSI Z87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for §1915.153(b)(2). |
| **Note:** For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see paragraph (b) of this section. | **Note to paragraph (a)(1)(iv):** For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see paragraph (b) of this section. |
| § 1915.14(b)(1)(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section, and. | (b)(1)(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section. |
| **Note to 1915.14:** See appendix A for additional information relevant to performing hot work safely. | **Note to § 1915.14:** See appendix A of this subpart for additional information relevant to performing hot work safely. |
| § 1915.15(c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as ''Safe for Workers'' or ''Safe for Hot Work,'' as often as necessary to ensure that atmospheric conditions within the space is maintained within the conditions established by the certificate after the certificate has been issued. | (c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as ''Safe for Workers'' or ''Safe for Hot Work,'' as often as necessary to ensure that atmospheric conditions within that space are maintained within the conditions established by the certificate after the certificate has been issued. |
| § 1915.15(e) Tests to maintain a competent person's findings ..... | (e) *Tests to maintain a competent person's findings* |
| § 1915.35(b)(2) If the ventilation fails or if the concentration of solvent vapors rises above ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration down to ten (10) percent of the lower explosive limit shall be provided. | (b)(2) If the ventilation fails or if the concentration of solvent vapors reaches or exceeds ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration to below ten (10) percent of the lower explosive limit shall be provided. |

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

| Current text | Amended text |
|---|---|
| § 1915.51(d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials. | (d)(2)(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials. |
| § 1915.71(e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side tails of not less than 1 5/16 × 3 inch lumber. | (e)(2)(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than 1 5/16 × 3 inch lumber. |
| § 1915.71(e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the siderails. | (e)(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that width of the platform planking shall not exceed the distance between the side rails |
| § 1915.71(f)(8) No more than two men shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of men permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold | (f)(8) No more than two persons shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of persons permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold |
| § 1915.72(a)(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of the American National Standards Institute Safety Code for Portable Wood Ladders, A14.1–1975. | (a)(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of the American National Standards Institute Safety Code for Portable Wood Ladders, A14–1975 |
| § 1915.72(c)(1)(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fastenings of equivalent strength | (c)(1)(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength. |
| § 1915.74(a)(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a mid rail | (a)(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a midrail. |
| § 1915.75(b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a mid rail. | (b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a midrail. |
| § 1915.75(d) Railings approximately 42 inches in height, with a mid rail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks | (d) Railings approximately 42 inches in height, with a midrail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks. |
| § 1915.75(e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable stanchions and 42 inch railings with a mid rail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent men from falling into the water | (e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable stanchions and 42 inch railings with a midrail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent employees from falling into the water. |
| § 1915.77(a) Paragraphs (b) through (d) of this section shall apply to ship repairing, shipbuilding operations and shall not apply to shipbreaking | (a) Paragraphs (b) through (d) of this section shall apply to ship repairing shipbuilding operations, and shall not apply to shipbreaking |
| § 1915.112(c)(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in 1915.18 has been reached | (c)(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in § 1915.118 has been reached. |
| § 115(d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane wither permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself | (d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane whether permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself. |
| § 1915.118 | |
| Table E–1 Heading | |
| 2nd & 3rd columns under ''Light Duty'' | |
| ''24 or less'' ''24 to 40'' ''40 to 60'' | ''≤ 24'' ''> 24 ≤ 40'' ''> 40 ≤ 60''. |
| § 1915.118 | |
| Table E–3 Heading | |
| 2nd & 3rd columns under ''Height in Feet'' | |
| ''Up to 10'' ''10 to 16'' ''16 to 20'' | ''≤10'' ''>10 ≤16'' ''>16 ≤ 20'' |
| § 1915.118, in the second column of Table G–1, Diameter in Inches, | |
| 1 15/32 | 15/32 |
| 1 13/16 | 13/16 |
| § 1915.118, in table G–3 in column ''B'' under the heading ''Vertical,'' | |
| 621 | 61 |
| § 1915.118, in table G–7, in the second column under the heading ''Single leg,'' | |
| 27,6 | 27.6 |
| § 1915.118, in table G–9, in the first column under ''Chain size in inches,'' | |
| 1 1/6 | 1 1/8 |
| In the second column, under ''Maximum allowable wear in fraction of inches'' | |
| 1 1/64 | 11/64 |
| 1 1/32 | 11/32 |

TABLE 1.—TYPOGRAPHICAL AND GRAMMATICAL CHANGES—Continued

| Current text | Amended text |
|---|---|
| § 1915.131(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum are required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum are required to allow proper retraction and contact with the work. | (c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. |
| § 1915.131(d) The moving parts of machinery on dry dock shall be guarded. | (d) The moving parts of machinery on a dry dock shall be guarded. |
| § 1915.131(g) Headers, manifolds and widely spaced hose connection on compressed air lines shall bear the work ''air'' in letters at least 1 inch high, which shall be painted either on the manifold or separate hose connections, or on signs permanently attached to the manifolds or connections | (g) Headers, manifolds and widely spaced hose connections on compressed air lines shall bear the word ''air'' in letters at least 1 inch high, which shall be painted either on the manifolds or separate hose connections, or on signs permanently attached to the manifolds or connections. |
| § 1915.134(c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1 | (c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1–1964. |
| § 1915.152(e)(2) The employer shall ensure that each effected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE | (e)(2) The employer shall ensure that each affected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE. |

| In amendments 25, 26, 27 and 29, there were many numerical mistakes made when converting English units to metric units. Rather than listing standard by standard, this is a listing of which standards are being corrected, together with the current and corrected measurements | Currently Reads | Changed To |
|---|---|---|
| § 1915.158(b)(4) | 22.2 Kn | 22.24 Kn |
| § 1915.159(a)(3) | 13.3 Kn | 13.34 Kn |
| § 1915.159(a)(9) | 1.8 m | 1.83 m |
| § 1915.159(b)(2) | 140 kg | 140.62 kg |
| § 1915.159(b)(3) | 4.1 cm | 4.13 cm |
| § 1915.159(b)(4) | 113 kg | 113.34 kg |
| § 1915.159(b)(6)(iv) | 8.89 Kn | 8.9 Kn |
| The Note to paragraph (b)(6) | 1.2 m | 1.22 m |
| § 1915.159(b)(7) | 27 m | 27.43 m |
| § 1915.159(c)(1)(i) | 10 Kn | 10.01kn |
| § 1915.159(c)(8) | 10 cm | 10.16 cm |
| § 1915.160(a)(2) | 136 kg | 136.08 kg |
| § 1915.160(b)(1) | 5 cm | 5.08 cm |
| § 1915.160(b)(2)(i) | 0.3 m | 0.31 m |
| § 1915.160 (b)(2)(ii) | 2.3 m | 2.29 m |
| Appendix B to Subpart I—throughout | 46 cm | 45.72 cm |
| | 100 kg | 99.79 kg |
| | 1.6 kg | 1.36 kg |
| | 11.2 Kn | 11.21 Kn |
| | 30.5 cm | 30.48 cm |
| | 1 cm | 1.02 mm |
| | 96 cm | 96.52 cm |

| Appendix A to Subpart I, paragraph 10 | |
|---|---|
| *Selection guidelines for foot protection.* | 10. *Selection guidelines for foot protection.* |
| (a) Safety shoes and boots ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in some other special situations electrical conductive or insulating safety shoes would be appropriate. | (a) Safety shoes and boots must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal (top of foot) protection should be provided, and in some other special situations electrical conductive or insulating safety shoes would be appropriate. |
| § 1915.163(a)(1) The isolation and shutoff valves connecting the dead system with the life system or systems shall be secured, blanked, and tagged indicating that employees are working on the systems | (a)(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and tagged indicating that employees are working on the systems. |
| § 1915.163(a)(2) Drain connections to atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage | (a)(2) Drain connections to the atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage. |
| § 1915.165(a)(1) The devil claws shall be made fast to the anchor chains | (a)(1) The devil claws (also known as chain stoppers) shall be made fast to the anchor chains. |
| § 1915.181(c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it it definitely determined that the work on the circuit has been completed | (c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed. |

| | |
|---|---|
| § 1915.1000(d) *Computation formulae* ..... | (d) *Computation formula.* |
| § 1915.1001(d)(2) Asbestos hazards at a multi-employer work site shall be abated by the contractor who created or controls the source of asbestos contamination | (d)(2) Asbestos hazards at a multi-employer worksite shall be abated by the contractor who created or controls the source of asbestos contamination. |
| § 1915.1001(d)(4) All employers of eployees working adjacent to regulated areas established by another employer on a multi-employer work-site, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas | (d)(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer worksite, shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas. |
| § 1915.1001(g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipe or other structure where the work is to be done | (g)(5)(ii)(B)(*1*) Each glovebag shall be installed so that it completely covers the circumference of pipes or other structures where the work is to be done |
| § 1915.1001(g)(5)(ii)(B)(*7*) Where system uses attached waste bag, such bag shall be connected to collection bag using hose or other material which shall withstand pressure of ACM waste and water without losing its integrity: | (g)(5)(ii)(B)(*7*) Where a system uses an attached waste bag, such bag shall be connected to a collection bag using hose or other material which shall withstand the pressure of ACM waste and water without losing its integrity: |
| § 1915.1001(g)(5)(ii)(B)(*8*) Sliding valve or other device shall separate waste bag from hose to ensure no exposure when waste bag is disconnected: | (g)(5)(ii)(B)(*8*) A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected: |
| § 1915.1001(g)(5)(iii)(A) *Specifications:* In addition to specifications for glove bag systems above, negative pressure glove bag systems shall attach HEPA vacuum system or other device to bag to prevent collapse during removal | (g)(5)(iii)(A) *Specifications:* In addition to the specifications for glove bag systems above, negative pressure glove bag systems shall attach the HEPA vacuum system or other device bag to prevent collapse during removal. |
| § 1915.1001(g)(8)(iii)(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via covered dust-tight chute, crane or hoist, or placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift. | (g)(8)(iii)(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via a covered dust-tight chute, crane or hoist, or placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift. |
| § 1915.1001(h)(1)(iv) During all Class II and III asbestos jobs where the employer does not produce a ''negative exposure assessment''. | (h)(1)(iv) During all Class II and III asbestos jobs where the employer does not produce a ''negative exposure assessment''. |
| § 1915.1001 | |
| Table 1, first column | |
| Not in excess of 1 f/cc (10 × PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section. | Not in excess of 1 f/cc (10 × PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section. |
| § 1915.1001(i)(4)(i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during performance of work. | (i)(4)(i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during the performance of work. |
| § 1915.1001(k)(3) Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM. | *(k)(3) Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM.* |
| § 1915.1001(k)(3)(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the work site and the precautions to be taken to insure that airborne asbestos is confined to the area. | (k)(3)(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the worksite and the precautions to be taken to insure that airborne asbestos is confined to the area. |
| § 1915.1001(k)(5)(ii)(A) Having a completed inspection conducted pursuant to the requirements of AHERA (40 CFR Part 763, Subpart E) which demonstrates that the material is not ACM; or. | (k)(5)(ii)(A) Having completed an inspection conducted pursuant to the requirements of AHERA (40 CFR Part 763, Subpart E) which demonstrates that the material is not ACM; or |
| § 1915.1001(k)(9)(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours. | (k)(9)(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such a course shall take at least 2 hours. |
| § 1915.1001(k)(9)(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:. | (k)(9)(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by the provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following: |
| § 1915.1001(o) *Qualified Person* (1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authorities for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32). | (o) *Qualified Person* (1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authority for ensuring worker safety and health required by Subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32). |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| *Qualitative Fit Test Protocols.* | |
| I. Isoamyl Acetate Protocol ..... | I. *Isoamyl Acetate Protocol* |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |

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|---|---|
| II. *Saccharin Solution Aerosol Protocol* | |
| B. Taste Threshold Screening ..... | B. *Taste Threshold Screening.* |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| C. Fit test | |
| 15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used assign protection factors no higher than ten. | 15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten. |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| III. *Irritant Fume Protocol Quantitative Fit Test Procedures* | |
| 1. General. | |
| a. The method applies to the negative-pressure non-powered air-purifying respirators only. | a. The method applies to negative-pressure non-powered air-purifying respirators only. |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| III. *Irritant Fume Protocol Quantitative Fit Test Procedures* | |
| 2. *Definitions* ..... | 2. *Definitions.* |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| III. *Irritant Fume Protocol Quantitative Fit Test Procedures* | |
| 5. *Exercise Regime.* Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. | 5. Exercise Regime. Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| III. *Irritant Fume Protocol Quantitative Fit Test Procedures* | |
| 6. The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h). | 6. Test Termination. The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h) |
| Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory | |
| III. *Irritant Fume Protocol Quantitative Fit Test Procedures* | |
| 9. Other requirements ..... | 9. Other requirements |
| f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered or when the test agent has altered the integrity of the filter media. | f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent. |
| Organic vapor cartridges/canisters, shall be replaced daily or sooner if there is any indication of breakthrough by the test agent. | |

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT

| Text as it currently reads | Amended text | Explanation |
|---|---|---|
| § 1915.4(t) The term ''portable unfired pressure vessel'' means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to ICC regulations under 49 CFR Part 178, Subparts C and H. | (t) The term ''portable unfired pressure vessel'' means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to Department of Transportation regulations under 49 CFR Part 178, Subparts C and H. | Correcting a reference to an agency. |
| § 1915.5(d)(1)(i) ANSI A14.1–1959 Safety Code for Portable Wood Ladders, IBR approved for § 1915.72(a)(6). | (d)(1)(i) ANSI A14.1–1975 Safety Code for Portable Wood Ladders, IBR approved for § 1915.72(a)(6). | Corrects inaccurate date of the incorporated ANSI standard. |
| § 1915.5(d)(1)(ii) ANSI A14.2–1956 Safety Code for Portable Metal Ladders, IBR approved for Sec. 1995.72(a)(4). | (d)(1)(ii) ANSI A14.2–1972 Safety Code for Portable Metal Ladders, IBR approved for § 1915.72(a)(4). | Corrects inaccurate date of the incorporated ANSI standard and corrects the reference to § 1915. |
| § 1915.14(a)(1)(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in Sec. 1915.12, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids have a flash point below 150 deg. F (65.6 deg. C) and the distance between such spaces and the work is 25 feet (7.5m) or greater. | (a)(1)(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in § 1915.12, but are adjacent to spaces containing flammable gases or liquids, with a flash point below 150 °F (65.6 °C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater. | Language changed to ensure the intent of the Agency, in addition to an incorrect measurement. |

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

| Text as it currently reads | Amended text | Explanation |
|---|---|---|
| § 1915.14(b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section, and | (b)(1)(iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section, | Corrects inaccurate reference. |
| Appendix A to Subpart B: *Section 1915.12(a)(4)* ..... | *Section 1915.12(a)(3)* ..... | Previous rulemaking combined § 1915.12(a)(3) and (a)(4) to create the current § 1915.12(a)(3). Therefore, the correct reference is § 1915.12(a)(3). |
| Appendix A to Subpart B: 2nd paragraph under *Section 1915.12(a)(4)* An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry. | *Section 1915.12(a)(4)* An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level greater than 20.8 percent by volume should alert the competent person to look for the cause of the oxygen-enriched atmosphere and correct it prior to entry. In addition, any oxygen level lower than 19.5 percent level should also alert the competent person to look for the cause of the oxygen-deficiency and correct it prior to entry. | As currently written, this provision would require a competent person to look for oxygen deficiency or oxygen enriched atmosphere that would occur between 19.5 percent and 20.8 percent, which is the proper oxygen content for entry. This was changed to reflect the proper oxygen content that would signify an oxygen deficient or oxygen enriched atmosphere. |
| Appendix A to Subpart B: *Section 1915.12(b)(4),* ..... | *Section 1915.12(b)(3),* ..... | See Section 1915.12(a)(4). |
| Appendix A to Subpart B: *Section 1915.14(a) and (b) Hot work.* This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of 1915.54 must be met before welding, cutting, or heating is begun on any structural voids. | *Section 1915.14(a) and (b) Hot work.* This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, Subpart D, Welding, Cutting and Heating, places additional restrictions on hot work: The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting, or heating is begun on any hollow containers or structures not covered by § 1915.12. | Language added for clarification and consistency. |
| § 1915.51(c)(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of 1915.152(a), and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency. | (c)(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of § 1915.152, and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency. | Corrects paragraph reference to reflect section and paragraph numbering changes made in 1996 revision of Subpart I. |
| § 1915.51(d)(1) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of paragraph (a) of this section. | (d)(1) Welding, cutting or heating in any enclosed spaces abroad the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of paragraph (b) of this section. | Corrects an incorrect reference. |
| § 1915.51(d)(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of 1915.152(a). | (d)(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of § 1915.154. | See § 1915.51(c)(3). |

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

| Text as it currently reads | Amended text | Explanation |
|---|---|---|
| § 1915.51(d)(3) Employees performing such operations in the open air shall be protected by filter type respirators in accordance with the requirements of paragraphs (a) and (d)(2)(iv) of 1915.152, except that employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators in accordance with the requirements of 1915.152(a). | (d)(3) Employees performing such operations in the open air shall be protected by filter type respirators, and employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators, in accordance with the requirements of § 1915.154. | See § 1915.51(c)(3). |
| § 1915.51(e)(1)(ii) Helpers and other employees in the area not protected from the arc by screening as provided in 1915.56(e) shall be protected by filter lenses meeting the requirements of 1915.151(a) and (c). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements 1915.151(a) and (c) shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed. | (e)(1)(ii) Helpers and other employees in the area not protected from the arc by screening as provided in 1915.56(e) shall be protected by filter lenses meeting the requirements of § 1915.153. When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of § 1915.153 shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed. | See § 1915.51(c)(3). |
| § 1915.51(f)(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of 1915.151(a) and (c). | (f)(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of § 1915.153. | See § 1915.51(c)(3). |
| § 1915.53(d)(1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of 1915.152(a). | (d)(1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of § 1915.154. | See § 1915.51(c)(3) |
| § 1915.53(d)(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of 1915.152 (a) and (d). | (d)(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of § 1915.154. | See § 1915.51(c)(3). |
| § 1915.71(j)(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of 1915.154(b), and employees working over water shall be protected by buoyant work vests meeting the requirements of 1915.154(a). | (j)(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of § 1915.159 and § 1915.160, and employees working over water shall be protected by buoyant work vests meeting the requirements of § 1915.158(a). | See § 1915.51(c)(3). |
| § 1915.73(e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of 1915.154(a). | (e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of § 1915.158(a). | See § 1915.51(c)(3). |
| § 1915.74(c)(2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp in accordance with requirements of paragraph (a)(7) of this section shall be provided. | (2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp meeting the requirements of paragraph (c)(1) of this section or a safe walkway meeting the requirements of paragraph (a)(7) of this section shall be provided. | A portion of the first sentence was inadvertently removed from previous printings. As currently written, the reference of (a)(7) is to the walkway, not the ramp requirements, and ''a safe walkway'' has been added back in. |
| § 1915.77(c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of 1915.154(b). | (c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of § 1915.159 and § 1915.160. | See § 1915.51(c)(3). |

TABLE 2.—INCORRECT CITATIONS, CROSS REFERENCES AND CLARIFICATION OF REGULATORY TEXT—Continued

| Text as it currently reads | Amended text | Explanation |
|---|---|---|
| § 1915.77(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of 1915.154. | (e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of § 1915.158(a). | See § 1915.51(c)(3). |
| § 1915.92(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of 1915.13. | (e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of 1915.13(b)(9). | The reference has been corrected to be more specific. |
| § 1915.97(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under 1915.99 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part. | (a) The employee shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under § 1915.1200 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part. | Corrects paragraph reference to reflect section and paragraph numbering changes made in 1994 when OSHA redesignated § 1915.99 to § 1915.1200 to provide similar section numbers for the same topics in the general industry standards. |
| § 1915.116(n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from being unshipped so that it cannot be displaced by accident. | (n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from moving so that it cannot be displaced by accident. | Language added for clarification. |
| § 1915.158(a)(1) PFDs (life preservers, life jackets, and work vests) worn by each affected employee shall be any United States Coast Guard (USCG) approved and marked Type I PFD, type II PFD, or Type III PFD; of PFDs shall be a USCG approved Type V PFD which is marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, subpart Q, Coast Guard Lifesaving Equipment Specifications. | (1) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46 CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications. | The language has been changed to be consistent with § 1917.95(b)(2) and § 1917.95(b)(2) when addressing Personal Flotation Devices (PFD). The new language also clarifies the requirement for PFDs. |
| § 1915.172(a) Portable, unfired pressure vessels, built after the effective date of this regulation shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engines Boiler and Pressure Vessel Code, Section XIII, Rules for Construction of Unfired Pressure Vessels, 1963. | (a) Portable, unfired pressure vessels, built after the effective date of this regulation, shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels 1963. They shall be subjected, to a hydrostatic pressure test of one and one-half times the working pressure of the vessels. | This change corrects the section reference to the ASME Boiler and Pressure Vessel Code. |

*Good Cause Exception:* The corrections and editorial changes in this document are not substantive, and they will become effective on July 3, 2002. OSHA finds good cause for this rule to take effect upon publication, so that these nonsubstantive amendments will be incorporated in the 2002 edition of the CFR. This will increase the convenience to the public in using the new edition of CFR. See 5 U.S.C. 553(d).

For the same reasons, it is certified that no substantive changes are being made which would require analysis under the Regulatory Flexibility Act or under Executive Order 12291.

**List of Subjects in 29 CFR Part 1915**

Hazardous substances, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping, Shipyards.

**Authority:** This document has been prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. These technical amendments are made pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 29 CFR part 1911.

Signed at Washington, DC this 26th day of June, 2002.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

Accordingly, 29 CFR part 1915 is amended as set forth below:

## PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for part 1915 is revised to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941);

secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017) as applicable.

2. In § 1915.4, revise paragraphs (k) and (t) to read as follows:

**§ 1915.4 Definitions.**

* * * * *

(k) The term *shipbuilding* means the construction of a vessel including the installation of machinery and equipment.

* * * * *

(t) The term *portable unfired pressure vessel* means any pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure, excepting pressure vessels built to Department of Transportation regulations under 49 CFR part 178, subparts C and H.

* * * * *

3. In § 1915.5, revise paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(v) to read as follows:

**§ 1915.5 Incorporation by reference.**

* * * * *

(d)(1)* * *

(i) ANSI A14.1–1975 Safety Requirements for Portable Wood Ladders, IBR approved for § 1915.72(a)(6).

(ii) ANSI A14.2–1972 Safety Requirements for Portable Metal Ladders, IBR approved for § 1915.72(a)(4).

* * * * *

(v) ANSI Z87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(2).

* * * * *

4. In § 1915.14, revise paragraph (a)(1)(iv), the note to paragraph (a)(1)(iv), paragraphs (b)(1)(iii), (b)(1)(iv), and the note to § 1915.14 to read as follows:

**§ 1915.14 Hot work.**

(a) * * * (1) * * *

(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in § 1915.12, but are adjacent to spaces containing flammable gases or liquids, with a flash point below 150 °F (65.6 °C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.

**Note to Paragraph (a)(1)(iv):** For flammable liquids with flash points above 150 °F (65.6 °C), see paragraph (b) of this section.

* * * * *

(b) * * * (1) * * *

(iii) The engine room and boiler spaces for which a Marine Chemist or a Coast Guard authorized person certificate is not required under paragraph (a)(1)(i) of this section (iv) Vessels and vessel sections for which a Marine Chemist or Coast Guard authorized person certificate is not required under paragraph (a)(1)(iv) of this section.

* * * * *

**Note to § 1915.14:** See appendix A of this subpart for additional information relevant to performing hot work safely.

5. In § 1915.15, revise paragraph (c) and the heading to paragraph (e) to read as follows:

**§ 1915.15 Maintenance of safe conditions.**

* * * * *

(c) *Tests to maintain the conditions of a Marine Chemist's or Coast Guard authorized person's certificates.* A competent person shall visually inspect and test each space certified as ''Safe for Workers'' or ''Safe for Hot Work,'' as often as necessary to ensure that atmospheric conditions within that space are maintained within the conditions established by the certificate after the certificate has been issued.

* * * * *

(e) *Tests to maintain a competent person's findings.* * * *

* * * * *

6. Amend Appendix A to Subpart B as follows:

a. Revise the heading of *Section 1915.12(a)(4)* to read *Section 1915.12(a)(3);*

b. Revise the second paragraph under *Section 1915.12(a)(3);*

c. Revise the heading of *Section 1915.12(b)(4)* to read *Section 1915.12(b)(3);*

d. Revise the paragraph titled *Section 1915.14(a) and (b) Hot Work*

The revisions read as follows:

**Appendix A to Subpart B—Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres**

* * * * *

*Section 1915.12(a)(3).*

* * *

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level greater than 20.8 percent by volume should alert the competent person to look for the cause of the oxygen-enriched atmosphere and correct it prior to entry. In addition, any oxygen level lower than 19.5 percent level should also alert the competent person to look for the cause of the oxygen-deficiency and correct it prior to entry.

*Section 1915.12(b)(3) Flammable atmospheres.* * * *

* * * * *

*Section 1915.14 (a) and (b) Hot work.* This is a reminder that other sections of the OSHA shipyard safety and health standards in part 1915 should be reviewed prior to starting any hot work. Most notably, subpart D, Welding, Cutting and Heating, places additional restrictions on hot work. The requirements of §§ 1915.51 and 1915.53 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of § 1915.54 must be met before welding, cutting, or heating is begun on any hollow containers or structures not covered by § 1915.12.

* * * * *

7. In § 1915.35, revise paragraph (b)(2) to read as follows:

**§ 1915.35 Painting.**

* * * * *

(b) * * *

(2) If the ventilation fails or if the concentration of solvent vapors reaches or exceeds ten (10) percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten (10) percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration to below ten (10) percent of the lower explosive limit shall be provided.

* * * * *

8. In § 1915.51, revise paragraphs (c)(3), (d)(1) introductory text, (d)(2) introductory text, (d)(2)(i), (d)(3), (e)(1)(ii), and (f)(2) to read as follows:

**§ 1915.51 Ventilation and protection in welding, cutting and heating.**

* * * * *

(c) * * *

(3) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of § 1915.154, and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.

(d) *Welding, cutting or heating of metals of toxic significance.* (1) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with either general mechanical or local exhaust ventilation

meeting the requirements of paragraph (b) of this section:

* * * * *

(2) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified below shall be performed with local exhaust ventilation in accordance with the requirements of paragraph (b) of this section or employees shall be protected by air line respirators in accordance with the requirements of § 1915.154:

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

* * * * *

(3) Employees performing such operations in the open air shall be protected by filter type respirators, and employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators, in accordance with the requirements of § 1915.154.

* * * * *

(e) *Inert-gas metal-arc welding.* (1) * * *

(ii) Helpers and other employees in the area not protected from the arc by screening as provided in § 1915.56(e) shall be protected by filter lenses meeting the requirements of § 1915.153. When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of § 1915.153 shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

* * * * *

(f) * * *

(2) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of § 1915.153.

* * * * *

9. In § 1915.53, revise paragraph (d) to read as follows:

**§ 1915.53 Welding, cutting and heating in way of preservative coatings.**

* * * * *

(d) *Protection against toxic preservative coatings.* (1) In enclosed spaces, all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of § 1915.154.

(2) In the open air, employees shall be protected by a filter type respirator in accordance with the requirements of § 1915.154.

* * * * *

10. In § 1915.71, revise paragraphs (e)(2)(ii), (e)(9), (f)(8), and (j)(3) to read as follows:

**§ 1915.71 Scaffolds or staging.**

* * * * *

(e) * * *

(2) * * *

(ii) Ladders over 16 feet long and up to and including those 20 feet long shall have side rails of not less than $1\frac{5}{16} \times 3$ inch lumber.

* * * * *

(9) Platform planking shall be in accordance with the requirements of paragraph (i) of this section, except that the width of the platform planking shall not exceed the distance between the side rails.

(f) * * *

(8) No more than two persons shall be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this paragraph. Where heavier construction is used, the number of persons permitted to work on the scaffold shall be determined by the size and the safe working load of the scaffold.

* * * * *

(j) * * *

(3) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted, employees working more than 5 feet above solid surfaces shall be protected by safety belts and life lines meeting the requirements of §§ 1915.159 and 1915.160, and employees working over water shall be protected by buoyant work vests meeting the requirements of § 1915.158(a).

* * * * *

11. In § 1915.72, revise paragraphs (a)(4),(a)(6) and (c)(1)(iii) to read as follows:

**§ 1915.72 Ladders.**

(a) * * *

(4) Portable metal ladders shall be of strength equivalent to that of wood ladders. Manufactured portable metal ladders provided by the employer shall be in accordance with the provisions of ANSI Standard A14.2–1972: Safety Requirements for Portable Metal Ladders (incorporated by reference, see § 1915.5).

* * * * *

(6) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of ANSI Standard A14.1–1975: Safety Requirements for Portable Wood Ladders (incorporated by reference, see § 1915.5).

* * * * *

(c) *Construction of portable wood cleated ladders from 30 to 60 feet in length.* (1) * * *

(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength.

* * * * *

12. In § 1915.73, revise paragraph (e) to read as follows:

**§ 1915.73 Guarding of deck openings and edges.**

* * * * *

(e) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by personal flotation devices, meeting the requirements of § 1915.158(a).

* * * * *

13. In § 1915.74 revise paragraph (a)(2) and the first sentence of paragraph (c)(2) to read as follows:

**§ 1915.74 Access to vessels.**

(a) * * *

(2) Each side of such gangway, and the turn table if used, shall have a railing with a minimum height of approximately 33 inches measured perpendicularly from rail to walking surface at the stanchion, with a midrail. Rails shall be of wood, pipe, chain, wire or rope and shall be kept taut at all times.

* * * * *

(c) * * *

(2) Unless employees can step safely to or from the wharf, float, barge, or river towboat, either a ramp meeting the requirements of paragraph (c)(1) of this section or a safe walkway meeting the requirements of paragraph (a)(7) of this section shall be provided. * * *

* * * * *

14. In § 1915.75, revise the first sentence of paragraphs (b) and (d) and revise paragraph (e) to read as follows:

**§ 1915.75 Access to and guarding of dry docks and marine railways.**

* * * * *

(b) Each side of such gangway, ramp or permanent stairway, including those which are used for access to wing walls from dry dock floors, shall have a railing with a midrail. * * *

* * * * *

(d) Railings approximately 42 inches in height, with a midrail, shall be provided on the edges of wing walls of floating dry docks and on edges of graving docks. * * *

(e) When employees are working on the floor of a floating dry dock where they are exposed to the hazard of falling into the water, the end of the dry dock shall be equipped with portable

stanchions and 42 inch railings with a midrail. When such a railing would be impracticable or ineffective, other effective means shall be provided to prevent employees from falling into the water.

* * * * *

15. In § 1915.77, revise the first sentence of paragraphs (a) and (c) and revise paragraph (e) to read as follows:

**§ 1915.77 Working surfaces.**

(a) Paragraphs (b) through (d) of this section shall apply to ship repairing and shipbuilding operations, and shall not apply to shipbreaking. * * *

* * * * *

(c) When employees are working aloft, or elsewhere at elevations more than 5 feet above a solid surface, either scaffolds or a sloping ladder, meeting the requirements of this subpart, shall be used to afford safe footing, or the employees shall be protected by safety belts and lifelines meeting the requirements of §§ 1915.159 and 1915.160. * * *

* * * * *

(e) When employees are boarding, leaving, or working from small boats or floats, they shall be protected by personal flotation devices meeting the requirements of § 1915.158(a).

* * * * *

16. In § 1915.92, revise paragraph (e) to read as follows:

**§ 1915.92 Illumination.**

* * * * *

(e) Employees shall not be permitted to enter dark spaces without a suitable portable light. The use of matches and open flame lights is prohibited. In nongas free spaces, portable lights shall meet the requirements of § 1915.13(b)(9).

* * * * *

17. In § 1915.97, revise paragraph (a) to read as follows:

**§ 1915.97 Health and sanitation.**

(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified in § 1915.1200 of this part and those hazards for which specific precautions are required in subparts B, C, and D of this part.

* * * * *

18. In § 1915.112, revise paragraph (c)(3) to read as follows:

**§ 1915.112 Ropes, chains and slings.**

* * * * *

(c) * * *

(3) Interlink wear, not accompanied by stretch in excess of 5 percent, shall be noted and the chain removed from service when maximum allowable wear at any point of link, as indicated in Table G–9 in § 1915.118, has been reached.

* * * * *

19. In § 1915.115, revise paragraph (d) to read as follows:

**§ 1915.115 Hoisting and hauling equipment.**

* * * * *

(d) Accessible areas within the swing radius of the outermost part of the body of a revolving derrick or crane, whether permanently or temporarily mounted, shall be guarded in such a manner as to prevent an employee from being in such a position as to be struck by the crane or caught between the crane and fixed parts of the vessel or of the crane itself.

* * * * *

20. In § 1915.116, revise paragraph (n) to read as follows:

**§ 1915.116 Use of gear.**

* * * * *

(n) A section of hatch through which materials or equipment are being raised, lowered, moved, or otherwise shifted manually or by a crane, winch, hoist, or derrick, shall be completely opened. The beam or pontoon left in place adjacent to an opening shall be sufficiently lashed, locked or otherwise secured to prevent it from moving so that it cannot be displaced by accident.

* * * * *

21. In § 1915.118:

**§ 1915.118 Tables.**

a. Revise the headings in the second and third columns in table E–1, from ''24 or less'' ''24–40'' ''40–60'' to ''≤24'' ''>24≤ 40'' ''>40≤60'' respectively

b. Revise the heading in table E–3 from ''Up to 10'' ''10 to 16'' ''16 to 20'' to ''≤10'' ''>10≤16'' ''>16≤20'' respectively

c. In the second column of table G–1, under ''Diameter in Inches'' remove ''1–15/32'' and add in its place ''15/32'' and remove ''1–13/16'' and add in its place ''13/16'';

d. In table G–3, under 6 x 37 Classification in column ''B'' under the heading ''Vertical,'' remove ''621'' and add in its place, ''61'';

e. In table G–7, in the second column under the heading ''Single leg,'' remove ''27,6'' and add in its place ''27.6'';

f. In table G–9, in the first column under ''Chain size in inches,'' remove ''1–1/6'' and add in its place ''1–1/8'';

g. In table G–9, in the second column under ''Maximum allowable wear in fraction of inches'' remove ''1–1/64'' and add in its place ''11/64,'' and remove ''1–1/32'' and add in its place ''11/32'';

22. In § 1915.131, revise the first three sentences of paragraph (c), revise paragraph (d) and the first sentence of paragraph (g) to read as follows:

**§ 1915.131 General precautions.**

* * * * *

(c) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. * * *

(d) The moving parts of machinery on a dry dock shall be guarded.

* * * * *

(g) Headers, manifolds and widely spaced hose connections on compressed air lines shall bear the word ''air'' in letters at least 1-inch high, which shall be painted either on the manifolds or separate hose connections, or on signs permanently attached to the manifolds or connections. * * *

* * * * *

23. In § 1915.134, revise the first sentence of paragraph (c) to read as follows:

**§ 1915.134 Abrasive wheels.**

* * * * *

(c) Cup type wheels used for external grinding shall be protected by either a revolving cup guard or a band type guard in accordance with the provisions of the United States of America Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1–1964. * * *

* * * * *

24. In § 1915.152, revise paragraph (e)(2) to read as follows:

**§ 1915.152 General requirements.**

* * * * *

(e) * * *

(2) The employer shall ensure that each affected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE.

* * * * *

25. In § 1915.158, revise paragraphs (a)(1) and (b)(4) to read as follows:

**§ 1915.158 Lifesaving equipment.**

(a) *Personal flotation devices (PFDs).*

(1) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46

CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.

* * * * *

(b) * * *

(4) At least 90 feet (27.43m) of line shall be attached to each ring life buoy.

* * * * *

26. In § 1915.159, revise paragraphs (a)(3), (a)(9), (b)(2), (b)(3), (b)(4), (b)(6)(iv), the note to paragraph (b)(6), paragraphs (b)(7), (c)(1)(i), and (c)(8) to read as follows:

**§ 1915.159 Personal fall arrest systems (PFAS).**

* * * * *

(a) * * *

(3) D-rings and snaphooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.24 Kn).

* * * * *

(9) Anchorages shall be capable of supporting at least 5,000 pounds (22.24 Kn) per employee attached, or shall be designed, installed, and used as follows:

* * * * *

(b) * * *

(2) Vertical lifelines and lanyards shall have a minimum tensile strength of 5,000 pounds (22.24 Kn).

(3) Self-retracting lifelines and lanyards that automatically limit free fall distances to 2 feet (0.61 m) or less shall be capable of sustaining a minimum tensile load of 3,000 pounds (13.34 Kn) applied to a self-retracting lifeline or lanyard with the lifeline or lanyard in the fully extended position.

(4) Self-retracting lifelines and lanyards which do not limit free fall distance to 2 feet (0.61 m) or less, ripstitch lanyards and tearing and deforming lanyards shall be capable of sustaining a minimum static tensile load of 5,000 pounds (22.24 Kn) applied to the device when they are in the fully extended position.

* * * * *

(6) * * *

(iv) Have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet (1.83 m), or the free fall distance permitted by the system, whichever is less;

**Note to Paragraph (b)(6) of this Section**: A personal fall arrest system which meets the criteria and protocols contained in appendix B, is considered to comply with paragraph (b)(6). If the combined tool and body weight is 310 pounds (140.62 kg) or more, systems that meet the criteria and protocols contained in appendix B will be deemed to comply with the provisions of paragraph (b)(6) only if they are modified appropriately to provide protection for the extra weight of the employee and tools. (7) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.83 m) nor contact any lower level.

(c) *Criteria for selection, use and care of systems and system components.*

(1) * * *

(i) The attachment point of a body harness shall be located in the center of the wearer's back near the shoulder level, or above the wearer's head. If the free fall distance is limited to less than 20 inches (50.8 cm), the attachment point may be located in the chest position; and

* * * * *

(8) Body belts shall be at least one and five-eighths inches (4.13 cm) wide.

* * * * *

27. In § 1915.160, revise paragraphs (a)(2), (b)(1), the first two sentences of (b)(2)(i) and revise paragraph (b)(2)(ii) to read as follows:

**§ 1915.160 Positioning device systems.**

* * * * *

(a) * * *

(2) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.24 Kn).

* * * * *

(b) *Criteria for positioning device systems.* (1) Restraint (tether) lines shall have a minimum breaking strength of 3,000 pounds (13.34 Kn).

(2) * * *

(i) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a 6 foot (1.83 m) drop of a 250-pound (113.4 kg) weight. The system shall limit the initial arresting force to not more than 2,000 pounds (8.9 Kn), with a duration not to exceed 2 milliseconds.

* * *

(ii) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a 4 foot (1.22 m) drop of a 250-pound (113.4 kg) weight.

* * * * *

28. In Appendix A to subpart I of Part 1915, revise paragraph (a) of section 10, *Selection guidelines for foot protection*, to read as follows:

**Appendix A to Subpart I—Non-Mandatory Guidelines For Hazard Assessment, Personal Protective Equipment (PPE), and PPE Training Program**

* * * * *

10. *Selection guidelines for foot protection.* (a) Safety shoes and boots must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal (top of foot) protection should be provided, and in some other special situations, electrical conductive or insulating safety shoes would be appropriate.

* * * * *

29. In Appendix B to Subpart I of Part 1915, revise paragraphs 1(a)(2), 1(a)(4), 1(b)(1), 1(b)(3), 1(b)(5), 1(c)(1)(i), 1(c)(1)(ii), 1(c)(2)(i), 1(c)(3), 1(d)(1)(i), 2(a)(1) and (2), the first two sentences of 2(a)(3), and revise 2(a)(4) to read as follows:

**Appendix B to Subpart I—General Testing Conditions and Additional Guidelines for Personal Fall Protection Systems (Non-Mandatory)**

1. *Personal fall arrest systems.* * * *

(a) * * *

(2) The anchorage should be rigid, and should not have a deflection greater than .04 inches (1 cm) when a force of 2,250 pounds (10.01 Kn) is applied.

* * * * *

(4) The test weight used in the strength and force tests should be a rigid, metal cylindrical or torso-shaped object with a girth of 38 inches plus or minus 4 inches (96.5 cm plus or minus 10.16 cm).

* * * * *

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus 5 pounds (136.08 kg plus or minus 2.27 kg) should be used. (See paragraph (a)(4) above.)

* * * * *

(3) For lanyard systems, the lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5.08 cm) as measured from the fixed anchorage to the attachment on the body belt or harness.

* * * * *

(5) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to 2 feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of 1 foot (0.31 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.29 m) from a point that is 1.5 feet (45.72 cm) above the anchorage point, to its hanging location (6 feet (1.83 m) below the anchorage). The test weight should fall without interference, obstruction, or hitting the floor or the ground during the test. In some cases, a

non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

* * * * *

(c) *Force test general.* * * *

(1) For lanyard systems. (i) A test weight of 220 pounds plus or minus three pounds (99.79 kg plus or minus 1.36 kg) should be used (see paragraph (a)(4) above).

(ii) Lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5.08 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

* * * * *

(2) For all other systems. (i) A test weight of 220 pounds plus or minus 3 pounds (99.79 kg plus or minus 1.36 kg) should be used (see paragraph (a)(4) above).

* * * * *

(3) Failure. A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (5.6 Kn) when using a body belt, or exceeds 2,520 pounds (11.21 Kn) when using a body harness.

* * * * *

(d) *Deceleration device tests—general.* * * *

(1) Rope-grab-type deceleration devices. (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than 1 foot (30.48 cm), and the mechanism should lock each time.

* * * * *

2. *Positioning device systems*—(a) *Test Conditions.* (1) The fixed anchorage should be rigid and should not have a deflection greater than .04 inches (1.02 mm) when a force of 2,250 pounds (10.01 Kn) is applied.

(2) For lineman's body belts and pole straps, the body belt should be secured to a 250 pound (113.4 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap should be attached to the rigid anchorage and the other end to the body belt. The sand bag should be allowed to free fall a distance of 4 feet (1.22 m). Failure of the pole strap and body belt should be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

(3) For window cleaner's belts, the complete belt should withstand a drop test consisting of a 250 pound (113.4 kg) weight falling free for a distance of 6 feet (1.83 m). The weight should be a rigid object with a girth of 38 inches plus or minus four inches (96.52 cm plus or minus 10.16 cm.) * * *

(4) All other positioning device systems (except for restraint line systems) should withstand a drop test consisting of a 250-pound (113.4 kg) weight falling free for a distance of 4 feet (1.22 m). The weight should be a rigid object with a girth of 38 inches plus or minus 4 inches (96.52 cm plus or minus 10.16 cm). The body belt or harness should be affixed to the test weight as it would be to an employee. The system should be connected to the rigid anchor in the manner that the system would be connected in normal use. The weight should be lifted exactly 4 feet (1.22 m) above its ''at rest'' position and released so as to permit a vertical free fall of 4 feet (1.22 m). Any breakage or slippage which permits the weight to fall free to the ground should constitute failure of the system.

30. In § 1915.163, revise the first sentence of paragraph (a)(1) and revise paragraph (a)(2) to read as follows:

**§ 1915.163 Ship's piping systems.**

(a) * * *

(1) The isolation and shutoff valves connecting the dead system with the live system or systems shall be secured, blanked, and tagged to indicate that employees are working on the systems. * * *

(2) Drain connections to the atmosphere on all of the dead interconnecting systems shall be opened for visual observation of drainage.

31. In § 1915.165, revise paragraph (a)(1) to read as follows:

**§ 1915.165 Ship's deck machinery.**

(a) * * *

(1) The devil claws (also known as chain stoppers) shall be made fast to the anchor chains.

* * * * *

32. In § 1915.172, revise the first sentence of paragraph (a) to read as follows:

**§ 1915.172 Portable air receivers and other unfired pressure vessels.**

(a) Portable, unfired pressure vessels, built after the effective date of this regulation, shall be marked and reported indicating that they have been designed and constructed to meet the standards of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963. * * *

* * * * *

33. In § 1915.181, revise paragraph (c) to read as follows:

**§ 1915.181 Electrical circuits and distribution boards.**

* * * * *

(c) Deenergizing the circuit shall be accomplished by opening the circuit breaker, opening the switch, or removing the fuse, whichever method is appropriate. The circuit breaker, switch, or fuse location shall be tagged to indicate that an employee is working on the circuit. Such tags shall not be removed nor the circuit energized until it is definitely determined that the work on the circuit has been completed.

* * * * *

34. In § 1915.1000, revise the heading to paragraph (d) to read as follows:

**§ 1915.1000 Air contaminants.**

* * * * *

(d) *Computation formula* * * *

* * * * *

35. In § 1915.1001, revise the first sentence of paragraph (d)(2), paragraphs (d)(4), (g)(5)(ii)(B)(*1*), (g)(5)(ii)(B)(*7*), (g)(5)(ii)(B)(*8*), (g)(5)(iii)(A), (g)(8)(iii)(C), (h)(1)(iv), the first item in the first column of Table 1, paragraphs (i)(4)(i), the heading of (k)(3), (k)(3)(ii), (k)(5)(ii)(A), (k)(9)(vi), (k)(9)(viii), and (o)(1) to read as follows:

**§ 1915.1001 Asbestos.**

* * * * *

(d) * * *

(2) Asbestos hazards at a multi-employer worksite shall be abated by the contractor who created or controls the source of asbestos contamination. * * *

* * * * *

(4) All employers of employees working adjacent to regulated areas established by another employer on a multi-employer worksite shall take steps on a daily basis to ascertain the integrity of the enclosure and/or the effectiveness of the control method relied on by the primary asbestos contractor to assure that asbestos fibers do not migrate to such adjacent areas.

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(B) *Work practices—(1)* Each glovebag shall be installed so that it completely covers the circumference of pipes or other structures where the work is to be done.

* * * * *

(*7*) Where a system uses an attached waste bag, such bag shall be connected to a collection bag using hose or other material which shall withstand the pressure of ACM waste and water without losing its integrity.

(*8*) A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected.

* * * * *

(iii) * * *

(A) *Specifications:* In addition to the specifications for glove bag systems above, negative pressure glove bag systems shall attach the HEPA vacuum system or other device to the bag to prevent collapse during removal.

* * * * *

(8) * * *

(iii) * * *

(C) Unwrapped or unbagged panels or shingles shall be immediately lowered to the ground via a covered dust-tight chute, crane or hoist, or be placed in an impervious waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift.

* * * * *

(h) (1) * * *

(iv) During all Class II and III asbestos jobs where the employer does not produce a ''negative exposure assessment.''

* * * * *

TABLE 1.—RESPIRATORY PROTECTION FOR ASBESTOS FIBERS

| Airborne concentration of asbestos or conditions of use | Required respirator |
|---|---|
| Not in excess of 1 f/cc (10 X PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section. | Half-mask air purifying respirator other than a disposable respirator, equipped with high efficiency filters. |
| Not in excess of 5 f/xx (50 X PEL). | Full facepiece air-purifying respirator equipped with high efficiency filters. |
| Not in excess of 10 f/cc (100 X PEL). | Any powered air-purifying respirator equipped with high efficiency filters or any supplied air respirator operated in continuous flow mode. |

* * * * *

(i) * * *

(4) *Inspection of protective clothing.* (i) The qualified person shall examine worksuits worn by employees at least once per workshift for rips or tears that may occur during the performance of work.

* * * * *

(k) * * *

(3) *Duties of employers whose employees perform work subject to this standard in or adjacent to areas containing ACM and PACM.* * * *

(ii) Before work under this standard is performed employers of employees who will perform such work shall inform the following persons of the location and quantity of ACM and/or PACM present at the worksite and the precautions to be taken to ensure that airborne asbestos is confined to the area.

* * * * *

(5) * * *

(ii) * * *

(A) Having completed an inspection conducted pursuant to the requirements of AHERA (40 CFR part 763, subpart E) which demonstrates that the material is not ACM; or

* * * * *

(9) * * *

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in the recognition of damage, deterioration, and delamination of asbestos containing building materials. Such a course shall take at least 2 hours.

* * * * *

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by the provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

* * * * *

(o) *Qualified person*—(1) *General.* On all shipyard worksites covered by this standard, the employer shall designate a qualified person, having the qualifications and authority for ensuring worker safety and health required by subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

36. Amend Appendix C to 1915.1001 as follows:

a. Under ''Qualitative Fit Test Protocols'' revise the heading to Section I, ''Isoamyl Acetate Protocol'';

b. In Section II, ''Saccharin Solution Aerosol Protocol'', revise the heading to paragraph B, and revise paragraph C(15);

c. Under Section III, revise the heading of ''Irritant Fume Protocol'' and under ''Quantitative Fit Test Procedures'', under heading 1, revise paragraph (a); revise headings of numbers 2 and 5 and revise the first sentence of paragraph 5;

d. Revise paragraph 6 and paragraph 9(f).

The revisions read as follows:

**Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory**

**Qualitative Fit Test Protocols**

**I. Isoamyl Acetate Protocol**

* * *

**II. Saccharin Solution Aerosol Protocol**

*A.* * * *

*B. Taste Threshold Screening*

* * *

*C.* * * *

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

* * * * *

**III. Irritant Fume Protocol**

* * * * *

*Quantitative Fit Test Procedures*

1. General.

a. The method applies to negative-pressure non-powered air-purifying respirators only.

* * * * *

2. Definitions.

* * * * *

5. Exercise Regime.

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures.* * * *

* * * * *

6. Test Termination.

The test shall be terminated whenever any single peak penetration exceeds 5 percent for half-masks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h)

* * * * *

9. * * *

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

* * * * *

[FR Doc. 02–16530 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–26–P

**DEPARTMENT OF TRANSPORTATION**

**33 CFR Part 100**

**[CGD07–02–049]**

**RIN 2115–AE46**

## Special Local Regulations; Savannah Waterfront Association July 4th Fireworks Display, Savannah River, Savannah, GA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being established on the Savannah River for the Savannah Waterfront Association July 4th Celebration Fireworks Display, Savannah, GA. This rule creates a regulated area on the waters of the Savannah River around the fireworks launch point located ashore but close to the river's edge. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** This rule is effective from 9 p.m. until 11 p.m. on July 4, 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 [CGD07–02–049] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St., Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Martinez, Coast Guard Group Charleston at (843)724–7632.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

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

### Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks for the Savannah Waterfront Association July 4th Fireworks Display, Savannah, GA. The event sponsor expects approximately 120 spectator craft to observe the show. The fireworks launch point will be located ashore, approximately 35 yards from the river's edge, in approximate position 32°04.991′ N, 081°05.309′ W. This rule creates a regulated area only on the waters of the Savannah River within 175 yards of the launch point, which is located ashore. This rule creates no restrictions on land. It prohibits non-participant persons and vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the rule minimally impacts navigation: The regulated area will be enforced for two hours, vessels will still be able to transit the waterway around the regulated area (the regulated area extends approximately 140 yards into the channel for a small portion of the river adjacent to the launch site, which leaves approximately 25 yards around the zone in which to navigate), and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' 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 may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Savannah River from 9 p.m. to 11 p.m., July 4, 2002. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it minimally impacts navigation: the regulated area will be enforced for two hours, vessels will still be able to transit the waterway around the regulated area (the regulated area extends approximately 140 yards into the channel for a small portion of the river adjacent to the launch site, which leaves approximately 25 yards around the zone in which to navigate), and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

### Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding this rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 contains no collection of information requirements 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. Although 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 safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this action and has determined pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

**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.

**List of Subjects in 33 CFR Part 100**

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 100 as follows:

## PART 100—MARINE EVENTS

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. until 11 p.m. on July 4, 2002, add temporary § 100.35T–07–049 to read as follows:

**§ 100.35T–07–049 Savannah Waterfront Association July 4th Fireworks Display, Savannah River, Savannah GA.**

(a) *Regulated area.* A regulated area is established for the waters in Savannah River, Savannah, GA, encompassing a 175-yard radius around a point located ashore at approximate position 32° 04.991′ N, 081° 05.309′ W. All coordinates referenced use Datum: NAD 1983.

(b) *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 Commanding Officer, Coast Guard Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited, unless expressly authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This section will be enforced from 9 p.m. until 11 p.m. on July 4, 2002.

Dated: June 27, 2002.

**J.W. Stark,**

*Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.*

[FR Doc. 02–16747 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD07–02–074]**

**RIN 2115–AE46**

## Special Local Regulations; APBA Off-Shore Boat Race, Tybee Island, GA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being established for the APBA Off-Shore Boat Race, Tybee Island, Georgia. This rule restricts the movement of non-participating vessels in the regulated area around the race course located off-shore of Tybee Island. This rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This rule is effective from 11 a.m. on July 6, 2002 until 6 p.m. on July 8, 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 [CGD07–02–074] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston S.C. 29401 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Martinez, Coast Guard Group Charleston at (843) 724–7632.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from a high speed boat race and because there will be numerous spectator craft in the area.

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

**Background and Purpose**

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with a high-speed power boat race. This rule prohibits non-participating vessels from entering the designated regulated area off-shore of Tybee Island, Georgia during the event. A Coast Guard Patrol Commander will be present during this event to enforce this rule.

**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 the rule minimally impacts navigation: the regulated area will be enforced for seven hours on two separate days, vessels will still be able to transit around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

**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.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Atlantic Ocean, near Tybee Island, Georgia, from 11 a.m. to 6 p.m. on July 6 or July 7, 2002 (or July 8, 2002 if the race is postponed due to weather on July 6 or July 7). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it has minimal impact on navigation: the regulated area will be enforced for seven hours on two separate days, vessels will still be able to transit around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

**Assistance for Small Entities**

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 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) governs the issuance of Federal regulations that require unfunded mandates. 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. Although 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 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 safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

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

**Energy Effects**

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

**List of Subjects in 33 CFR Part 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—MARINE EVENTS

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. July 6, 2002 until 6 p.m. July 8, 2002, add temporary § 100.35T–07–074 to read as follows:

**§ 100.35T–07–074, APBA Off-shore Boat Race, Tybee Island, Georgia.**

(a) *Regulated Area:* A regulated area is established for all waters within an area enclosed by lines between the following points located off-shore of Tybee Island, GA:

(1) 32–01.638′N 080–50.420′W, then roughly south for about 1 mile to

(2) 32–00.640′N 080–50.334′W, then roughly east for about one-half mile to

(3) 32–00.719′N 080–49.664′W, then roughly southeast for about one-half mile to

(4) 32–00.465′N 080–49.264′W, then roughly east for about one mile to

(5) 32–00.519′N 080–48.501′W, then roughly north-northwest one and one-quarter mile to

(6) 32–01.716′N 080–49.122′W, then roughly west one and one-quarter mile to point (1).

All coordinates referenced use Datum: NAD 1983.

(b) *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 Commanding Officer, Coast Guard Group Charleston SC.

(c) *Special Local Regulations:* Non-participant vessels are prohibited from entering the regulated area unless authorized by the Patrol Commander. The sponsor will establish and mark an area suitable for viewing the race from spectator craft.

(d) *Dates:* This section will be enforced from 11 a.m. until 6 p.m. on July 6, 2002, and from 11 a.m. until 6 p.m. on July 7, 2002. If the race is postponed on one of these dates due to weather, this section will be enforced from 11 a.m. until 6 p.m. on July 8, 2002.

Dated: June 27, 2002.

**J.W. Stark,**

*Captain, Coast Guard, Acting Commander, Seventh Coast Guard District.*

[FR Doc. 02–16746 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD07–02–056]**

**RIN 2115–AE46**

## Special Local Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being established for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. This rule creates a regulated area around the fireworks barge. It will be enforced from 8:30 p.m. to 10:15 p.m. on July 4, 2002 (rain date July 5, 2002). This rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This rule is effective from 8:30 p.m. July 4, 2002 until 10:15 p.m. July 5, 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 [CGD07–02–056] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston, SC 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Chris Martinez, Coast Guard Group Charleston at (843) 724–7632.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

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

### Background and Purpose

This rule is required to provide for the safety of life on navigable waters because of the inherent danger associated with the aerial fireworks display during the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event sponsor expects numerous spectator craft to be in the vicinity of the fireworks display. This rule creates a regulated area on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 350-yard radius of a fireworks launch barge in approximate position 32°08.2′ N, 080°49.2′ W. Non-participant vessels and persons are prohibited from entering the regulated area without the permission of the Coast Guard Patrol Commander.

### 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, l979) because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Calibogue Sound around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

### 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.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Calibogue Sound from 8:30 p.m. to 10:15 p.m. on July 4, 2002 (or July 5, 2002 if the event is postponed). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the impacts on navigation are expected to be minimal: the rule will be enforced for under two hours, vessels will be able to transit Calibogue Sound around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

### 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 can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although 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 safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

**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.

**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—MARINE EVENTS

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 p.m. on July 4, 2002 until 10:15 p.m. on July 5, 2002, add temporary § 100.35T–07–056 to read as follows:

**§ 100.35T–07–056 Harbour Town Fireworks Display, Calibogue Sound, Harbour Town, Hilton Head, SC.**

(a) *Regulated area.* A regulated area is established on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 350-yard radius of a fireworks launch barge in approximate position 32°08.2′ N, 080°49.2′ W. All coordinates referenced use Datum: NAD 1983.

(b) *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 Commanding Officer, Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited unless authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This rule will be enforced from 8:30 p.m. to 10:15 p.m. on July 4, 2002. If the event is postponed on July 4, 2002, it will be enforced from 8:30 p.m. to 10:15 p.m. on July 5, 2002.

Dated: June 14, 2002.

**John E. Crowley, Jr.,**

*Captain, Coast Guard, Acting Commander Seventh Coast Guard District.*

[FR Doc. 02–16743 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## 33 CFR Part 100

**[CGD07–02–045]**

**RIN 2115–AE46**

## Special Local Regulations; Skull Creek, Hilton Head, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Temporary special local regulations are being established for the Skull Creek July 4th Celebration Fireworks Display, on Skull Creek, Hilton Head, SC. This rule creates a regulated area around the fireworks barge. This rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This rule is effective from 8:30 p.m. on July 4, 2002, until 10:30 p.m. on July 5, 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 [CGD07–02–045] and are available for inspection or copying at Coast Guard Group Charleston, 196 Tradd St, Charleston S. C. 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Martinez, Coast Guard Group Charleston at (843)—724–7621.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this

rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public from aerial fireworks and because there will be numerous spectator craft in the area.

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

**Background and Purpose**

This rule is required to provide for the safety of life on navigable waters because of the inherent danger of aerial fireworks for the Skull Creek July 4th Celebration on Skull Creek, Hilton Head, SC. The event sponsor expects approximately 120 spectator craft to observe the show. The fireworks barge will be located in approximate position 32°13.95′ N, 080°45.1′ W, approximately 900 feet offshore from Hudson's Seafood. This rule creates a regulated area that will prohibit non-participant vessels from entering the regulated area during the event without the permission of the Coast Guard Patrol Commander.

**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 the rule minimally impacts navigation: the regulated area will only be in effect for two hours, the main channel will be open, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' 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 may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Skull Creek, part of the Intercoastal Waterway, from 8:30 p.m. to 10:30 p.m., July 4, 2002 (or July 5, 2002 if the event is postponed). The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it has minimal impact on navigation: the rule will only be in effect for two hours, the main channel will be open, vessels will still be able to transit the waterway around the regulated area, and vessels may be allowed to enter the regulated area with the permission of the Coast Guard Patrol Commander.

**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 this rule so that they may better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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-GAIR (1–888–734–3247)

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**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 safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this action and has determined pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1D, that this action is categorically excluded from further environmental documentation.

**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.

**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—MARINE EVENTS

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 p.m. on July 4, 2002 until 10:30 p.m. on July 5, 2002 add temporary § 100.35T–07–045 to read as follows:

**§ 100.35T–07–045; Skull Creek July 4th Celebration, Skull Creek, Hilton Head SC.**

(a) *Regulated area.* A regulated area is established for the waters in Skull Creek, Hilton Head, SC, encompassing a 500-foot radius around a barge located in approximate position 32°13.95′ N, 080°45.1′ W. All coordinates referenced use Datum: NAD 1983.

(b) *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 Commanding Officer, Coast Guard Group Charleston, SC.

(c) *Special local regulations.* Entry into the regulated area by non-participant persons or vessels is prohibited, unless expressly authorized by the Coast Guard Patrol Commander.

(d) *Dates.* This section will be enforced from 8:30 p.m. until 10:30 p.m. on July 4, 2002. If the event is postponed on July 4, 2002, this section will be enforced from 8:30 p.m. to 10:30 p.m. on July 5, 2002.

Dated: June 14, 2002.

**John E. Crowly, Jr.,**

*Captain, Coast Guard, Acting Commander Seventh Coast Guard District.*

[FR Doc. 02–16748 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD07–01–143]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the operating regulations of the Dania Beach Boulevard bridge across the Atlantic Intracoastal Waterway, mile 1069.4 at Dania Beach, Florida, from July 31, 2002 to November 15, 2002. This temporary rule allows this bridge to only open a single leaf of the bridge on a regular schedule. Double leaf openings will be provided during certain times. This action is necessary to facilitate repairs to the bridge.

**DATES:** This rule is effective from 8:01 p.m. on July 31, 2002 until 6 p.m. on November 15, 2002.

**ADDRESSES:** Comments and material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–143] and are available for inspection or copying at room 432, Seventh Coast Guard District, Bridge Branch, 909 S.E. 1st Avenue, Miami, Florida, 33130–3050, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, telephone 305–415–6744.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On February 21, 2002 we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations: Dania Beach Boulevard Drawbridge, Atlantic Intracoastal Waterway, Florida'' in the **Federal Register** (67 FR 7991).

On April 16, 2002, PCL Constructors, who were hired by Florida Department of Transportation, notified the Coast Guard that due to a safety issue involving the welding of deck plates, the bridge should be put on a single leaf opening schedule as soon as possible, and requested this be done to facilitate repairs. The Coast Guard met with Florida Department of Transportation representatives on April 22, 2002 to discuss this request. After this meeting the Coast Guard determined that to best facilitate the needs of navigation and bridge repair, the bridge would be put on a 20-minute, single leaf opening schedule with double leaf openings available with 2 hours advance notice to the bridge tender. On June 13, 2002 the Coast Guard published a notice of temporary deviation from regulations entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1069.4 at Dania Beach, Broward County, FL'' in the **Federal Register** (67 FR 40606). This deviation allows the bridge operator to only open a single leaf of the bridge from June 4, 2002 until July 31, 2002 with double leaf openings available with 2 hours advanced notice to the bridge tender.

### Background and Purpose

The Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, Broward County, Florida, has a vertical clearance of 22 feet at mean high water and a horizontal clearance of 45 feet between fenders. The existing operating regulations in 33 CFR 117 require the bridge to open on signal.

On November 7, 2001, the Coast Guard met with the Florida Department of Transportation representative, URS to discuss altering the Dania Beach Boulevard bridge regulations to facilitate a major rehabilitation of the bridge. The representatives stated that due to the comprehensive nature of the repairs, which includes rebalancing the bascules, they would only be able to open a single span of the bridge for a period of 45 days during the months of September and October. URS requested the bridge be allowed to only open a single leaf of the bridge on the quarter hour and three-quarter hour during these 45 days. Double leaf openings would not be available during this time period because one span will be inoperable. Since the notice of proposed rulemaking was published, URS determined that the 45 days will begin on September 5, 2002 and end on October 19, 2002.

On April 16, 2002, PCL Contractors notified the Coast Guard that the work on the bridge bascules had started and due to safety issues involving welding deck plates, the current on-demand bridge schedule raised safety concerns and impeded their work. As a result, they requested a 20-minute, single leaf, opening schedule. On April 22, 2002, the Coast Guard contacted URS to discuss this request. As a result of that meeting, the Coast Guard determined that operational and safety concerns justified a 20-minute, single leaf, opening schedule. Double-leaf openings

will be available with 2 hours advance notice to the bridge tender. This action is necessary to facilitate worker safety during repairs to the bridge without significantly hindering navigation. This schedule will run from July 31, 2002 until September 5, 2002 and then again from October 19, 2002 until November 15, 2002.

Although this schedule will run for a longer period of time than that proposed in the notice of proposed rulemaking, safety issues that were only discovered after work commenced justified this additional single leaf schedule. The schedule for the additional time still provides for single leaf openings 3 times an hour and provides for double leaf openings with 2 hours advance notice.

**Discussion of Comments and Changes**

We received 2 written comments and one verbal comment to the notice of proposed rulemaking. The Florida Department of State found that the project would not affect historic properties. The National Oceanic and Atmospheric Administration stated that any adverse effects that may occur on the marine and anadromous fishery resources and essential fish habitat would be minimal so did not have any comments. A representative from Marine Industries of Fort Lauderdale verbally told the Seventh Coast Guard District Bridge Branch staff that he did not oppose the proposed bridge operating schedule. The Coast Guard has not received any comments on the notice of temporary deviation from regulations.

**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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule only temporarily modifies the bridge's operating schedule and still provides for regular single leaf openings.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have a significant economic effect upon 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 because this rule only temporarily modifies the bridge's operating schedule and still provides for regular single leaf openings. We are only aware of one vessel that will be unable to pass through the bridge when double leaf openings are unavailable from September 5, 2002 until October 14, 2002. The vessel operator has agreed to moor on the other side of the bridge during this period.

**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 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 consult the person listed under **FOR FURTHER INFORMATION CONTACT**. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information requirements under the Paperwork Reduction Act 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 regulatory actions not specifically required by law. 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. Although this rule would 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 Execute 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 would 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 has considered the environmental impact of this action and has concluded that under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket we have indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 117**

Bridges.

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

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. A new temporary § 117.261(rr) is added to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(rr) *Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL.* (1) The Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL need only open a single leaf of the bridge on the hour, 20-minutes after the hour, and 40-minutes after the hour from 8:01 p.m. on July 31, 2002 until 12:01 a.m. on September 5, 2002 and from 11:59 p.m. on October 19, 2002 until 6 p.m. on November 15, 2002. A double-leaf opening will be available if 2 hours advance notice is provided to the bridge tender.

(2) From 12:02 a.m. on September 5, 2002 until 11:58 p.m. on October 19, 2002, the Dania Beach Boulevard bridge, mile 1069.4 at Dania Beach, FL need only open a single leaf of the bridge on the quarter hour and three-quarter hour.

Dated: June 26, 2002.

**J.W. Stark,**

*Captain, Coast Guard, Acting Commander Seventh Coast Guard District.*

[FR Doc. 02–16754 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP CHARLESTON–02–065]**

**RIN 2115–AA97**

## Security Zones; Charleston Harbor, Cooper River, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is maintaining temporary fixed security zones for the waters under the Highway 17 bridges over Charleston Harbor and the Don Holt I–526 Bridge over the Cooper River for an additional 6 months. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Vessels are prohibited from anchoring, mooring, or loitering within these zones, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

**DATES:** This regulation is effective from 12:01 a.m. on June 16, 2002 until 11:59 p.m. December 16, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Charleston 02–065], will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Erin Healey, Coast Guard Marine Safety Office Charleston, at (843) 747–7411.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). Publishing a NPRM and delaying the effective date of this rule would be contrary to national security since immediate action is necessary to protect the public, ports and waterways of the United States.

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

**Background and Purpose**

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, VA, there is an increased risk that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, S.C., against bridges within the security zones established by this rule. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These temporary security zones are necessary to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, S.C. and to ensure the continued unrestricted access to the sea from the Port.

On October 18, 2001, the Coast Guard issued a temporary final rule (Docket Number COTP Charleston 01–012, 67 FR 9194, 9195, February 28, 2002) creating temporary security zones around these bridges. That rule expired on January 15, 2002. On February 28, 2002 the Coast Guard published another temporary final rule in the **Federal Register** continuing these security zones until June 15, 2002 (67 FR 9201). This temporary final rule we are publishing today will maintain security zones in these same areas until December 16, 2002.

**Regulatory Evaluation**

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

We expect the economic impact of this rule to be so minimal so that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The limited geographic area impacted by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule would have a significant economic effect 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 because the limited geographic area encompassed by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

**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 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 and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under 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, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects 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 is amending 33 CFR part 165, as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. A new temporary § 165.T07–065 is added to read as follows:

**§ 165.T07–065 Security Zones; Charleston Harbor, Cooper River, South Carolina.**

(a) *Regulated areas.* (1) A temporary fixed security zone is established for the waters around the Highway 17 bridges, to encompass all waters of the Cooper River within a line connecting the following points: 32°48.23′ N, 079°55.3′ W; 32°48.1′ N, 079°54.35′ W; 32°48.34′ N, 079 055.25′ W; 32°48.2°N, 079°54.35′ W.

(2) Another temporary fixed security zone is established for the waters around the Interstate 526 Bridge spans (Don Holt Bridge) in Charleston Harbor and on the Cooper River and will encompass all waters within a line connecting the following points: 32°53.49′ N, 079°58.05′ W; 32°53.42′ N, 079°57.48′ W; 32°53.53′ N, 079°58.05′ W; 32°53.47′ N, 079°57.47′ W.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, vessels are allowed to transit through these zones but are prohibited from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

(c) *Authority.* In addition to 33 U.S.C. 1321 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective dates.* This section is effective from 12:01 a.m. on June 16,

2002 until 11:59 p.m. on December 16, 2002.

Dated: June 12, 2002.

**K.B. Janssen,**

*Lieutenant Commander, Coast Guard, Acting Captain of the Port.*

[FR Doc. 02–16744 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–02–042]**

**RIN 2115–AA97**

## Safety Zone; Sturgeon Bay Fireworks, Sturgeon Bay, WI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Sturgeon Bay Canal off of Peterson Building Inc. for the Sturgeon Bay Fireworks 2002 display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin.

**DATES:** This temporary rule is effective from 9:20 p.m. (local time) on July 5, 2002, until 10 p.m. (local time) on July 6, 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 [CGD09–02–042] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Chief Dave McClintock, Marine Safety Office Milwaukee, at (414) 747–7155.

**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. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property. Due to known accidents in other Captain of the Port zones, the absence of the safety zone could subject spectators and event organizers to unnecessary risks by being too close to the launch platform. Thus, the Coast Guard believes good causes exists for not delaying the effective date of this rule.

### Background and Purpose

This safety zone is being established to safeguard the public from the hazards associated with launching of fireworks in the Sturgeon Bay Canal, Sturgeon Bay, Wisconsin. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be enforced on July 5, 2002, from 9:20 p.m. (local time) until 10 p.m. (CST). The safety zone will encompass the arc of the circle with a 560 foot radius with its center in the approximate position 44°49.51′ N, 087°22.38′ W. These coordinates are based upon North American Datum 1983 (NAD 83).

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

### Regulatory Evaluation

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

### 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: the owners or operators of vessels intending to transit or anchor in the vicinity of the Peterson Building Inc. grounds by the Sturgeon Bay Canal from 9:20 p.m. (CST) until 10 p.m. (CST) on July 5, 2002.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative.

### 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 can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (see **ADDRESSES**).

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

### Collection of Information

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

### Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not

have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 proposed rule would 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant 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, and 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. From 9:20 p.m. (local time) on July 5, 2002, until 10 p.m. (local time) on July 6, 2002, a new temporary § 165.T09–042 is added to read as follows:

**§ 165.T09–042 Safety Zone; Sturgeon Bay Canal, Sturgeon Bay, Wisconsin.**

(a) *Location.* The safety zone will encompass all waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°49.51′ N, 087°22.38′ W (NAD 83).

(b) *Enforcement period.* This section will be enforced from 9:20 p.m. until 10 p.m. on July 5, 2002. If the event is canceled on July 5, 2002, the event will be rescheduled and the safety zone will be enforced during these same times on July 6, 2002.

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

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

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: June 25, 2002.

**M.R. DeVries,**

*Commander, Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.*

[FR Doc. 02–16745 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–02–003]**

**RIN 2115–AA97**

## Safety Zone; Annual Fireworks Events in the Captain of the Port Milwaukee Zone

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety zones for annual fireworks displays located in the Captain of the Port Milwaukee Zone. This action provides for the safety of life and property on navigable waters during each event. This action restricts vessel traffic in a portion of the Captain of the Port Milwaukee Zone during the enforcement periods.

**DATES:** This rule is effective on July 3, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–003 and are available for inspection or copying at, U.S. Coast Guard, Marine Safety Office Milwaukee, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Chief, Dave McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On April 18, 2002, we published a notice of proposed rulemaking (NPRM)

entitled Safety Zone; Captain of the Port Milwaukee Zone in the **Federal Register** (67 FR 19144). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

The Coast Guard is establishing 29 permanent safety zones that will be enforced during fireworks displays occurring annually at the same location. The 29 locations are the Henry W. Maier Festival Park Harbor Island, Outer Milwaukee Harbor, Lake Michigan; 80 feet east of the Annheuser Busch grain elevator, Manitowoc River; 100 feet out on the South Pier, Sheboygan Harbor, Sheboygan River, and Lake Michigan; C Reiss Coal Co. Beach, Lake Michigan and Sheboygan River; Wolfen Buttel Park, Lake Michigan and Kenosha Harbor entrance; Veterans Park, outer Milwaukee Harbor, Lake Michigan; Stephenson Island, Menominee River; 150 feet off Pere Marquette Park, Milwaukee River; 1000 feet east of Manitowoc Yacht Club, Lake Michigan; north breakwall at the elbow, Racine Harbor and Lake Michigan; Leichts Park and the Western Lime Corp. & Leichts Transfer Storage Companies private property, Fox River; Henry W. Maier Festival Park Harbor Island Lagoon, outer Milwaukee Harbor, Lake Michigan; South Shore Park, Lake Michigan; South Pier, Kewaunee Harbor and Lake Michigan; Wisconsin Electric Coal Dock, Port Washington Harbor, Lake Michigan; 1000 feet off Menominee Marina, Lake Michigan; 360 feet off Sturgeon Bay Yacht Harbor, Sturgeon Bay Canal; South breakwall at the second elbow, Algoma Harbor and Lake Michigan; 560 feet off Sister Municipal Marina, Lake Michigan; between East Chicago St. and Humboldt Ave, Milwaukee River; and 500 feet out on the South Pier, Sheboygan Harbor and Lake Michigan.

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the fireworks launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk. 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**.

**Discussion of Comments and Changes**

MSO Milwaukee received no comments or related information pertaining to this rulemaking.

**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).

**Small Entities**

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on these small entities for the following reasons: The safety zone is only in effect for a few hours on the day of the event on an annual basis. Vessel traffic can safely pass outside the safety zones during the events. In cases where traffic congestion is greater than expected and blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Milwaukee.

Before the effective period, the Coast Guard will issue maritime advisories widely available to users who might be in the affected area by publication in the **Federal Register** and the Ninth Coast Guard District Local Notice to Mariners Marine information broadcasts and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant 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 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. Add § 165.909 to read as follows:

**§ 165.909 Safety Zones; Annual fireworks events in the Captain of the Port Milwaukee Zone.**

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Pridefest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Second week in June; sunset to termination of display.

(2) *Summerfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor encompassed by a line drawn from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last week in June; sunset to termination of display.

(3) *Summerfest Hole-in-One Shoot/Stunt Shows.*

(i) *Location.* All waters of the Harbor Island Lagoon, outer Milwaukee Harbor from the point of origin at 43°02.50′ N, 087°53.78′ W then west to 43°02.50′ N, 087°53.85′ W; then following the shoreline of the Henry W. Maier Festival Park and Harbor Island back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date and time.* Last week in June through the first two weeks in July; 11:30 a.m. to 9:15 p.m.

(4) *Festa Italiana Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is also included in this safety zone.

(ii) *Expected date and time.* Third week in July; sunset to termination of display.

(5) *Germanfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last week in July; sunset to termination of display.

(6) *African World Festival—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* First week in August; sunset to termination of display.

(7) *Irishfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island

Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Third week in August; sunset to termination of display.

(8) *Mexican Fiesta Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Last Week in August; sunset to termination of display.

(9) *Indian Summer Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* First week in September; sunset to termination of display.

(10) *Arabianfest Fireworks—Milwaukee, WI.*

(i) *Location.* All waters off of Henry W. Maier Festival Park Harbor Island, outer Milwaukee Harbor from the point of origin at 43°02.209′ N, 087°53.714′ W; then southeast to 43°02.117′ N, 087°53.417′ W; then south to 43°01.767′ N, 087°53.417′ W; then southwest to 43°01.555′ N, 087°53.772′ W; then north following the shoreline back to the point of origin (NAD 83). The Harbor Island Lagoon Area is encompassed by this safety zone.

(ii) *Expected date and time.* Second Week in September; sunset to termination of display.

(11) *St. Patrick's Day Fireworks—Manitowoc.*

(i) *Location.* All waters and adjacent shoreline across from the World War II U.S. Cobia submarine, Manitowoc River encompassed by the arc of a circle with a 70-foot radius with its center in approximate position 44°05.30′ N, 087°39.15′ W (NAD 1983).

(ii) *Expected date and time.* Third week in March; sunset to termination of display.

(12) *Rockets for Schools—Sheboygan, WI.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 1260-foot radius with its center in the approximate position 43°44.56′ N, 087°42.06′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* Second weekend in May; sunset to termination of display.

(13) *City of Sheboygan Fourth of July Fireworks.*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in the approximate position 43°44.48′ N, 087°42.14′ W (NAD 1983). This zone will encompass the entrance to Sheboygan Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(14) *City of Kenosha Fourth of July Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the South Pier Light area, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 42°35.17′ N, 087°48.33′ W (NAD 1983). This safety zone will encompass the entrance to Kenosha Harbor and will result in its closure while the safety zone is in effect.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(15) *U.S. Bank (Firstar) Fireworks—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline south of Juneau Park, outer Milwaukee Harbor encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 43°02.23′ N, 087°53.30′ W (NAD 1983).

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(16) *Marinettefest Fireworks.*

(i) *Location.* All waters between the U.S. 41 Interstate Bridge (mile marker 1.88) and the NEW Hydro Inc. Dam (mile marker 2.45) on the Menominee River. This safety zone includes all adjacent shoreline between the bridge and the dam.

(ii) *Expected date and time.* First week in July; sunset to termination of display.

(17) *Riversplash Fireworks-Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline east of Pere Marquette Park, Milwaukee River encompassed by the arc of a circle with a 210-foot radius of the fireworks barge in approximate position 43°02.33′ N, 087°54.46′ W (NAD 1983). (This safety zone will temporarily close down the Milwaukee River.)

(ii) *Expected date and time.* First week in June; sunset to termination of display.

(18) *Manitowoc Municipal Fourth of July Fireworks.*

(i) *Primary location.* All waters and adjacent shoreline east of the Manitowoc Yacht Club, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks barge in approximate position 44°06.05′ N, 087°38.37′ W (NAD 1983).

(ii) *Alternate location.* All waters and the adjacent shoreline encompassed by the arc of a circle with a 420-foot radius of the fireworks barge with its center in approximate position 44°05.33′ N, 087°39.00′ W (NAD 1983). If display is moved to secondary site, it will temporarily close entrance to Manitowoc Harbor.

(iii) *Expected date and time.* First week in July; sunset to termination of display.

(19) *Fourthfest of Greater Racine.*

(i) *Primary location.* All waters and adjacent shoreline around the north breakwall, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.14′ N, 087°46.30′ W (NAD 1983).

(ii) *Alternate location.* All waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 42°44.21′ N, 087°46.45′ W (NAD 1983) (on the beach north of the northern breakwall).

(iii) *Expected date and time.* First week in July; sunset to termination of display.

(20) *Celebrate Amerifest—Green Bay, WI.*

(i) *Location.* All waters and adjacent shoreline between the Green Bay & Western Railroad Bridge (mile marker 1.03) and the Mason St. Bridge (mile marker 3.52) on the Fox River. This safety will temporarily close the Fox River. (This safety zone does not encompass the water of the East River.)

(ii) *Expected date and time.* First week in July; 2 p.m. to 11 p.m.

(21) *South Shore Frolics Fireworks—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline east of South Shore Park, Milwaukee Harbor encompassed by the arc of a circle with a 280-foot radius

with its center in approximate position 42°59.43′ N, 087°52.54′ W (NAD 1983).

(ii) *Expected date and time.* Second week in July; sunset to termination of display.

(22) *Kewaunee Annual Trout Festival.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°27.30′ N, 087°29.46′ W (NAD 1983). This safety zone will temporarily close the entrance to Kewaunee Harbor.

(ii) *Expected time and date. Third weekend in July; sunset to termination of display.*

(23) *Port Washington Fish Days Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the Wisconsin Electric Coal Dock, Lake Michigan encompassed by the arc of a circle with an 840-foot radius with its center in approximate position 43°23.07′ N, 087°51.55′ W (NAD 1983). This safety zone will temporarily close the entrance to Port Washington Harbor.

(ii) *Expected date and time.* Third week in July; sunset to termination of display.

(24) *Menominee Waterfront Festival.*

(i) *Location.* All waters and adjacent shoreline off the southeast side of the Menominee Municipal Marina, Lake Michigan encompassed by the arc of a circle with an 840-foot radius of the fireworks launch platform with its center in approximate position 45°20.05′ N, 087°36.49′ W (NAD 1983).

(ii) *Expected date and time.* The Saturday following the first Thursday in August; sunset to termination of display.

(25) *Sturgeon Bay Venetian Night Fireworks.*

(i) *Location.* All waters and adjacent shoreline off the Sturgeon Bay Yacht Club, Sturgeon Bay Canal encompassed by the arc of a circle with a 350-foot radius of the fireworks launch platform with its center in approximate position 44°49.33′ N, 087°23.27′ W (NAD 1983). This safety zone will temporarily close down the Sturgeon Bay Canal.

(ii) *Expected date and time.* First weekend in August; 10 a.m. to termination of fireworks display.

(26) *Algoma Shanty Days Fireworks.*

(i) *Primary location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.22′ N, 087°25.55′ W (NAD 1893) forming the primary site.

(ii) *Alternate location.* All waters and adjacent shoreline encompassed by the arc of a circle with a 560-foot radius with its center in approximate position 44°36.28′ N, 087°25.54′ W (NAD 1983). If display is moved to secondary site, it will temporarily close entrance to Algoma Harbor.

(iii) *Expected time and date.* Second week in August; sunset to termination of display.

(27) *Sister Bay MarinaFest—Sister Bay.*

(i) *Location.* All waters and adjacent shoreline off the town of Sister Bay, Lake Michigan encompassed by the arc of a circle with a 560-foot radius of the fireworks launch platform with its center in approximate position 45°10.60′ N, 087°06.60′ W (NAD 1983).

(ii) *Expected date and time.* First week in September; sunset to termination of display.

(28) *Milwaukee River Challenge—Milwaukee, WI.*

(i) *Location.* All waters and adjacent shoreline between the Humboldt Ave. Bridge (mile marker 3.22) and E. Chicago St. (mile marker 1.08) on the Milwaukee River. This safety zone will temporarily close the Milwaukee River for crew boat races.

(ii) *Expected date and time.* Third week in September; 10 a.m. to 5 p.m.

(29) *Sheboygan South High School Homecoming Fireworks.*

(i) *Location.* All waters and adjacent shoreline around the south breakwall area, Lake Michigan encompassed by the arc of a circle with a 420-foot radius with its center in approximate position 43°44.57′ N, 087°42.13′ W (NAD 1983). This safety zone will temporarily close the entrance to Sheboygan Harbor.

(ii) *Expected date and time.* One day in the first two weeks in October; sunset to termination of display.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

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

(3) The safety zones in this regulation are outside navigation channels and will not adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Milwaukee to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* The Captain of the Port Milwaukee will publish at least 10 days in advance a Notice in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section will be enforced.

Dated: June 24, 2002.

**M.R. DeVries,**

*Commander, Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 02–16749 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

## CGD09–02–039

**RIN 2115–AA97**

## Safety Zone; Saginaw River, Bay City, MI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Bay City Relay for Life Fireworks on August 10, 2002. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

**DATES:** This temporary final rule is effective from 10:30 p.m. until 11 p.m. on August 10, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–039] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

**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**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

**Background and Purpose**

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with a fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the Saginaw River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35′55″ N, 083°53′34″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

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

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the zone.

**Small Entities**

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

The Coast Guard certifies under 5 U. S. C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10:30 p.m. until 11 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (see **ADDRESSES.**) Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 proposed rule would 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**

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

**Environment**

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

**Indian Tribal Governments**

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

**Energy Effects**

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 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 new temporary § 165.T09–038 is added to read as follows:

**§ 165.T09–038 Safety Zone; Saginaw River, Bay City, MI.**

(a) *Location.* The safety zone will encompass all waters of the Saginaw River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35′55″ N, 083°53′34″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 10:30 p.m. until 11 p.m. on August 10, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other applicable requirements.

Dated: June 24, 2002.

**P.G. Gerrity,**

*Commander, Coast Guard, Captain of the Port Detroit.*

[FR Doc. 02–16751 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–02–032]**

**RIN 2115–AA97**

## Safety Zone; Festa Italiana 2002, Milwaukee, WI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Milwaukee's outer harbor for the Festa Italiana 2002 fireworks display and airshow. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Lake Michigan and in particular, outer Milwaukee Harbor, Milwaukee, Wisconsin.

**DATES:** This temporary rule is effective from 3:30 p.m. (local) on July 19, 2002 until 10:40 p.m. (CST) on July 21, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–02–032] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Timothy Sickler, Port Operations Chief, Marine Safety Office Milwaukee, at (414) 747–7155.

**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. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule for the fireworks safety zone would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property. In addition, any delay in the effective date of the safety zone for the air show would expose the public and participants to unnecessary hazards associated with low flying aircraft in close proximity to spectator vessels.

**Background and Purpose**

This safety zone is established to safeguard the public from the hazards associated with launching of fireworks and aircraft flying at high speeds close to the water in Milwaukee's outer Harbor. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port Milwaukee zone and local knowledge about wind, waves, and currents in this particular area.

The daytime safety zone will be enforced on July 20 and again on July 21, 2002 from 3:30 p.m. (local) until 4:30 p.m. (local). The daytime safety zone will consist of the following: all waters and adjacent shoreline of outer Milwaukee Harbor encompassed by the following coordinates: 43°02.17′ N, 087°53.42′ W, then east to 43°02.11′ N, 087°53.14′ W, then south to 43°01.32′ N, 087°53.21′ W, then west to 43°01.35′ N, 087°53.43′ W, then north along the shoreline to the point of origin. These

coordinates are based upon North American Datum 1983 (NAD 83).

The night time safety zone will be enforced on July 19 and again on July 21, 2002 from 9:30 p.m. (local) until 10:40 p.m. (local). The following area is the night time safety zone: all waters and adjacent shoreline of outer Milwaukee Harbor encompassed by the following coordinates: 43°01.22′ N, 087°53.39′ W, east to 43°01.16′ N, 087°53.01′ W, then north to 43°02.13′ N, 087°52.45′ W, then west to 43°02.21′ N, 087°53.27′ W, then south to 43°01.30′ N, 087°53.41′ W, then south along the shoreline to the point of origin (NAD 83).

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

**Regulatory Evaluation**

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

**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: the owners or operators of vessels intending to transit or anchor in the vicinity of the outer Milwaukee Harbor during the day zone from 3:30 p.m. (local) until 4:30 p.m. (local) on July 20 and July 21, 2002, and the night zone from 9:30 p.m. (local) until 10:40 p.m. (local) on July 19 and July 21, 2002.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on one day and late in the day when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of Milwaukee.

**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 can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (See **ADDRESSES.**)

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 proposed rule would 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant 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, and 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 new temporary § 165.T09–032 is added to read as follows:

### § 165.T09–032 Safety Zone; Milwaukee Harbor, Lake Michigan, Milwaukee, WI.

(a) *Location.* The following are safety zones:

(1) *Day time zone.* All waters and adjacent shoreline of the outer Milwaukee Harbor encompassed by a line drawn between the following coordinates: 43°02.17′ N, 087°53.42′ W; then east to 43°02.11′ N, 087°53.14′ W; then south to 43°01.32′ N, 087°53.21′ W; then west to 43°01.35′ N, 087°53.43′ W; then north along the shoreline to the point of origin (NAD 83).

(2) *Night time zone.* All waters and adjacent shoreline of the outer Milwaukee Harbor encompassed by a line drawn between the following coordinates: 43°01.22′ N, 087°53.39′ W; east to 43°01.16′ N, 087°53.01′ W; then north to 43°02.13′ N, 087°52.45′ W; then west to 43°02.21′ N, 087°53.27′ W, then south to 43°01.30′ N, 087°53.41′ W, then southerly along the shoreline to the point of origin (NAD 83).

(b) *Regulations:* (1) The general regulations contained in 33 CFR 165.23 apply.

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

(3) This safety zone should not adversely effect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

(c) *Enforcement period.* This section is effective from 9:30 p.m. (local) on July 19th, 2002 until 10:40 p.m. (local) on July 21st, 2002. The zone in paragraph (a)(1) will be enforced from 3:30 p.m. until 4:30 p.m. on July 20th; and again during these same times on July 21, 2002. The zones in paragraph (a)(2) will be enforced from 9:30 p.m. until 10:40 p.m. on July 19th; and again during these same times on July 21st, 2002.

Dated: June 24, 2002.

**M.R. DeVries,**

*Commander, Coast Guard, Captain of the Port, Milwaukee, Milwaukee, Wisconsin.*

[FR Doc. 02–16752 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP San Francisco Bay 02–014]**

**RIN 2115–AA97**

## Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary security zones in areas of the San Francisco Bay adjacent to San Francisco International Airport and Oakland International Airport. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts at these airports. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 5 p.m. (PDT) on June 21, 2002 to 4:59 p.m. (PST) on December 21, 2002.

**ADDRESSES:** U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Building 14, Alameda, CA 94501–5100.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On October 30, 2001, we published COTP San Francisco Bay 01–009, a temporary final rule and request for comments, titled ''Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA,'' in the **Federal Register** (66 FR 54663) under 33 CFR 165.T11–095. That rule was similar to the one being enacted herein as it established security zones around both San Francisco and Oakland International airports.

On February 6, 2002, we published COTP San Francisco Bay 01–011, a temporary final rule and request for comments, titled ''Security Zones; San Francisco Bay, San Francisco, CA and Oakland, CA'' in the **Federal Register** (67 FR 5482) under 33 CFR 165.T11–097. Similar to its predecessor and the rule being enacted herein, that rule also established security zones around both San Francisco and Oakland International airports.

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. On the same day, a similar attack was conducted on the Pentagon in Arlington, Virginia. Also, on the same date, a fourth commercial passenger airplane was hijacked, this one from Newark, New Jersey, and later crashed in Pennsylvania. National security officials warn that future terrorist attacks against civilian targets may be anticipated. A heightened level of security has been established concerning all vessels transiting in the San Francisco Bay, and particularly in waters adjacent to San Francisco International Airport and Oakland International Airport. These security zones are needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area.

The delay inherent in the NPRM process, and 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 Francisco and Oakland airports 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 these west coast airports. Immediate action is required to accomplish these objectives. Any delay in the effective date of this

rule is impracticable and contrary to the public interest.

As of today, the need for security zones around San Francisco and Oakland International airports still exists. This new temporary final rule will begin at 5 p.m. (PDT) on June 21, 2002, the exact time that the previous airport security zones cease to be in effect, and is set to expire at 4:59 p.m. on December 21, 2002. We have discussed with San Francisco and Oakland airport representatives the continuing need for security zones and the possibility of making those or similar zones permanent, a process that may require several months to complete.

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. We have requested public comments when publishing the previous regulations and have incorporated the received comments into the security zones being established by this temporary final rule.

**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 airports adjacent to the San Francisco Bay present possible platforms from which individuals may gain unauthorized access to the airports.

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. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001 have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing two temporary security zones in the navigable waters of the United States surrounding San Francisco International Airport and Oakland International Airport.

On September 21, 2001 we issued a similar temporary final rule under docket COTP San Francisco Bay 01–009, and published that rule in the **Federal Register** (66 FR 54663, Oct. 30, 2001). Upon further reflection, and after discussion with airport officials and members of the public, we decided to withdraw the temporary section created by that rule (33 CFR 165.T11–095) and issue a new temporary section in Title 33 of the Code of Federal Regulations. That rule (33 CFR 165.T11–097, published in 67 FR 5482, Feb. 6, 2002), which established security zones extending 1000 yards seaward from the San Francisco and Oakland airport shorelines, will expire at 4:59 (LCL) on June 21, 2002.

We received several written comments about the latest rule (33 CFR 165.T11–097) and the 1000-yard security zones. Virtually all of those comments urged a reduction in size of the security zones in order to allow increased public access to San Francisco Bay for fishing, windsurfing and similar uses. We have also discussed with San Francisco and Oakland airport representatives the continuing need for security zones and the possibility of making those or similar zones permanent, a process that may require several months to complete. Upon considering the written comments and discussions regarding the security zones, we have decided to issue a new temporary final rule that will establish temporary security zones around San Francisco International and Oakland International airports extending approximately 200 yards seaward from the shorelines of each airport.

**Discussion of Rule**

The Coast Guard is establishing two security zones within the navigable waters of San Francisco Bay that will extend 200 yards seaward from the shorelines of the San Francisco International Airport and the Oakland International Airport. This distance from the shoreline is estimated to be an adequate zone size to provide increased security for each airport. The two security zones are designed to provide increased security for the airports, while minimizing the impact to vessel traffic, fishing, windsurfing and other activities upon San Francisco Bay.

These temporary security zones are necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. These zones will be enforced by the official patrol (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard the patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties. Persons and vessels are prohibited from entering into or remaining in these security zones without permission of the Captain of the Port, or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

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 for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, 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 for up to 12 years (class C felony).

**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 these security zones is necessary for the protection of the United States and its people. Because these security zones are established in an area of the San Francisco Bay 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'' 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 less than 50,000.

These security zones will not have a significant impact on a substantial number of small entities because these security zones will not occupy an area of the San Francisco Bay that is frequently 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**

Under 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 could 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 Lieutenant Ross Sargent, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

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 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)(g), of Commandant Instruction M16475.1D, 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), 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, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–086 to read as follows:

### § 165.T11–086 Security Zones; Waters surrounding San Francisco International Airport and Oakland International Airport, San Francisco Bay, California.

(a) *Locations:* (1) *San Francisco International Airport Security Zone.* This security zone extends approximately 200 yards seaward from the shoreline of the San Francisco International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°36′19″N and longitude 122°22′36″W; thence to 37°36′45″N and 122°22′18″W; thence to 37°36′26″N and 122°21′30″W; thence to 37°36′31″N and 122°21′21″W; thence to 37°36′17″N and 122°20′45″W; thence to 37°36′37″N and 122°20′40″W; thence to 37°36′50″N and 122°21′08″W; thence to 37°37′00″N and 122°21′12″; thence to 37°37′21″N and 122°21′53″W; thence to 37°37′39″N and 122°21′44″W; thence to 37°37′56″N and 122°21′51″W; thence to 37°37′50″N and 122°22′20″W; thence to 37°38′25″N and 122°22′54″W; thence to 37°38′25″N and 122°23′02″W, and along the shoreline back to the beginning point. Also, the lighted platform positioned approximately 1000 yards northeast of the airport shoreline is surrounded by a circular security zone with a radius extending 100 yards from the center point, 37°38′12″N and 122°21′40″W.

(2) *Oakland International Airport Security Zone.* This security zone extends approximately 200 yards seaward from the shoreline of the Oakland International Airport and encompasses all waters in San Francisco Bay within an area drawn from the following coordinates beginning at a point latitude 37°43′35″N and longitude 122°15′00″W; thence to 37°43′40″N and 122°15′05″W; thence to 37°43′34″N and 122°15′12″W; thence to 37°43′24″N and 122°15′11″W; thence to 37°41′54″N and 122°13′05″W; thence to 37°41′51″N and 122°12′48″W; thence to 37°41′53″N and 122°12′44″W; thence to 37°41′35″N and 122°12′18″W; thence to 37°41′46″N and 122°12′08″W; thence to 37°42′03″N and 122°12′34″W; thence to 37°42′08″N and 122°12′32″W; thence to 37°42′31″N and 122°12′35″W; thence to 37°42′35″N and 122°12′30″W; thence to 37°42′40″N and 122°12′06″W, and along the shoreline back to the beginning point.

(b) *Effective period.* This section is in effect from 5 p.m. (PDT) on June 21, 2002 to 4:59 p.m. (PST) on December 21, 2002. If the need for these security zones ends before the scheduled termination time, the Captain of the Port will cease enforcement of these security zones and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in either of these security zones established by this temporary section, unless authorized by the Captain of the Port, his designated representative or the official patrol consisting of Coast Guard commissioned, warrant or petty officers onboard vessels and patrol craft of the Coast Guard or of any government agency or entity that has agreed to assist the Coast Guard in the performance of its duties. All other general regulations of § 165.33 of this part apply in the security zones established by this temporary section.

Dated: June 21, 2002.

**L.L. Hereth,**

*Captain, Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 02–16753 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[I.D. 062702B]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Spring Commercial Red Snapper Component

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the spring portion of the annual commercial quota for red snapper will be reached on July 7, 2002. This closure is necessary to protect the red snapper resource.

**DATES:** Closure is effective noon, local time, July 7, 2002, until noon, local time, on October 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2002. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available spring commercial quota of 3.10 million lb (1.41 million kg) for red snapper will be reached when the fishery closes at noon on July 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on October 1, 2002. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, July 7, 2002.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2002 recreational red snapper season opens on April 21, 2002, and closes on October 31, 2002. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, July 7, 2002, and were held in cold storage by a dealer or processor.

### Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: June 27, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–16712 Filed 6–28–02; 3:10 pm]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 020313058–2094–02; I.D. 062702E]**

## Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Quota Harvested for Period 1

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure; commercial quota for period 1.

**SUMMARY:** NMFS announces that the period 1 spiny dogfish commercial quota available to the coastal states from Maine through Florida has been harvested. Federally permitted commercial vessels may no longer land spiny dogfish for the duration of period 1 (through October 31, 2002). Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing spiny dogfish in these states.

**DATES:** Effective 0001 hrs local time, July 1, 2002, through 2400 hrs local time, October 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, at (978) 281–9104.

**SUPPLEMENTARY INFORMATION:** Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages of the annual quota. The period 1 commercial quota (May through October) is distributed to the coastal states from Maine through Florida as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2001 fishing year was 4,000,000 lb (1,814 mt) (67 FR 30614, May 7, 2002). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30), with trip limits intended to preclude directed fishing. Quota period 1 was allocated 2,316,000 lb (1,050 mt) and quota period 2 was allocated 1,684,000 lb (764 mt) of the commercial quota, respectively.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data and other available information, determines when the commercial quota has been harvested. NMFS is required to publish a notice in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the spiny dogfish commercial quota has been harvested and no commercial quota is available for landing spiny dogfish for the remainder of a given quota period. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2002 commercial period 1 quota for spiny dogfish has been harvested.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota for the period has been harvested and that no commercial quota for the spiny dogfish fishery is available. The Regional Administrator has determined that period 1 for spiny dogfish no longer has commercial quota available. Therefore, effective 0001 hrs local time, July 1, 2002, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through October 31, 2002, 2400 hrs local time. The fishing year 2002 quota period 2 for commercial spiny dogfish harvest will open on November 1, 2002. Effective July 1, 2002, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued federal spiny dogfish permits that land in coastal states from Maine through Florida.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 27, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02–16713 Filed 6–28–02; 3:10 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 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

### Grain Inspection, Packers and Stockyards Administration

### 7 CFR Part 800

**[Docket Number FGIS 2002–003]**

**RIN 0580–AA76**

### Exceptions to Geographic Areas for Official Agencies Under the USGSA

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. This proposal would enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

**DATES:** Written comments must be submitted on or before September 3, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by electronic mail: *comments.gipsa@usda.gov.* Please state that your comments refer to Docket Number FGIS 2002–003. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

**FOR FURTHER INFORMATION CONTACT:** Neil Porter, Director, Compliance Division at 202–720–8262

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act**

This proposed rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are ''small business entities'' under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70 percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

**Background**

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them.

Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled ''Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs,'' which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information gathered from the pilot program, that less restrictive geographic service area requirements on designated official agencies would improve the quality of service provided to the American grain industry and facilitate the marketing of grain without undermining the integrity of the USGSA and the official system. Legislative authority was requested to permit more than one designated official agency to provide official services within a single geographic area.

Congress amended the USGSA in 2000 to give the Department discretion, under certain circumstances, to allow more than one designated official agency to provide official inspection services within a single geographic area. GIPSA is now proposing to implement this authority by revising the regulations under the USGSA. This proposed rule would allow, under certain circumstances, more than one designated official agency to provide official inspection services within a single geographic area. This proposal would provide segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services.

## Proposed Action

We propose to revise the following: 7 CFR 800.81, 800.99, 800.116, 800.117, 800.118, 800.185, and 800.196 to implement changes in the USGSA. The proposed changes would allow sampling for official sample-lots, and weighing of sacked grain outside the geographical boundaries assigned to the designated official agency. Program criteria for nonuse of service, timely service, and barge probing would be provided. Requests for original services would allow qualified applicants to use another agency to provide service. Official personnel may operate outside of the area of responsibility assigned to them. The proposed action would allow exceptions to the designated areas of responsibility. The sections regarding certification would be combined for a more logical sequence.

## List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

## PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 800.81 is amended by revising paragraphs (a)(1) and (d) and the information collection parenthetical to read as follows:

### § 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service.* (1) Original official sample-lot inspection service. For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

* * * * *

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

3. Section 800.99 is amended by revising paragraph (d) to read as follows:

### § 800.99 Checkweighing sacked grain.

* * * * *

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

4. Section 800.116 is revised to read as follows:

### § 800.116 How to request original services.

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in §800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580–0013.)

5. Section 800.117 is revised to read as follows:

### § 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service.* (1) *Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other

than seasonal shipping fluctuations, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

6. Section 800.118 is revised to read as follows:

**§ 800.118 Certification.**

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under control number 0580–0013.)

7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

**§ 800.185 Duties of official personnel and warehouse samplers.**

* * * * *

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

**§ 800.196 Designations.**

* * * * *

(f) *Area of responsibility.* (1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

Dated: June 27, 2002.

**Donna Reifschneider,**

*Administrator.*

[FR Doc. 02–16639 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–EN–P

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Parts 170 and 171

**[Docket No. PRM–170–5]**

## National Mining Association; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–170–5) submitted by the National Mining Association (NMA). In its petition, NMA asked the NRC to conduct a rulemaking that would establish the basis for waiving all licensing and inspection fees and annual fees imposed on uranium recovery licensees, or alternatively, to waive the fees associated with a contemplated rulemaking that would develop requirements for licensing uranium and thorium recovery facilities. In support of its petition the NMA argues that because of adverse economic conditions, the requested fee relief is in the public interest since it would help ensure the continued viability of a domestic uranium recovery industry.

The NRC is denying the petition because the circumstances outlined by the petitioner do not qualify the uranium recovery industry for a ''public interest'' fee exemption. Further, with extremely limited exceptions, the NRC does not base its fees on the economic circumstances of particular licensees or classes of licensees. Moreover, the Commission does not envision instituting a rulemaking proceeding to establish a new regulation for licensing uranium and thorium recovery facilities.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner may be examined at the NRC Public Document Room, Room O1F23, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession number for the package containing documents related to this petition is ML021230010. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Robert D. Carlson, Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** Under the Omnibus Budget Reconciliation Act of 1990 as amended (OBRA–90), for Fiscal Year (FY) 2002, the NRC is required to collect in fees approximately 96 percent of its budget authority (minus sums collected from the Nuclear Waste Fund and any sums appropriated from the General Fund).

### The Petition

On November 2, 2001 (66 FR 55604), the NRC published a notice of receipt for a September 11, 2001, petition for

rulemaking (PRM–170–5) filed by NMA. The NMA requested that the Commission modify its rules to waive all licensing and inspection fees (10 CFR part 170) and annual fees (10 CFR part 171) imposed on uranium recovery licensees. Alternatively, NMA asked that fees be waived for a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities (10 CFR part 41).

The NMA argues that fee relief for uranium recovery licensees is in the public interest. According to the petitioner, the uranium recovery industry provides value to the United States by producing energy-generating yellowcake, thereby reducing reliance on foreign supplies, and by recycling waste products and providing additional waste disposal options. The NMA believes that the NRC has already recognized this public interest argument in discussions about extensions of time for beginning decommissioning at uranium recovery sites. The petitioner asserts that during these difficult economic times for the domestic uranium recovery industry, NRC fees could have a significantly adverse impact on the industry's viability, including its ability to maintain knowledgeable talent necessary for all the industry to develop and progress.

In support of its petition, the NMA argues that the uranium recovery industry is experiencing a significant economic downturn as a result of a low spot-market price of under $8 per pound (the industry would become profitable if prices rose to $13–16 per pound), a decrease in sector employment of 50 percent since 1996, and a low demand for and an oversupply of uranium. Thus, the petitioner argues that fee relief is needed to help ensure the continued viability of a domestic industry. The petitioner is further concerned that under the existing NRC annual fee schedule, as the number of uranium recovery licensees decrease, the annual fees for the remaining licensees increase, placing an unreasonable financial burden on the few remaining licensees. The NMA further claims that some of the fee increases which have been borne by the uranium recovery licensees have resulted from ''regulatory inefficiencies'' such as the loss of agency expertise resulting from the Commission's decision to close the Denver Uranium Recovery Field Office, the protracted Hydro Resources Inc. informal NRC hearing, and excessive and dual regulation. Under these circumstances, the NMA argues, fee relief is in the public interest.

In making its argument, the NMA asserts that not all licensees pay fees, noting that annual fees are not imposed on those licensees who have relinquished their authority to operate and have permanently ceased operations; that small business entities pay reduced fees; and that non-profit educational institutions are fully exempted from fees. The NMA then states that allowing the domestic uranium recovery industry to ''wither to the point of virtual extinction or to disappear completely'' cannot be in the national public interest because of the benefits provided by the industry.

**Public Comments**

The Commission solicited public comment on the rulemaking petition in the **Federal Register** of November 2, 2001 (66 FR 55604), and requested that comments be filed by January 16, 2002. The NRC also mailed the **Federal Register** notice to all NRC licensees (more than 5000 entities). In response, the Commission received 14 comments. In addition, the NRC in its proposed fee rule for FY 2002 (67 FR 14818; March 27, 2002) noted the pendency of the NMA petition and explained that if the Commission decided to grant the petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The NRC invited any member of the public who had arguments to place before the Commission, which had not been previously submitted in response to the November 2, 2001, **Federal Register** Notice, to do so during the public comment period for the FY 2002 proposed fee rule.

Although three additional comments were received on the NMA petition during the FY 2002 proposed fee rule public comment period, they did not surface any new issues. All three of these commenters disagreed with the NRC's decision to invite additional comments, stating that the initial comment period was sufficient and the NRC should not have reopened it as part of the FY 2002 proposed fee rule.

*1. Comments Supporting the NMA Petition*

The NRC received eight comment letters in support of the petition; six from uranium recovery licensees, and two from industry groups. The uranium recovery industry supports the petition, endorses the contentions advanced by NMA, and offers additional arguments.

One commenter stated that last year the United States relied on imports, or inventory draw-downs, for 94 percent of the fuel needed to operate the nation's reactors. The commenter asserts that with even lower domestic uranium production expected in 2001, U. S. nuclear utilities will be even more dependent on imports and inventory draw-downs to meet their needs. The commenter further states that granting the petition would be in the public interest because it would provide an immediate and tangible benefit to uranium recovery licensees, and help preserve what is left of the dwindling domestic uranium production industry.

Some commenters stated that the uranium recovery industry is vital to the U. S. energy security and national security, for example, to ensure energy independence and a stable source of domestic uranium for the U.S. Nuclear Navy. Some commenters also noted that conventional mills can offer recycling/disposal options to other generators whose waste contains recoverable uranium.

Two commenters argue that assuring the viability of the domestic uranium recovery resources and waste disposal capacity until the uranium prices recover, and until regulatory policy initiatives are in place to make these resources even more viable, will not result in an unreasonable burden shift to other licensees. In support of this argument, the commenters assert that many other classes of licensees stand to benefit from access to more cost-effective disposal options and from the stability of having viable domestic partners and customers. Further, they argue, some of the licensees who would bear the burden of the shift in fees have benefitted directly from the depressed uranium prices over the years.

Another commenter states that the NRC's current fees represent a tremendous and stifling burden on the uranium recovery industry, with no end to escalating charges in sight. Failure to provide fee relief could thus result in all domestic producers ceasing operations.

The Wyoming Congressional delegation jointly sent in a comment supporting the petition. The members of the delegation argue that the grant of the petition is in the nation's interest because this action would provide assistance to a vital domestic industry that is struggling to maintain viability in the face of depressed worldwide uranium markets. The delegation recognizes that this would ultimately shift the burden of fees to other licensees, but notes that many of these licensees had benefitted from depressed uranium prices. These commenters stress the importance of reducing U.S. dependence on foreign supply sources, especially in light of the events of September 11. The commenters also

report that the State of Wyoming has granted some tax relief to the uranium recovery industry in Wyoming.

The Governor of Wyoming submitted comments arguing that maintenance of a viable uranium recovery industry not only is in the public interest, but also would further President Bush's national energy policies. The Governor of Wyoming suggests that when, and if, the price for uranium increases to acceptable levels, and there is a sufficient number of licensees, then fees should be reinstated.

*2. Comments Against the NMA Petition*

The NRC received six comment letters opposing the petition. One person holding a license for a nuclear gauge argues that granting NMA members a waiver is unfair to other licensees, who would then be required to bear NRC costs associated with regulation of the uranium recovery industry. Increased fees would thus constitute an ''additional tax'' that would result in further financial hardships for others. This commenter stated that forcing other companies and industries to pay more so the mining industry can stay in business is not in the public interest. This same commenter argued that if the petitioner's members only need temporary relief, then they should seek loans.

A state employee involved with licensing and inspection, commenting in his private capacity, states that granting the petition would set a bad precedent that could carry over to Agreement States. This commenter further asserts that Canada or Australia can provide the U.S. plentiful supplies of uranium, that there is no reason to expect the domestic market to turn around in the near future, and that most of the uranium recovery licensees are owned by larger companies able to afford annual fees. Finally, the commenter expresses the concern that waiving uranium recovery licensees' fees would result in additional pressure to reduce the amount of funding to be allocated for NRC licensing and inspection of uranium recovery sites.

The U.S. Environmental Protection Agency (EPA), while not taking a position on whether the petition should be granted, said that any use of uranium recovery facilities for disposal of high-volume, low-level radioactive waste, as suggested by the petitioner, ''deserve[d] a thorough review. * * *'' EPA believes that further discussion regarding the petitioner's suggestion of additional uses for uranium mill tailings impoundments warrants further discussion between EPA, the affected States, and the NRC.

A private company, Envirocare, argues that grant of the waiver would not be in the public interest because other licensees would be required to bear an inequitable and unfair fee burden. Envirocare further asserts that waiving fees for uranium recovery licensees would provide them with an unfair competitive advantage over companies such as Envirocare, which compete with those licensees for contracts to dispose of 11e.(2) waste material. In effect, Envirocare argues, grant of the petition would result in a government-furnished subsidy that would place companies like Envirocare, who pay full fees, at a competitive disadvantage. Envirocare also claims there remains a viable uranium recovery industry that does not need a subsidy.

Representing power reactor licensees, the Nuclear Energy Institute (NEI) argues that the NRC lacks the authority to grant the petition; specifically, the NRC lacks the authority to decide whether maintenance of a domestic uranium recovery industry is in the public interest. Moreover, NEI says, granting fee relief to the uranium recovery industry would be unfair and inequitable to other NRC licensees. The NEI advocates that the NRC should not base its fees on economics and market factors, the economic health of a licensee, or the ability of a licensee to pass along fees to its customers. As an alternative means of reducing uranium recovery fees, NEI supports various regulatory and legislative initiatives to reduce unnecessary regulatory burden, to place greater onus on individual licensees for self-monitoring and regulatory compliance assessment, to make regulations more risk-informed and performance-based, and to end dual regulation. NEI further indicates that there is merit in granting fee relief to uranium recovery facilities that are not operating and are in standby status. However, NEI expresses concern that the grant of the petition would establish a poor public policy precedent of regulating for-profit licensees by exception.

The Colorado Department of Public Health and Environment opposes the grant of the petition noting that uranium recovery licensees may ask for similar fee reductions in Agreement States. The State is concerned that this could serve as a precedent for other industries to petition both the NRC and the Agreement States for fee reductions, and if a state sets its fees by charging a percentage of NRC fees, the reduction in fees for the uranium recovery licensees may translate to an increase for all other licensees in that state, including small gauge holders. The State indicates that the Commission's answers to the questions of fairness and public interest must be suitable to be used for any other petition, regardless of the fee category or industry. The State further comments that since states have direct regulatory responsibility for low-activity radioactive waste disposition and experience in regulating diffuse uranium, thorium and their decay products, the Commission may wish to reconsider the states' offer to take the lead on developing a new 10 CFR part 41.

**Intervening NRC Actions**

In its FY 2002 proposed fee rule, which the Commission published for public comment on March 27, 2002 (67 FR 14818), the NRC stated that the costs of generic activities for the uranium recovery class of licensees should be distributed among the licensees under both the Uranium Mill Tailings Radiation Control Act ( UMTRCA) Title I (sites closed prior to enactment of UMTRCA, for which the U.S. Department of Energy (DOE) is responsible for cleanup) and Title ll (sites holding active NRC licenses at the time Congress enacted UMTRCA) programs. In the past, DOE has not been assessed any portion of these generic costs as the sole licensee for all Title I sites. The NRC has adopted this change in the final FY 2002 fee rule, resulting in a decrease of the annual fees assessed to the commercial uranium recovery licensees. This represents an approximately 18 percent decrease in annual fees since FY 2001, and is the second straight year of significant fee reductions for the uranium recovery class of licensees. In FY 2001, the uranium recovery class received an approximately 29 percent reduction in annual fees from FY 2000. The FY 2002 final fee rule, including the current fee schedule for uranium recovery licensees, is scheduled to be published in the **Federal Register** on June 24, 2002.

**Denial of the Petition**

The NRC is denying the petition for the following reasons:

1. The Commission does not believe that Congress, in establishing user fee requirements, expected the NRC fee structure for a given class of licensee to be based primarily on licensees' economic circumstances, rather than on the NRC's budgeted costs for regulating that class of licensees. OBRA–90 requires that the Commission's annual fees ''shall have a reasonable relationship to the cost of providing regulatory services.'' Granting the fee waiver requested would be inconsistent

with that mandate. Therefore, absent specific legislation from Congress, including appropriations from the general fund, the NRC cannot provide the relief sought by the petitioner.

2. The Commission recognizes the national policy interest in maintaining a domestic source of uranium that has been previously expressed by Congress in the Energy Policy Act of 1992 and the U.S. Energy Corporation Privatization Act. However, there is nothing in this legislation that supercedes the law requiring the NRC to collect appropriate fees from its licensees and applicants. The Commission further notes that many of the uranium recovery licensees are large corporations, with sales in the millions or billions of dollars, or they are subsidiaries of very large corporations. If the Commission were to grant the petition, other licensees would be required to subsidize the uranium recovery industry through increased fees in order for the Commission to meet the requirements of OBRA–90.

Many other industries regulated by the NRC could also argue that they provide valuable public services, such as power reactors, nonprofit service organizations and medical facilities, and many of these entities may also be experiencing financial difficulties. However, in order for the NRC to meet the requirements of OBRA–90, the NRC is not able to base its fees on the public services these entities provide, nor is it able to base its fees on their economic conditions.

3. While the Commission understands that the uranium recovery industry is operating in adverse economic conditions, historically the Commission has not taken licensees' economic conditions into account when establishing fees, with the exception of licensees who qualify as small entities under NRC size standards. The NRC has established reduced annual fees for qualifying small entities pursuant to the statutory requirement in the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, such that in rulemaking proceedings, the Commission consider the impact of its actions on small entities and consider alternatives to those impacts. In accordance with the Small Business Administration's guidelines, in determining whether a licensee qualifies as a small entity under the NRC's revenue-based size standards, receipts from all sources, not solely receipts from licensed activities, are considered. Further, a licensee that is a subsidiary of a large entity does not qualify as a small entity. Those uranium recovery licensees that qualify as small businesses under NRC's size standards are eligible to pay the reduced annual fees the NRC has established for such entities in § 171.16(c).

Previously, in very limited circumstances, the Commission also granted partial annual fee exemptions to certain reactor licensees when it concluded that, as a result of certain economic factors, the NRC's regulatory costs for those licensees were substantially lower than for other reactors. There are no such entities presently operating. The current annual fee exemption provision for reactors (10 CFR 171.11(c)) lists age and size of the reactor, number of customers in the rate base, and the net increase in KWh costs for each customer directly related to the annual fee as factors the Commission may consider in granting an exemption for reactors. In establishing this provision, the Commission stated it may grant such relief only if it is persuaded by the licensee that these factors ''substantially reduce the NRC's regulatory costs for that plant and the benefits bestowed on that licensee below that of the other power reactors'' (51 FR 33224; September 18, 1986). Thus, the reactor exemption provision is not based on the economic factors per se, but rather on any reduction in NRC costs that are the result of these factors.

4. In a 1993 decision, the U.S. Court of Appeals for the District of Columbia Circuit made clear that the Commission cannot take into account the ability of one class of licensees to ''pass through'' their costs to others, while refusing to consider similar economic considerations for other classes. In *Allied Signal* v. *NRC,* 988 F. 2d 146 (D.C. Cir. 1993), the court remanded for reconsideration parts of the NRC's FY 1991 annual fee rule. The court questioned the Commission's decision to exempt non-profit educational institutions from NRC fees on the grounds (in part) that they could not ''pass through'' the costs of those fees to their customers, without attempting a similar ''pass through'' analysis for other licensees. The court indicated that while Congress had not mandated that the NRC consider the ability of a licensee to ''pass through'' its fees, if this could be done with reasonable accuracy and cost, there appeared no reason why the Commission should not do so. In response to this decision, the Commission issued a final rule which revoked the prior non-profit educational institution fee exemption. The Commission found the ability to ''pass through'' costs to be an unworkable standard for setting fees.

The university community petitioned the Commission to reconsider its rule. The Commission solicited public comment on the petition for reconsideration and ultimately restored the exemption, but not by taking into account the ability of these non-profit educational institutions to ''pass through'' their costs. Instead, the Commission based the exemption on the theory that these institutions, unlike commercial entities, provide a ''public good.'' This term is used in economic theory to describe goods or services that are non-depletable (one can acquire the goods without reducing the amount available) and acquirable by anyone (it is impossible to prevent others from acquiring the good). In practice, this term encompasses the non-proprietary research that non-profit educational institutions make available at no cost.

The services provided by NMA members are not a ''public good'' in the same sense. Uranium is depletable and its owners can prevent its cost-free acquisition by others. Hence, the ''public good'' based exemption for non-profit educational institutions' research cannot plausibly be extended to the uranium recovery industry.

5. The Commission has consistently taken the position that it will not take licensees' special economic circumstances into account in establishing fees. In 1995, it denied a petition by the uranium recovery industry seeking reduced annual fees for uranium mills in standby status, because these licensees have the authority to operate and have made a business decision to remain in standby status rather than terminate their licenses (60 FR 20918; April 28, 1995). Similarly, the Commission does not base its fees on how much material is possessed by a licensee or how often a licensed device is used.

The Commission is also unable to use factors such as the revenue earned by a licensee or the licensee's profit from the use of licensed material in developing its fees because the governing statute requires that annual charges must, to the maximum extent practicable, have a reasonable relationship to the costs of providing regulatory services (60 FR 20918; April 28, 1995). To grant fee waivers to a particular class of licensees based on economic duress would, under the teachings of Allied Signal, result in the Commission's having to take economic conditions into effect in establishing fees for each of its classes of licensees. Further, as the Commission has stated in numerous fee rules since 1991, and most recently in the FY 2001 final fee rule (66 FR 32452; June 14, 2001), a reduction in fees for one class of licensees would require a corresponding increase in fees for other classes. For these reasons the NRC does not base its fees on market conditions,

or a licensee's economic status, or a licensee's inability to ''pass through'' the costs to its customers.

Inevitably, were the Commission to exempt uranium recovery licensees from NRC fees, other licensees—both those forced to subsidize the NRC's regulation of the uranium recovery industry and those claiming economic hardship of their own—would also demand fee relief. Widespread and frequent reevaluation of fee schedules based on licensees' various economic situations and indeterminate market conditions has the potential to entangle the Commission's statutorily-required user fee program in constant controversy, and ultimately to unravel the program altogether. This is one reason why, in connection with the Allied-Signal remand, the Commission refused to establish a system to consider each licensee's ability to ''pass through'' NRC fees to customers.

Developing fee schedules based on licensees' current economic circumstances, in any case, is not workable as a practical matter. An economics-driven approach would make NRC fee schedules overly complex and difficult to establish. On July 20, 1993, the Commission implemented the Allied Signal remand of the FY 1991 and 1992 final fee rules by addressing the remanded issues in the statement of considerations accompanying its FY 1993 fee rule (58 FR 38666). In this document, the Commission explained that the NRC ''is not a financial regulatory agency, and does not possess the knowledge or resources necessary to continuously evaluate purely business factors'' (58 FR 38667; July 20, 1993). The Commission further explained that it recognizes licensees dislike paying user fees; however, such fees must be taken into account in running a business. The Commission then noted that it has neither the expertise nor the information needed to undertake the complex inquiry into whether, in a market economy, particular licensees are able to recoup their user fee payments. The Commission expressed concern that if this sort of inquiry became part of its mission, the agency would have to hire financial specialists which could lead to higher fees charged to pay for an expanded NRC. The Commission further noted as part of any such review it would have to examine tax returns, financial statements, and commercial data that some licensees might be reluctant to provide. See a more detailed discussion of this issue in the subject final rule (58 FR 38665, 38667–69; July 20, 1993). In addition, the Commission might have to look at the overall corporate structures of licensees to see, for example, if a corporate parent or subsidiary could equitably pay the fees imposed on a temporarily distressed enterprise.

The Commission is further concerned that a detailed examination of economic factors would destabilize the NRC's fee schedules because changing economic circumstances and inevitable shifts in economic cycles could result in significant, unexpected fee increases for some classes of licensees. Thus, consideration of economic factors would not bring greater fairness and equity to the NRC's fee schedules because some classes of licensees would unexpectedly, and on short notice, be required to subsidize other classes of licensees based on indeterminate shifts in industry markets.

6. The Commission does not intend to conduct a 10 CFR part 41 rulemaking, which would be a comprehensive set of regulations governing the uranium recovery industry. The Commission has concluded that its current regulations are adequate, but has directed the NRC staff to issue revised guidance to its uranium recovery licensees. Thus, the Commission need not address the issue of whether the uranium recovery industry should bear the costs of developing a new 10 CFR part 41.

The Commission notes that Congress, in the Energy and Water Development Appropriations Act for FY 2001, has given NRC licensees fee relief in the requirement that the NRC collect approximately 100 percent of its budget authority (minus funds appropriated from the Nuclear Waste Fund and General Fund). That percentage is being annually reduced by two percent for five years, so that only 90 percent of the agency's budget authority will have to be collected in fees in FY 2005. Additionally, the NRC staff is reexamining the issue of fee assessment to uranium recovery facilities in standby status.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 27th day of June, 2002.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 02–16721 Filed 7–2–02; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR Part 1720

**RIN 2550–AA22**

## Safety and Soundness; Correction

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the **Federal Register** of June 21, 2002, regarding the safety and soundness of the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). The correction inserts inadvertantly omitted language in the preamble of the proposed rule.

**FOR FURTHER INFORMATION CONTACT:** Kathleen McLees, Federal Register Liaison Officer, telephone (202) 414–3836 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

### Correction

In the preamble of the proposed rule, FR Doc. 02–15678, beginning on page 42200 in the issue of June 21, 2002, make the following correction in the Supplementary Information section. On page 42201, in the second column, on line 16, after the words ''in a policy guidance will'', add the word ''not''. The sentence should read: ''Compliance with the minimum standards articulated in a policy guidance will not preclude the agency from finding that an Enterprise is otherwise engaged in a specific unsafe or unsound practice or is in an unsafe or unsound condition, or requiring corrective or remedial action with regard to such practice or condition.''

Dated: June 27, 2002.

**Kathleen K. McLees,**

*Federal Register Liaison Officer, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 02–16697 Filed 7–2–02; 8:45 am]

BILLING CODE 4220–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NE–34–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. This proposal would require replacing certain part number (P/N) fuel heaters with redesigned fuel heaters. This proposal is prompted by several field incidents in which one or more of the three studs that attach the fuel filter bowl to the fuel heater have been partially or completely pulled free of the fuel heater housing. The actions specified by the proposed AD are intended to prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire.

**DATES:** Comments must be received by September 3, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada Corp., 1000, Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; Telephone 450–677–9411. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–34–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. Transport Canada (TC) advises that there have been several field incidents in which one or more of the three studs that attach the fuel bowl to the fuel heater main housing had been pulled partially or completely free of the associated mounting lug, resulting in fuel leaks. Failure was attributed to overtorquing of the nuts that retain the fuel bowl to the housing and a decrease in the housing material hardness. Housing hardness may have been reduced due to high temperatures such as a heat treatment process used to remove the flame arrest coating from these parts.

### Bilateral Agreement Information

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

### Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other PWC models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require replacement of fuel heaters, part number (P/N) 3039183, with improved design fuel heaters, P/N 3039798, at the next removal of the engine low pressure fuel filter, but not later than December 31, 2002.

### Economic Analysis

There are approximately 2,200 engines of the affected design in the worldwide fleet. The FAA estimates that 1,238 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 8 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost

approximately $12,172 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $15,663,176.

**Regulatory Analysis**

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pratt & Whitney Canada:** Docket No. 2001–NE–34–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Pratt & Whitney Canada models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines. These engines are installed on, but not limited to the following airplanes: Aerospatiale ATR–42 and –72; Bombardier DHC–8 series 100, 200, and 300, CL–215T and –415; Construcciones Aeronautics, S.A. (CASA) C–295; Empresa Brasileira de Aeronautica S. A (EMBRAER) EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60.

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

**Compliance**

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

To prevent the separation of the fuel filter bowl from the fuel heater, which could result in a pressurized fuel leak and possible engine fire, do the following:

(a) Replace fuel heater, part number (P/N) 3039183, with fuel heater, P/N 3039798, at the next removal of the engine low pressure fuel filter, but not later than December 31, 2002.

(b) Do not install any fuel heater, P/N 3039183, after the effective date of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

(d) Special flight permits may be issued in accordance 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 done.

**Note 3:** The subject of this AD is addressed in Transport Canada airworthiness directive CF–2000–34, dated November 23, 2000.

Issued in Burlington, Massachusetts, on June 24, 2002.

**Francis A. Favara,**

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

[FR Doc. 02–16675 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 31 and 301

**[REG–116644–01]**

**RIN 1545–BA18**

## Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to backup withholding. The regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect. If a payor receives two or more such notices with respect to the same account during a three-year period, the payor must begin backup withholding unless the payee provides verification of its correct TIN pursuant to the regulations. This document also contains proposed regulations which clarify when an information return filer must solicit a payee's TIN following the receipt of a penalty notice. In addition, this document provides notice of a public hearing on these proposed regulations.

**DATES:** Written and electronic comments must be received by October 1, 2002. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for October 22, 2002, at 10 a.m., must be received by October 1, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–116644–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–116644–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.* The

public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Nancy Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3406 of the Internal Revenue Code (Code), and to the Procedure and Administration Regulations (26 CFR part 301) under section 6724 of the Code. These proposed amendments to the regulations would revise existing §§ 31.3406(d)–5(d)(2)(ii) and (g)(4), and 301.6724–1(f)(2), (f)(3), (f)(5) and (k).

These proposed regulations address certain issues identified by the Commissioner's Information Reporting Program Advisory Committee (IRPAC) and take into account comments and information provided by IRPAC members.

*Section 3406*

Section 3406 imposes a requirement to backup withhold on any reportable payment where the Secretary notifies the payor that the TIN furnished by the payee is incorrect. After receiving a notice of incorrect TIN, the payor must backup withhold on reportable payments until the payee furnishes another TIN. However, if the payor receives two notices with respect to the same account within a three year period, the payor must backup withhold on reportable payments until the payor receives a verification of the payee's TIN from the Social Security Administration or the IRS.

The regulations under section 3406 set forth detailed procedures for payors to follow after receipt of a notice of incorrect TIN from the IRS. When the first such notice is received by the payor, the payor must send a notice (commonly referred to as a ''B'' notice) to the payee stating that the payee will be subject to backup withholding if the payee does not furnish a certified TIN. If a second notice of incorrect TIN is received by a payor with respect to the payee's account within a three-year period, the payor must send a second ''B'' notice to the payee stating that the payee will be subject to backup withholding unless the payor receives verification of the payee's TIN from the Social Security Administration or IRS.

If the payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, the regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first ''B'' notice, and must be treated as one notice for purposes of sending out a second B notice. However, in some cases, a payor may receive multiple notices of incorrect TIN in different calendar years which relate to the same payee's account for the same year. This may occur where a payor files different types of information returns with respect to the same payee, such as a Form 1099–B (gross proceeds reported by brokers) and a Form 1099–DIV (payment of dividends). Typically these information returns all contain the same TIN, following information contained in the payor's records. Variations in the processing of such returns by the IRS may result in the issuance of incorrect TIN notices at different times.

The regulations currently do not provide that two or more notices of incorrect TIN relating to the same payee and the same year, but which are received in different calendar years, count as one notice. Accordingly, a payor must send a first ''B'' notice to the payee after receipt of the first notice of incorrect TIN, and a second ''B'' notice after receipt of the second notice of incorrect TIN, even if the second notice relates to an information return filed for the same year as the first notice. The payee must respond to the second notice by obtaining verification of its TIN from the IRS or Social Security Administration.

To avoid this burden on both payor and payee, the proposed amendments to the regulations provide that when a payor receives two or more notices of incorrect TIN with respect to the same payee's account for the same year, the payor is treated as receiving one notice, regardless of the calendar year in which the notices are received.

*Section 6724*

Section 6724 provides for a waiver of information reporting penalties under sections 6721 through 6723 where the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724–1(a) of the regulations, in order to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control. In addition, the filer must have acted in a responsible manner both before and after the failure.

The regulation provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control. However, the payor must also act in a responsible manner with respect to the failure. Section 301.6724–1(f) sets forth special rules for acting in a responsible manner with respect to incorrect TINs. The filer is required to make an initial solicitation for the payee's correct TIN at the time the account is opened, and up to two annual solicitations following receipt of penalty notices.

Under the current regulation, if a filer receives a penalty notice with respect to an incorrect payee TIN and a notice of incorrect TIN under section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy the section 6724 annual solicitation requirements by sending the required ''B'' notice. The filer does not have to make another solicitation pursuant to section 6724. However, if the filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year, and the following year receives a penalty notice with respect to the same payee and the same year as the section 3406(a)(1)(B) notice, the filer must make an annual solicitation pursuant to section 6724.

To avoid this burden, the proposed amendments to the regulations provide that if a filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year and the following year receives a penalty notice with respect to the same payee and the same year as the 3406(a)(1)(B) notice, the filer is not required to make an annual solicitation for the payee's TIN pursuant to section 6724 provided the filer has sent the required B notice.

## Effective Date of Proposed Regulations

The provisions of these regulations are proposed to be applicable the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations.

## 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply

to these regulations, and because the regulation does not impose a collection of information of small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**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** portion of this preamble) to the IRS. The IRS and the 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. Written comments on the proposed regulations are due by October 1, 2002.

A public hearing has been scheduled for October 22, 2002, beginning at 10 a.m. in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 1, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these proposed regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*26 CFR Part 301*

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

1. The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

2. Section 31.3406(d)–5 is amended by revising paragraphs (d)(2)(ii) and (g)(4) to read as follows:

**§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.**

* * * * *

(d) * * *

(2) * * *

(ii) *Two or more notices for an account for the same year or received in the same year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, need only send one notice to the payee under this section.

* * * * *

(g) * * *

(4) *Receipt of two notices for the same year or in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, must treat such notices as one notice for purposes of this paragraph (g).

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

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

**Authority:** 26 U.S.C. 7805 * * *

4. Section 301.6724–1 is amended as follows:

1. Revising paragraphs (f)(2) and (f)(3).

2. Amending paragraph (f)(5)(vi), last sentence, by removing the language ''paragraph (f)(2)'' and adding ''paragraph (f)(3)'' in its place.

3. Amending paragraph (k), *Example 3*(ii), second sentence, by removing the language ''§ 35a.3406–1(c)(1) of this paragraph'' and adding ''§ 31.3406(d)–5(d)(2)(i)'' in its place; and by removing the language ''(f)(2)'' and adding ''(f)(3)'' in its place.

4. Amending paragraph (k), *Example 3*(ii), fifth sentence, by removing the language ''§ 301.6721–1T'' and adding ''§ 301.6721–1'' in its place.

5. Amending paragraph (k), *Example 3*(iii), fifth sentence, by removing the language ''§ 35a.3406–1(c)(1)'' and adding ''§ 31.3406(d)–5(d)(2)(i)'' in its place.

6. Amending paragraph (k), *Example 3*(iii), last sentence, by removing the language ''§ 301.6721–1T'' and adding ''§ 301.6721–1'' in its place.

7. Amending paragraph (k), *Example 5,* final sentence, by removing the language ''§ 301.6721–1T'' and adding ''§ 301.6721–1'' in its place.

8. Amending paragraph (k), *Example 6*(ii), sixth sentence, by removing the language ''(f)(3)'' and adding the language ''(f)(2)'' in its place.

9. Amending paragraph (k), *Example 7*(ii), fourth sentence, by removing the language ''(f)(2)'' and adding ''(f)(3)'' in its place; and by removing the language ''§ 35a.3406(c)(1)'' and adding ''§ 31.3406(d)–5(g)(1)(ii)'' in its place.

10. Amending paragraph (k), *Example 7*(ii), fifth sentence, by removing the language ''§ 35a.3406–1(c)(1)'' and adding ''§ 31.3406(d)–5(g)(1)(ii)'' in its place.

The revisions read as follows:

**§ 301.6724–1 Reasonable cause.**

* * * * *

(f) * * *

(2) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

(3) *Coordination with solicitations under section 3406(a)(1)(b).* (i) A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under

§ 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under § 31.3406(d)–5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which § 31.3406(d)–5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–16525 Filed 7–2–02; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–02–020]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Mystic River, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations for the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This proposed rule would start the advance notice for openings period at 3 p.m instead of 11 p.m., November through March, when there have been few requests to open the bridge. This action is expected to relieve the bridge owner from the burden of crewing the bridge during the winter months at night when there have been few requests to open the bridge.

**DATES:** Comments must reach the Coast Guard on or before September 3, 2002.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The S99 Alford Street Bridge has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water.

The existing regulations for the bridge at 33 CFR 117.609, require the bridge to open on signal from 7 a.m. to 11 p.m.; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m. From 11 p.m. to 7 a.m., at least an eight-hour advance notice is required for bridge openings.

The bridge owner, the City of Boston, asked the Coast Guard to change the drawbridge operation regulations to require the bridge to open on signal, from November 1 through March 31, only between 7 a.m. and 3 p.m. All opening requests between 3 p.m. and 7 a.m. would require an eight-hour advance notice.

The number of bridge openings November through March, from 3 p.m. to 7 a.m., for the last two years were 11 requests in 2000, and 5 requests in 2001.

The Coast Guard believes it is reasonable to allow the bridge owner to not be required to crew this bridge during the 3 p.m. to 7 a.m. shift in the winter months as a result of the low number of requests to open the bridge during that time period. We also believe the eight-hour advance notice is appropriate and will meet the reasonable needs of navigation. It will allow any vessel the opportunity to transit the bridge provided they give the required advance notice.

### Discussion of Proposal

This proposed rule would revise the drawbridge operation regulations for the S99 Alford Street Bridge, mile 1.4, across the Mystic River at Boston, Massachusetts. This proposed rule would allow the bridge owner to not be required to crew the bridge from November 1 through March 31, from 3 p.m. to 7 a.m., daily. The eight-hour advance notice requirement from 3 p.m. to 7 a.m. should assist the bridge owner in cost savings while still meeting the reasonable needs of navigation.

The Coast Guard believes this proposed rule is reasonable and will meet the present needs of navigation.

### Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 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, Feb. 26, 1979).

We expect 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. This conclusion is based on the fact that the bridge will open at all times for the passage of vessel traffic provided the eight-hour notice is given.

**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, 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 section 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 conclusion is based upon the fact that the bridge will open at all times for the passage of vessel traffic provided the eight-hour notice is given.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

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

**Indian Tribal Governments**

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

*Energy Effects*

We have analyzed this 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 117 Bridges**

**Regulations**

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

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.609 is revised to read as follows:

**§ 117.609 Mystic River.**

(a) The draw of the S99 Alford Street Bridge, mile 1.4, shall open on signal; except that, Monday through Saturday, excluding holidays, the draw need not open for the passage of vessel traffic from 7:45 a.m. to 9 a.m., 9:10 a.m. to 10 a.m., and 5 p.m. to 6 p.m., daily. From November 1 through March 31, between 3 p.m. and 7 a.m., at least an eight-hour advance notice is required for bridge openings by calling the number posted at the bridge.

(b) The draw of the Wellington Bridge, mile 2.5, need not open for the passage of vessel traffic.

Dated: June 11, 2002.

**V.S. Crea,**

*Rear Admiral, Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02–16750 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

# Notices

Federal Register

Vol. 67, No. 128

Wednesday, July 3, 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

### Food and Nutrition Service

### National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the annual adjustments to: The ''national average payments,'' the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; the ''maximum reimbursement rates,'' the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2002 through June 30, 2003.

**EFFECTIVE DATE:** July 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Semper, Acting Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

## Background

*Special Milk Program for Children*

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2002 to June 30, 2003, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 13.50 cents. This reflects a decrease of 6.83 percent in the Producer Price Index for Fluid Milk Products from May 2001 to May 2002 (from a level of 157.9 in May 2001 to 147.1 in May 2002).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

*National School Lunch and School Breakfast Programs*

Pursuant to Sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and Section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2002 through June 30, 2003 reflect a 2.6 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2001 to May 2002 (from a level of 173.1 in May 2001 to 177.6 in May 2002). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

*Lunch Payment Levels*

Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The National School Lunch Act provides two different Section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these Section 4 payments, Section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The Section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under Sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

*Afterschool Snack Payments in Afterschool Care Programs*

Section 17A of the National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool

snacks as part of the National School Lunch Program.

*Breakfast Payment Factors*

Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe need'' because they serve a high percentage of needy children.

**Revised Payments**

The following specific Section 4, Section 11 and Section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2002 through June 30, 2003. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

**National School Lunch Program Payments**

*Section 4 National Average Payment Factors*—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 2000–01, the payments for meals served are: *Contiguous States*—paid rate—20 cents, free and reduced price rate—20 cents, maximum rate—28 cents; *Alaska*—paid rate—33 cents, free and reduced price rate—33 cents, maximum rate—44 cents; *Hawaii*—paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—32 cents. In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2000–01, payments are: *Contiguous States*—paid rate—22 cents, free and reduced price rate—22 cents, maximum rate—28 cents; *Alaska*—paid rate—35 cents, free and reduced price rate—35 cents, maximum rate—44 cents; *Hawaii*—paid rate—26 cents, free and reduced price rate—26 cents, maximum rate—32 cents.

*Section 11 National Average Payment Factors—Contiguous States*—free lunch—194 cents, reduced price lunch—154 cents; *Alaska*—free lunch—314 cents, reduced price lunch—274 cents; *Hawaii*—free lunch—226 cents, reduced price lunch—186 cents.

*Afterschool Snacks in Afterschool Care Programs*—The payments are: *Contiguous States*—free snack—58 cents, reduced price snack—29 cents, paid snack—5 cents; *Alaska*—free snack—95 cents, reduced price snack—47 cents, paid snack—8 cents; *Hawaii*—free snack—68 cents, reduced price snack—34 cents, paid snack—6 cents.

**School Breakfast Program Payments**

For schools ''not in severe need'' the payments are: *Contiguous States*—free breakfast—117 cents, reduced price breakfast—87 cents, paid breakfast—22 cents; *Alaska*—free breakfast—187 cents, reduced price breakfast—157 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—137 cents, reduced price breakfast—107 cents, paid breakfast—24 cents.

For schools in ''severe need'' the payments are: *Contiguous States*—free breakfast—140 cents, reduced price breakfast—110 cents, paid breakfast—22 cents; *Alaska*—free breakfast—223 cents, reduced price breakfast—193 cents, paid breakfast—32 cents; *Hawaii*—free breakfast—163 cents, reduced price breakfast—133 cents, paid breakfast—24 cents.

**Payment Chart**

The following chart illustrates: the lunch National Average Payment Factors with the Sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including ''severe need'' schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410–30–P

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from July 1, 2002 - June 30, 2003

| NATIONAL SCHOOL LUNCH PROGRAM * | | LESS THAN 60% | 60% OR MORE | MAXIMUM RATE |
|---|---|---|---|---|
| CONTIGUOUS STATES | PAID | .20 | .22 | .28 |
| | REDUCED PRICE | 1.74 | 1.76 | 1.91 |
| | FREE | 2.14 | 2.16 | 2.31 |
| ALASKA | PAID | .33 | .35 | .44 |
| | REDUCED PRICE | 3.07 | 3.09 | 3.32 |
| | FREE | 3.47 | 3.49 | 3.72 |
| HAWAII | PAID | .24 | .26 | .32 |
| | REDUCED PRICE | 2.10 | 2.12 | 2.29 |
| | FREE | 2.50 | 2.52 | 2.69 |
| SCHOOL BREAKFAST PROGRAM | | NON-SEVERE NEED | | SEVERE NEED |
| CONTIGUOUS STATES | PAID | .22 | | .22 |
| | REDUCED PRICE | .87 | | 1.10 |
| | FREE | 1.17 | | 1.40 |
| ALASKA | PAID | .32 | | .32 |
| | REDUCED PRICE | 1.57 | | 1.93 |
| | FREE | 1.87 | | 2.23 |
| HAWAII | PAID | .24 | | .24 |
| | REDUCED PRICE | 1.07 | | 1.33 |
| | FREE | 1.37 | | 1.63 |
| SPECIAL MILK PROGRAM | | ALL MILK | PAID MILK | FREE MILK |
| PRICING PROGRAMS WITHOUT FREE OPTION | | .1350 | N/A | N/A |
| PRICING PROGRAMS WITH FREE OPTION | | N/A | .1350 | Average cost per ½ pint of milk. |
| NONPRICING PROGRAMS | | .1350 | N/A | N/A |
| AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS | | | | |
| CONTIGUOUS STATES | PAID | .05 | | |
| | REDUCED PRICE | .29 | | |
| | FREE | .58 | | |
| ALASKA | PAID | .08 | | |
| | REDUCED PRICE | .47 | | |
| | FREE | .95 | | |
| HAWAII | PAID | .06 | | |
| | REDUCED PRICE | .34 | | |
| | FREE | .68 | | |

* Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.

BILLING CODE 3410–30–C

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

**Authority:** Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: June 27, 2002.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 02–16694 Filed 7–2–02; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Dixie National Forest, Utah, Duck Creek Fuels Treatment Analysis

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to implement fuels treatments in the Duck Creek area, within the Cedar City Ranger District, Dixie National Forest, Utah. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by thirty days after publication of this Notice Of Intent in the **Federal Register**. The draft environmental impact statement is expected in June, 2002. The final environmental impact statement is expected in January, 2003.

**ADDRESSES:** Send written comments to: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720.

**FOR FURTHER INFORMATION CONTACT:** Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720.

**SUPPLEMENTARY INFORMATION:** The proposed treatments will implement direction in the National Fire Plan, a USDA/USDI effort to reduce impacts of wildfires on people and resources. In August, 2000 President Clinton directed the Secretaries of Agriculture and Interior to reduce the impacts of wildland fires on rural communities. The Secretaries subsequently developed the National Fire Plan. This direction was followed by congressionally-approved plans that funded ''hazardous fuel reduction'' near urban interface areas.

The National Fire Plan directs Federal agencies within USDA/USDI to engage states and local communities in reducing forest fuels, using a variety of fuel reduction treatments (Mechanical, prescribed fire and intensive manual treatment). Hazardous fuel reduction is a critical investment necessary to reduce fire risk and fire suppression costs into the future and is focused on areas near communities and interface areas that the States have judged to be in harm's way of a wildfire.

The analysis area of 25,741 acres of National Forest system lands is located thirty miles east of Cedar City, Utah. The analysis area includes six tracts of private lands which are surrounded by National Forest lands. The tracts are subdivided into residential lots and contain an estimated 1,900 homes and 10 businesses. The specific subdivisions are as follows:

| Subdivision | Legal location (approximate) Salt Lake base meridian |
|---|---|
| 1. Meadow View Heights. | T38S R7w Sec 6 |
| 2. Mirror Lake ..... | T38S R7W Sec 5,8 |
| 3 Movie Ranch ..... | T38S R7W Sec 7 |
| 4. Movie Ranch South. | T38S R7W Sec 7 |
| 5. Color Country ..... | T38S R7W Sec 8,17 |
| 6. Timber Trails ..... | T38S R7W Sec 7,17,18 |
| 7. Ponderosa Villa ..... | T38S R7W Sec 16 |
| 8. Strawberry Valley .. | T38S R7W Sec 20,21 |
| 9. Swains Creek ..... | T38S R7W Sec 26,2 |
| 10. Blackman Hill ..... | T38S R7W Sec 26,27 |
| 11. Harris Springs ..... | T38S R7W Sec 26 |
| 12. Swains Creek Pines. | T38S R7W Sec 33,34 |
| 13. Ponderosa Ranch | T38S R7W Sec 24; T38S R6W Sec 19 |
| 14. Zion View Mtn Estates. | T38S R8W Sec 2 |
| 15. Duck Creek Pines | T38S R7W Sec 7 |

The private lands were designated an ''urban interface community at risk from wildfires on National Forestlands'' by the Chief of the Forest Service (66FR 43383, August 17, 2001). This designation meant that Federal funds from the National Fire Plan could be spent to reduce fuels on National Forestlands adjacent to the private lands.

Historic prevention and suppression of wildfire has resulted in ever-increasing accumulations of forest fuels. These buildups of forest fuels increase the risk of high intensity fires to the National Forest and to large private subdivisions within the forest boundary. The extensive development and high recreation use have also increased the threat of human-caused fires. A high intensity fire occurring within this area would cause significant damage to property and natural resources. Reducing the risk of wildfires in these areas would provide the best opportunity to protect National Forestlands and adjacent private properties. The Forest Service has determined that the fuels treatment objectives will be met without harvesting trees over nine inches in diameter.

**Purpose and Need for Action**

The purpose of this project is to modify existing, high fuel loads that influence fire behavior in National Forest lands adjacent to private lands in the Duck Creek Area. There is a need to reduce minute, hour, ten-hour and hundred-hour fuels adjacent to private property and in the defensible fire space zone. There is a need to change the structure and composition of the fuels throughout the project area, especially in aspendominated sites. There is a need to change the characteristics of the residual trees by removing ladder fuels from the ground to eight feet high. Changing these fuels characteristics and reducing the fuel loads would help reduce the risk of property damage and allow sufficient time for firefighters to directly attack and control a wildfire before housing and other developments are threatened or destroyed. The fuel elements that need to be treated are as follows:

*Element 1—Ground Fuels Reduction*

Current fuel loads adjacent to private lands range from 20–50 tons per acre. The desired condition of the area immediately surrounding the subdivisions, Defensible Fire Space (DFS), is to have fuel loads reduced to 5–10 tons per acre, a level that would not sustain a high intensity wildfire.

The current fuel loads range from 20–50 tons per acre in the general forest area outside of the DFS. Reducing the fuel loads in the general forest area to 10–15 tons per acre would slow the spread of fire and would reduce the potential for a fire to spread into the crowns of the trees.

*Element 2—Ladder Fuels Reduction*

Lower branches and small trees currently extend from the ground upward, the ladder a fire would climb

to reach higher crowns. Ladder fuels have increased dramatically as ponderosa pine trees with small crowns and few lower branches have been replaced by fir and spruce that have large crowns and branches extending to the ground. Fire suppression has also resulted in a dense understory of young trees that contribute to the fire ladder. The desired condition within the DFS is to effectively prevent a ground fire from climbing into upper tree crowns.

*Elements 3—Retention of Fire Tolerant Species*

Aspen is naturally regenerated by wildfire, and therefore is considered a fire-tolerant species. Aspen stands within the watershed are being encroached upon by tree species such as spruce and fir, which are fire intolerant species. Stands with high density of aspen act as natural firebreaks or areas where fire activity is slowed. Aspen is a short-lived species that requires disturbance in order to regenerate; without disturbance, these stands will eventually be taken over by conifers, eliminating the aspen from the area. Conifer encroachment increases fire susceptibility and fire behavior within these stands. Maintaining aspen stands would help slow the spread of fires that may occur. The desired condition is to regenerate and maintain aspen stands.

**Proposed Action**

The Forest Service proposes to treat fuels in timber stands located in Kane County, Utah, Salt Lake Base Meridian, T38S R38W, T38S R7W, T39S R8W, T39S R7W and T38S R6W. The specific fuels treatments are as follows:

*1. Defensible fire space treatments.* Establish a defensible fire space (DFS) in National Forest lands from 500′–2000′ wide immediately surrounding private lands with subdivisions. The area to be treated in the DFS is approximately 2,778 acres. To reduce the risk of a wildfire reaching or spreading through tree crowns within the DFS, intensive fuels removal treatments will be conducted by cutting all conifer trees under nine inches in diameter and pruning limbs under eight feet high on conifer trees to reduce ladder fuels. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

*2. Mixed conifer treatments.* Reduce fuel loads and favor the establishment of ponderosa pine on approximately 7,002 acres of mixed conifer stands in National Forest lands south and west of the private subdivisions. Mixed conifer stands have major components of ponderosa pine, white fir and Douglas-fir with minor components of subalpine fir, Engelmann spruce and Colorado blue spruce. Fuel loads will be reduced by cutting white fir, Douglas-fir, subalpine fir, Engelmann spruce and Colorado blue spruce trees under nine inches in diameter. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

*3. Spruce/fir treatments.* Reduce fuel loads on approximately 952 acres of spruce/fir conifer stands in National Forest lands south and west of the private subdivisions. Spruce/fir stands have major components of Engelmann spruce and subalpine fir with minor components of ponderosa pine, Colorado blue spruce, Douglas-fir and white fir. Fuel loads will be reduced by cutting subalpine fir, white fur and Douglas-fir under nine inches in diameter. Engelmann spruce, Colorado blue spruce and ponderosa pine trees under nine inches in diameter will be retained in this area in order to maintain a spruce component into the future. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

*4. Aspen treatments.* Regenerate and maintain stands dominated by aspen in approximately 2,906 acres of National Forest lands south and west of the private subdivisions by cutting Engelmann spruce, Colorado blue spruce, subalpine fir and white fir trees under nine inches in diameter and underburning fuels. Slash will be pulled away from mature (over 18″ diameter) ponderosa pine and Douglas-fir trees to provide partial protection from prescribed fire. Aspen, a short-lived species that acts to slow the spread of wildfire, requires periodic disturbance to induce new growth. Underburning will result in stimulating and regeneration the aspen. A prescribed fire plan will be developed prior to underburning. The plan will outline appropriate burning conditions and fire control methods to be implemented to insure the prescribed fire is confined to the area to be treated.

Fuels and slash piling may be done by machine, except where Forest Plan standards for soils or slope dictate otherwise. Piles will be burned. The transportation system required to treat or remove fuels is in place. No new roads would be constructed with this project. Riparian areas along perennial streams would be protected with a 300-foot no-treatment buffer along the edges. Riparian areas along ephemeral streams would be thinned, but piling and burning would occur at least 50 feet away from the channel. No treatment would occur within 100 feet of springs occur in order to protect water sources, soils that are wet and sensitive to compaction, and riparian habitat.

The project will be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan.

**Possible Alternatives**

Three or more alternatives will be considered in the analysis.

No action. Under this alternative, the proposed fuels treatments will not be completed. The current forest fuels conditions would not be substantially changed and natural processes would continue. This alternative will be fully evaluated and described.

Proposed Action (as described above).

Additional Alternatives—Additional alternatives may be developed in response to issues and resource conditions evaluated through the analysis.

**Responsible Official**

The responsible official for this EIS and the Record of Decision is: Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720–0627; FAX: (435) 865–3791.

**Nature of Decision To Be Made**

The Responsible Official will decide whether forest fuels treatment would be conducted to reduce risks from wildfires to the National Forest and to private lands held within the National Forest; and, if so, what extent and types of treatments should be done.

**Scoping Process**

Public participation was initiated through scoping in October, 2001. A scoping notice was sent to 2,796 individuals and organizations who are potentially affected parties and those currently on the Dixie National Forest mailing list that have expressed interest in natural resource projects. Two public meetings were held (October 27, November 1). Comments and issues were received in response to these public contacts.

*Scoping Will Continue*

Public participation is especially important during scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

**Preliminary Issues**

The following issues were identified through public scoping and internal resource analyses:

1. The proposed fuels treatments would reduce travel corridors for big game (e.g. elk and deer) and birds and small mammals (*e.g.* turkey, grouse, red squirrels and flying squirrels) by substantially fragmenting habitat throughout the project area.

2. The proposed fuels treatments would remove understory trees and limbs, which are used by juvenile goshawks within nest areas and flammulated owls as roosting habitat.

3. The proposed fuels treatments would create openings in the forest and increase sight distance from the homes within the subdivision into the forest. This would change the visuals/aesthetics of the area by reducing or eliminating the ''vegetative screening'' that many residents value.

4. Older stands of aspens would be regenerated and replaced by younger stands of aspen, reducing and/or changing the aesthetic value of these stands. Older trees with large, white boles would be replaced by thickets of seedlings and saplings in the short term. Fall color viewing would also be impacted.

5. The proposed fuels treatments would remove young trees and seedlings from the spruce/fir stands, resulting in the eventual loss of the timber stand due to lack of regeneration.

6. The proposed fuels treatments are too costly to implement.

7. The proposed fuels treatment would reduce or eliminate understory vegetation that serves as a barrier to off-road motorized vehicles, especially by ATV's (All Terrain Vehicles).

**Comments Requested**

Comments will continue to be received and considered througout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that,under the FOIA, confidentiality may be grated in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).*

Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider that and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in January, 2003. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: May 23, 2002.

**Mary Wagner,**

*Forest Supervisor, Dixie National Forest.*

[FR Doc. 02–16708 Filed 7–02–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Cedar City Ranger District, Dixie National Forest; Utah; Duck Creek—Swains Access Management Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for the Forest Service to implement proposals within the Duck Creek—Swains Access Management Project area, on the Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah 84720–7769; FAX: (435) 865–3791; e-mail: *psummers@fs.fed.us.* This is a revision in accordance with the **Federal Register** stating that a revised notice to intent is require due to a major change. The original notice of Intent for this project was published in the **Federal Register** May 21, 2001 (Vol. 66, No. 98, Pages 27934 to 27936). Six months from

May 21, 2001 would be November 21, 2001, therefore a revision is required.

**DATES:** The DEIS is expected to be available for review by June 2002. The Record of Decision and Final Environmental Impact Statement are expected to be available by September 2002. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

**ADDRESSES:** Send written comments to Priscilla Summers, Project Leader, Cedar City Ranger District, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail *psummers@fs.fed.us.* For further information, mail correspondence to Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail *psummers@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Priscilla Summers, Cedar City Ranger District, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769; FAX: (435) 865–3791; e-mail: *psummers@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:**

## Purpose and Need for Action

The purpose of these proposals is to initiate actions that would improve the motorized transportation system, improve habitat for wildlife, and reduce sedimentation and erosion. The project area is located approximately 24 miles east of Cedar City, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan (Forest Plan) for the Dixie National Forest, 1986.

## Proposed Action

The proposed action includes:

1. Maintain approximately 222 miles of road open to motorized vehicle travel. Approximately 32 miles of this mileage consists of State Highways 14 and 89, plus the Mammoth Creek Road. These three roads are open but restricted to street legal vehicles only. (This does not include approximately 61 miles on private land that would remain open in the Duck/Swains area.)

2. Provide approximately 35 miles of motorized vehicle trail by restricting travel to motorized trail use on approximately 33 miles of road, and constructing approximately 2 miles of new trail. This does not include the Duck Creek ATV Trail system, which is 8.5 miles.

3. Remove (decommission) approximately 123 miles of unneeded road from the Forest Transportation System close to motorized use, and restore to a more natural state.

4. Close approximately 178 miles of road to motorized use, retaining them on the Forest Transportation System for forest management or emergency use.

5. Implement a Code of Federal Regulations Special Order in the Dixie National Forest Travel Map superceding the existing order that would change the wording from: ''roads not shown on the map are open to motorized use unless posted as closed on the ground'', to: ''all roads are close unless designated open'' in the Duck Creek—Swains Area.

6. Relocate approximately one-half mile of the Bower's Flat road out of a wet meadow.

7. Any new roads (regardless of origin) inventoried after this proposal and corresponding decision will be decommissioned using existing authority.

These activities would occur over five years, with the Strawberry Creek and Swains Creek watersheds implemented last.

## Possible Alternatives

Four tentative alternatives excluding the Proposed Action and the No Action Alternative have been developed to address the issues listed in this notice. These are:

- Alternative C Responds to Issue #1—All closed roads would be decommissioned—301 miles
- Alternative D responds to issue #2 with 265 miles of road open and 35 miles of motorized trail open.
- Alternative E Responds to Issue #3 with 303 miles of road and 35 miles of motorized trail open.
- Alternative F Responds to Issues #4 and #5. 193 miles of road and 29 miles of motorized trail open).

## Responsible Official

Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 N Wedgewood Lane, Cedar City, Utah, 84720–7769.

## Nature of Decision To Be Made

Based on the environmental analysis in this Draft EIS, the Dixie National Forest Supervisor will decide whether or not to retain, close, relocate, or decommission roads and motorized trails within the Duck/Swains Area in accordance with Forest Plan goals, objectives and desired future conditions. The Forest Supervisory will decide whether to implement an action alternative, a modified action alternative, or the no action alternative. If an action alternative is selected, it may include:

- The miles and location of roads to retain open;
- The miles and location of roads to close;
- The miles and location of roads to decommission;
- The miles and location of new motorized trails to construct;
- The miles and location of roads to restrict for motorized trail use;
- The location of a new motorized bridge across Swains Creek;
- Changing the Code of Federal Regulations Order to implement closed unless designated open; and/or
- Mitigation measures and monitoring requirements.

This decision does not include a forest plan amendment.

## Scoping Process

On May 21, 2001, we published a notice in the Federal Register (Vol. 66, No. 98, pgs 27934–27936) soliciting public involvement in the development of issues necessary to complete an analysis of the environmental impacts of reducing roads in the Duck Creek-Swains area of the Cedar City Ranger District on the Dixie National Forest. We solicited comments on that notice for 45 days and received 184 comments. We will consider all the comments that we received in response to our May 21, 2001 notice during the preparation of the EIS that is the subject of this notice. Therefore, if you submitted comments in response to the March 2001 notice, you do not need to resubmit those comments in order for the information provided in them to be considered during the development of the EIS.

## Preliminary Issues

Issues identified to date include the following:

1. Open and closed roads cause resource impacts such as fragmentation and sedimentation.

2. Some of the roads proposed for closure or decommissioning provide access to scenic vistas, woodcutting, picnicking, hunting, and camping. Closing or decommissioning roads would eliminate access to these areas.

3. Increasing ATV and OHV use on the fewer roads left open would not meet current and anticipated demand increase would cause the potential for user conflicts, congestion and displacement.

4. Use on some roads left open could cause impacts to goshawk and peregrine falcon nesting areas, rims, meadows, and other sensitive areas for wildlife.

5. Existing roads cause changes in natural drainage patterns by intercepting subsurface flow, preventing infiltration and redirecting flow.

**Comment Requested**

This notice of intent continues the scoping process which guides the development of the environmental impact statement. On May 21, 2001, we published a notice in the **Federal Register** (Vol. 66, No. 98, pgs 27934–27936) soliciting public involvement in the development of issues necessary to complete an analysis of the environmental impacts of reducing roads in the Duck Creek-Swains area of the Cedar City Ranger District on the Dixie National Forest. We solicited comments on that notice for 45 days and received 184 comments. We will consider all the comments that we received in response to our May 21, 2001 notice during the preparation of the EIS that is the subject of this notice. Therefore, if you submitted comments in response to the March 2001 notice, you do not need to resubmit those comments in order for the information provided in them to be considered during the development of the EIS.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: May 23, 2002.

**Mary Wagner,**

*Forest Service, Dixie National Forest.*

[FR Doc. 02–16709 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### California Coast Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The California Coast Provincial Advisory Committee (PAC) will meet on July 17 and 18, 2002, in Humboldt County, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

**DATES:** A business meeting will be held from 10 a.m. to 4 p.m. on July 17, 2002, at the Forest Supervisor's Office, Six Rivers National Forest, in Eureka, CA. A field tour of the Headwaters Forest Reserve will be held on July 18, 2002, from 8:30 a.m. until 3 p.m.

**ADDRESSES:** The July 17 business meeting will be held at the Forest Supervisor's Office, Six Rivers National Forest, 1330 Bayshore Drive, Eureka, CA. The July 18 field tour will begin at the Bureau of Land Management office, 1695 Heindon Rd., in Arcata, CA.

**FOR FURTHER INFORMATION CONTACT:** Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–3316; e-mail *pybrown@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Presentation on Salmon Recovery Plan; (2) Regional Ecosystem Office (REO) update; (3) Bureau of Land Management presentation on Draft Environmental Impact Statement for the Headwaters Forest Reserve; (4) Update on planning for a Province fire ecology fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Presentation on working with county Fire Safe Counsels; (7) Northwest Forest Plan Implementation Monitoring scheduling; (8) Options for vegetation management; and (9) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 16, 2002.

**James Fenwood,**

*Forest Supervisor.*

[FR Doc. 02–16731 Filed 7–2–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Opal Creek Scenic Recreation Area (SRA) Advisory Council

**AGENCY:** Forest Service USDA Forest Service

**ACTION:** Notice of meeting.

**SUMMARY:** An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, July 15, 2002. The meeting is scheduled to begin at 6:00 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA,

and consults on a periodic and regular basis on the management of the area. Tentative agenda items include information sharing on the following topics:

Discussion of the decision and rationale for the Opal Creek SRA Management Plan Environmental Analysis;

Discussion on future transition of the Council membership in accordance with provisions of the Council Charter;

Discussion of future topics and a tentative schedule for the Council meetings;

A direct public comment period is tentatively scheduled to begin at 8:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 15 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: June 27, 2002.

**Y. Robert Iwamoto,**

*Acting Forest Supervisor.*

*Disclaimer:* This meeting notice is being published less than 15 days prior to the meeting due to the urgency of presenting the Management Plan decision and completing the appeal processes in order to allow the State of Oregon to move ahead with preparing an Economic Development Plan and grant requests as provided in paragraphs (i)(1) and (i)(2) of Public Law 104–208. This late notice is authorized under 41 CFR 1016.1015(b)(2).

[FR Doc. 02–16699 Filed 7–2–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Alpine County, CA, Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Alpine County Resource Advisory Committee (RAC) will meet on July 15, 2002, in Markleeville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) an the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, and Stanislaus National Forests in Alphine County.

**DATES:** The meeting will be held at the Turtle Rock County Park, Markleeville, CA.

**FOR FURTHER INFORMATION CONTACT:** Laura Williams, Committee Coordinator, USDA, Homboldt-Toiyabe National Forest, 1536 S Carson St, Carson City, NV 89701, (775) 884–8150, e-mail: *ljwilliams@fed.us.*

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1) Old business; (2) Project Criteria Discussion; (3) Camping in Alphine County; (4) Project Proposals; (5) New business & Public comment.

The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: June 26, 2002.

**Gary Schiff,**

*Carson District Ranger.*

[FR Doc. 02–16670 Filed 7–2–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

**[I.D. 062702F]**

### 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*: Coastal Resource Management Customer Survey.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0308.

*Type of Request*: Regular submission.

*Burden Hours*: 788.

*Number of Respondents*: 1,575.

*Average Hours Per Response*: 30 minutes.

*Needs and Uses*: This survey will be used by the NOAA Coastal Services Center to obtain information from its customers about their natural resource management issues, their information needs, and their technological capabilities to make quality improvements to our products and services. The respondents will be from the coastal natural resource management community.

*Affected Public*: State, Local, or Tribal Government.

*Frequency*: One-time.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 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 26, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16714 Filed 7–2–02; 8:45 am]

**BILLING CODE 3510–08–S**

## DEPARTMENT OF COMMERCE

**[I.D. 062702G]**

### 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).y

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Scientific Research, Exempted Fishing, and Exempted Activity Submissions.

*Form Number(s)*: None.

*OMB Approval Number*: 0648–0309.

*Type of Request*: Regular submission.

*Burden Hours*: 695.

*Number of Respondents*: 135.

*Average Hours Per Response*: 6 hours for a Scientific Research Plan; 1 hour for an exempted fishing permit request; 2 hours for an exempted fishing permit report; and 30 minutes for an exempted educational activity request or report.

*Needs and Uses*: Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a research plan to

ensure that the activities are considered research and not fishing. NOAA may also grant exemptions from fishery regulations for educational or other activities (e.g., testing of fishing gear). Applications for these exemptions must be submitted, and reports on activities submitted.

*Affected Public*: Business or other for-profit organizations, individuals or households, not-for-profit institutions, Federal government, and State, Local or Tribal government.

*Frequency*: On occasion, annually.

*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 26, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16715 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

**[Docket No.: 020528133–2133–01]**

## Privacy Act of 1974: System of Records

**AGENCY:** Department of Commerce.

**ACTION:** Notice of amendment of Privacy Act System of Records; Commerce/Census System 5: Population and Housing Census Records of the 1960 and Subsequent Censuses.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census-5, ''Population and Housing Census Records of the 1960 and Subsequent Censuses.'' We invite public comment on the change to the system of records announced in this notice.

**DATES:** *Effective Date:* The system will become effective without further notice on August 2, 2002, unless comments dictate otherwise. *Comment Date:* To be considered, written comments must be submitted on or before August 2, 2002.

**ADDRESSES:** Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

**SUPPLEMENTARY INFORMATION:** Pursuant to Title 13 of the United States Code, Section 141, the U.S. Census Bureau has conducted the 2000 Census. The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, retrievability , safeguards, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Population and Housing Census Records of the 1960 and Subsequent Censuses system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

The Department of Commerce finds no probable or potential effect of the proposed change to the system of records on the privacy of individuals. Respondent data including personally identifying data are captured as images suitable for computer processing. Images are scheduled for permanent retention. Original data sources are destroyed, according to the disposal procedures for Title 13 (''census confidential'') records, after confirmation of successful data capture and data transmission to headquarters. The Individual Census Record File (ICRF) represents a unified record of individual responses, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters. The ICRF is scheduled for permanent retention.

Accordingly, the Population and Housing Census Records of the 1960 and Subsequent Censuses is amended by the following updates:

### COMMERCE/CENSUS-5

**SYSTEM NAME:**

Delete ''1960 and Subsequent Censuses'' and insert ''2000 Census.''

**SYSTEM LOCATION:**

Delete ''Bureau of the Census 1201 East 10th Street, Jeffersonville, Indiana 47103''; Add Bureau of the Census, Bowie Computer Center, 17101 Melford Boulevard, Bowie, Maryland 20715.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete ''Censuses''; Insert ''Census''; Delete ''taken'' and insert ''conducted''; Delete ''1960 and later''; Add ''2000''.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete paragraph after ''information''; Add ''That may include name, address, telephone number, age, sex, relationships, race, Hispanic origin, and housing tenure. About one in six records also contain additional population information including, as applicable: Marital status; income and employment (income; labor force status; industry, occupation, and class of worker; work status last year; and veteran status); education (school enrollment and educational attainment); origins and language (including ancestry; place of birth, citizenship, and year of entry; and language spoken at home); residence five years ago; disability; grandparents as caregivers; physical characteristics of housing (including year built, units in structure, number of rooms, number of bedrooms, kitchen facilities, plumbing facilities, telephone service availability, heating fuel, year moved to unit, and farm residence); and financial characteristics of housing (including value, selected monthly owner costs, and rent). As a part of the 2000 Census test and experimentation program, Social Security numbers were requested from members of 20,000 randomly selected households. These are maintained with the above information for those households that provided them. Provision was voluntary.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:***

**PURPOSE(S):**

Add ''The purpose of this system of records is to create longitudinal linkages, enhance survey responses, and perform quality control studies.''

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:**

Insert ''These records are maintained and used solely for statistical purposes and are confidential under Title 13 of the United States Code, Sections 8, 9, and 214''

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete ''Microform, paper copy'' ; Delete punch cards'; After ''magnetic tape'' add on-line disk storage, CD-ROMs/DVD, server, and hard disk.''

**RETRIEVABILITY:**

After ''Information'' delete to the end; After ''Information'' insert ''may only be retrieved by address.''

**SAFEGUARDS:**

After ''Employees are'' delete ''also''. After ''advised of the'' delete ''regulations issued pursuant to Title 13, U.S.C. governing the''. After ''data.'' add ''Computer systems processing sensitive information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security. This level of security controls through use of specific security features, provides access to information such that only properly authorized individuals, or processes operating on their behalf, will have access to read, write, create, or delete information.''

**RETENTION AND DISPOSAL:**

Delete ''Records are retained in accordance with the unit's Record Control Schedule.'' Add: ''Respondent data including personally identifying data are captured as images suitable for computer processing. Images are scheduled for permanent retention. Original data sources are destroyed, according to the disposal procedures for Title 13 (''census confidential'') records, after confirmation of successful data capture and data transmission to headquarters. The Individual Census Record File (ICRF) represents a unified record of individual responses, including all names and other written entries provided by the respondent, and all associated address and geographic information for each housing unit or person living in group quarters. The ICRF is scheduled for permanent retention. The computer systems processing this information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security.

**SYSTEMS MANAGER(S) AND ADDRESS:**

Delete ''Administration''; add ''Decennial Census''.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Insert ''system of'' between ''this'' and ''record'' in the first sentence and change ''record'' to ''records''.

*Indicates that there are no changes to that paragraph of the notice.

Dated: June 27, 2002.

**Brenda S. Dolan,**

*Freedom of Information/Privacy Act Officer, Department of Commerce.*

[FR Doc. 02–16723 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Certain New Shipper Antidumping Duty Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for the preliminary results of certain new shipper antidumping duty reviews.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of two new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. This extension applies to the new shipper reviews for two producers/exporters, Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001.

**EFFECTIVE DATE:** July 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moats or Brian Ellman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5047 or (202) 482–4852, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

#### Extension of Time Limit for Preliminary Results for New Shipper Reviews

On November 29, 2001, Shandong Heze International Trade and Developing Company requested a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, of exports of its merchandise to the United States. Jinan Yipin Corporation, Ltd., also requested such a review of its exports to the United States on November 30, 2001. On January 7, 2002, the Department initiated new shipper reviews for these companies. See *Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 715 (Jan. 7, 2002). The Department also initiated a new shipper review of exports of Huaiyang Hongda Dehydrated Vegetable Company (Hongda) to the United States. However, we have since determined that it is appropriate to rescind the review of Hongda. See *Fresh Garlic From the People's Republic of China: Rescission of New Shipper Review and Initiation of New Shipper Review*, published concurrently with this notice. The deadline for completing the preliminary results of these new shipper reviews currently is June 26, 2002.

A number of complex factual and legal questions related to the calculation of dumping margins have arisen in the new shipper reviews. Because a margin has not been calculated during an earlier segment of this proceeding, numerous issues have been raised and commented upon by the petitioner and a respondent concerning the factors of production and the valuation of those factors. In addition, in the case of both Jinan Yipin and Shandong Heze, we are still evaluating their responses to the original questionnaire and two supplemental questionnaires. Therefore, we find that the new shipper reviews are extraordinarily complicated and it is not practicable to complete these reviews within the time limits mandated by section 751(a)(2)(B)(iv) of the Act. As a result, we are extending the time limit for the preliminary results of these reviews to July 24, 2002.

Dated: June 26, 2002

**Richard W. Moreland,**

*Deputy Assistant Secretary for AD/CVD Enforcement I.*

[FR Doc. 02–16741 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570-831]**

### Fresh Garlic from the People's Republic of China: Rescission of New Shipper Antidumping Duty Review and Initiation of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of New Shipper Antidumping Duty Review and

Initiation of Antidumping Duty New Shipper Review.

**EFFECTIVE DATE:** July 3, 2002.

**SUMMARY:** At the request of Huaiyang Hongda Dehydrated Vegetable Company, the Department of Commerce initiated a new shipper review of its shipments of merchandise subject to the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2000, through October 31, 2001. However, after review of the company's responses to our original and supplemental questionnaires, we found that the date of sale and entry of the company's U.S. sale fell outside the period of review. We are therefore rescinding this new shipper review.

Although the Department of Commerce is rescinding the November 1, 2000, through October 31, 2001, new shipper review for Huaiyang Hongda Dehydrated Vegetable Company, we still find that its request for review complies with the content requirements for a new shipper review. Further, we find that the date of sale and entry for the transaction covered by the company's request for review fall within the six-month period immediately preceding the May semiannual anniversary month of the antidumping duty order on fresh garlic from the People's Republic of China. Therefore, in accordance with 19 CFR 351.214(g)(1)(B), we are initiating a new shipper antidumping duty review for the period of November 1, 2001, through April 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Mark Ross, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3931 or (202) 482-4794, respectively.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, for purposes of the rescission, all references are made to the Department of Commerce's (the Department) regulations at 19 CFR Part 351 (2001), and, for purposes of the initiation, all references are made to the Department's regulations at 19 CFR Part 351 (2002).

## Background

On November 30, 2001, we received a request for a new shipper review from Huaiyang Hongda Dehydrated Vegetable Company (Hongda). We reviewed this request, in addition to two other requests, and found that the requests complied with the content requirements for requests for new shipper reviews set forth under 19 CFR 351.214(b)(2). We therefore initiated three new shipper reviews on December 28, 2001. See *Fresh Garlic from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 715 (Jan. 7, 2002) (*Initiation Notice*). On January 22, 2002, we issued Hongda a questionnaire. On March 7, 2002, we received a response from Hongda to the questionnaire. The company submitted a response to our May 15, 2002, supplemental questionnaire on June 5, 2002, and supplemented this response with additional information on June 17, 2002.

## Rescission of New Shipper Review

In its request for a new shipper review, Hongda stated that its only sale of subject merchandise had occurred on October 29, 2001, and that it considered this date to be both the sales invoice date and the date of sale. It also stated that the merchandise was entered for consumption into the United States on November 28, 2001. In support of its statements, it submitted an invoice, dated October 29, 2001, and a U.S. Customs entry summary form showing an entry date of November 28, 2001. Based on this request and documentation, we concluded that a sale had taken place during the period of review as defined under 19 CFR 351.214(g) and that the request complied with the content requirements for requests set forth under 19 CFR 351.214(b)(2).

In its March 7, 2002, questionnaire response, Hongda confirmed that the invoice date for its U.S. sale was October 29, 2001. However, it claimed that the merchandise was shipped from the factory on November 7, 2001, and that, upon its arrival in the United States, the U.S. Customs Service refused entry of the merchandise unless the importer entered the merchandise at a higher price. In support of its claim, Hongda submitted an entry summary reject form from the U.S. Customs Service that showed that entry of the merchandise was rejected on the basis of value claimed. Hongda stated that, as a result, the price was increased and it issued a supplemental invoice to the customer on November 29, 2001, to reflect this price increase. It stated that, since the increased price was not the result of a negotiation between the buyer and the seller, the price increase did not affect the date of sale and should be treated as a billing adjustment.

The petitioner, the Fresh Garlic Producers Association, submitted comments on Hongda's response on April 5, 2002. It argued that the new shipper review should be rescinded on the basis that no sale or entry had occurred during the period of review (POR). The petitioner asserted that a key term of sale the price changed on November 29, 2001, and that, accordingly, the sale of the merchandise did not occur during the POR.

In its June 5, 2002, response to our supplemental questionnaire, Hongda claimed that the U.S. Customs Service had demanded that the U.S. customer import the merchandise at a specified higher price and that this was the price reflected in the price increase between Hongda and the customer. Hongda could not provide an explanation as to why the U.S. Customs Service demanded the higher price.

As set forth under 19 CFR 351.401(i), the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, in identifying the date of sale of the subject merchandise. However, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i). The Department cited and explained this regulatory provision in Appendix I of the January 22, 2002, questionnaire sent to Hongda. See Request for Information Regarding Exports of Fresh Garlic from the PRC, p. I-2 (Jan. 22, 2002). In addition, the Department stated that ''if basic terms of sale have changed up to, or even subsequent to, the date of shipment, then the date of shipment is the date of sale.'' *Id.*

We find, based on a review of the record, that the U.S. Customs Service did not reject entry of the fresh garlic on the basis of the negotiated price between Hongda and the U.S. customer but on the basis of the value of the merchandise. Thus, we find that Hongda's decision to increase the price of its merchandise on November 29, 2001, was a decision it voluntarily made to have the merchandise enter the United States. Therefore, the price increase was not a mere billing adjustment, but a change in the price a material adjustment in the transaction of the goods. Consequently, a material

term of sale changed on November 29, 2001, and, because this date is subsequent to the date of shipment, we find that the date of sale is November 7, 2001.

This date is outside of the POR for the new shipper review. Under 19 CFR 351.214(g), a new shipper review will normally cover entries, exports, or sales during the twelve-month period preceding the anniversary month of the order if the new shipper review was initiated in the month immediately following the anniversary month. The anniversary month in this proceeding is November, since the antidumping duty order was published on November 16, 1994. We initiated the new shipper review on December 28, 2001. Consequently, the POR covers entries, exports, or sales of merchandise by Hongda from November 1, 2000, until October 31, 2001. Because no sales or entries of merchandise occurred during this period, we are rescinding this review in accordance with 19 CFR 351.214(f)(2), which permits the Department to rescind a new shipper review when we conclude that no entry and sale of subject merchandise to an unaffiliated customer in the United States took place during the period of review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

**Initiation of New Shipper Review**

As indicated in the ''background'' section above, we found in our *Initiation Notice* that Hongda's November 30, 2001, request for a new shipper review complied with the content requirements set forth under 19 CFR 351.214(b)(2). Therefore, we are initiating a new shipper review for shipments of fresh garlic from the People's Republic of China produced and exported by Hongda. This review will cover entries, exports, and sales during the period of November 1, 2001, through April 30, 2002, as defined under 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the date on which the new shipper review was initiated. See 19 CFR 351.214(i).

We previously instructed the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Hongda in accordance with 19 CFR 351.214(e). These instructions will remain in effect until the completion of the new shipper review.

The interested parties should submit applications for disclosure under APO in accordance with 19 CFR 351.305 and 351.306 of the Department's regulations.

This rescission, initiation, and notice are in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: June 26, 2002

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–16742 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket No.: 020612145–2145–01]**

### Request for Technical Input—Standards in Trade Workshops

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Request for workshop recommendations.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites interested parties to submit suggestions for workshops covering specific sectors and targeted countries or regions of the world where training in the U.S. system of standards development, conformity assessment, and metrology may facilitate trade. Prospective workshops may be scheduled for one or two week periods. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. Because there are a limited number of workshops that NIST can offer and NIST has limited resources, NIST will consider recommendations in the context of which workshops would be most useful to intended audiences. Additional information about the NIST Standards in Trade Workshops is available at *http://ts.nist.gov/ts/htdocs/210/216/216.htm.*

**DATES:** All recommendations must be submitted no later than July 31, 2002.

**FOR INFORMATION CONTACT:** Libby Parker (301) 975–3089, *libby@nist.gov.* Additional information about the NIST Standards in Trade workshops, to include schedules and summary reports for workshops held to date and participant information, is available at *http://ts.nist.gov/ts/htdocs/210/216/216.htm.*

**SUPPLEMENTARY INFORMATION:** The Standards in Trade Workshops are a major activity of the Global Standards and Information Group (GSIG) in the NIST Standards Services Division (SSD). The workshops are designed to provide timely information to foreign standards officials on U.S. practices in standards and conformity assessment. Participants are introduced to U.S. technology and principles in metrology, standards development and application, and conformity assessment systems.

Each workshop is a one or two week program offering a comprehensive overview of the roles of the U.S. Government, private sector, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with U.S. technology and practices in metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. Government and the private sector in developing and implementing standards; and (3) develop professional contacts as a basis for strengthening technical ties and enhancing trade. Workshop recommendations (maximum 4 pages) will address at a minimum the following points:

1. Name and Description of the Recommending Organization
2. Point of Contact
3. Industry Sector for Workshop Focus
4. Calendar Dates and Duration Suggested for Workshop
5. Workshop Objectives
6. Anticipated Benefit for Trade and Market Access
7. Proposed Foreign Participants
   a. country or region
   b. types of organizations
7. U.S. Stakeholder Participants (e.g., Associations, Agencies, Users, others)
8. Principal Topics and Recommended Speakers
9. Related Site Visits and Events
10. Expected Outcomes/Measures of Success

All recommendations must be submitted no later than July 31, 2002.

Dated: June 24, 2002.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 02–16698 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### Technology Administration

### Announcing a Public Workshop on Digital Entertainment and Rights Management

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Notice of a public workshop.

**SUMMARY:** The United States Department of Commerce Technology Administration (TA) announces a public workshop on digital entertainment and its availability to consumers. The workshop will help gather data on such issues as the status of technical standards that provide the framework necessary to enable legitimate digital media distribution and the present state of strengths, weaknesses and availability of current and imminent technological solutions to protect digital content, barriers that are inhibiting movies, music and games from coming online.

**DATES:** This workshop will be held on July 17, 2002, from 1 p.m.–4 p.m.

**ADDRESSES:** The workshop will be held at the Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. Entrance on 14th between Pennsylvania and Constitution Aves., NW.

**FOR FURTHER INFORMATION CONTACT:** Further information relevant to the substantive issues to be addressed by this workshop may be obtained from Chris Israel Deputy Assistant Secretary for Technology Policy, Technology Administration, (202) 482–5687. Limited seating will be available to members of the general public. It is recommended that persons wishing to become general public attendees arrive early, as seating will be first come, first served.

**SUPPLEMENTARY INFORMATION:** Pursuant to its statutory authority found at 15 U.S.C. 3704(c), the Technology Administration is authorized, among other things, to conduct technology policy analyses to improve United States industrial productivity, technology, and innovation, cooperate with United States industry in the improvement of its productivity, technology, and ability to compete successfully in world markets, and identify technological needs, problems, and opportunities within and across industrial sectors, that, if addressed, could make a significant contribution to the economy of the United States.

With these responsibilities in mind, the Technology Administration is planning on holding a moderated series of informal discussions with relevant stakeholders to gather information on the availability of digital entertainment and status of copyright protection and rights management tools. The discussions will help gather data on such issues as the strength, weaknesses and availability of technological solutions, as well as network capability, and the proper role for the Government in facilitating solutions that are best for innovation and best for consumers.

Topics to be addressed at the workshop include:

- The effectiveness of efforts to pursue technical standards or solutions that are designed to provide a more predictable and secure environment for digital transmission of copyright material;
- Major obstacles facing an open commercial exchange of digital content;
- What a future framework for success might entail;
- Current consumer attitude towards online entertainment.

The workshop will focus on these and other related issues. Anyone wishing to comment on these or raise related issues is free to do so, either in writing before the meeting, or in person at the meeting. Prior comments will be collected via the Technology Administration Web site—*www.ta.doc.gov/<http://www.ta.doc.gov/.>* and are requested by July 11, 2002.

**Authority:** This work effort is being initiated pursuant to TA's statutory responsibilities, codified at section 3704 of Title 15 of the United States Code.

Dated: June 28, 2002.

**Phillip J. Bond,**

*Undersecretary of Commerce for Technology.*

[FR Doc. 02–16740 Filed 7–2–02; 8:45 am]

BILLING CODE 3510–18–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 2, 2002.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: June 27, 2002.

**John D. Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information, Officer.*

### Office of Postsecondary Education

*Type of Review:* Reinstatement.

*Title:* Application for Grants under Upward Bound (UB) & Upward Bound Math/Science (UBMS) Programs.

*Frequency:* Once every four years.

*Affected Public:* Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,450.

Burden Hours: 49,300.

*Abstract:* The application form is needed to conduct a national competition for the Upward Bound and Upward Bound Math and Science Centers Programs for program year 2003–04. These programs provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of

institutions and agencies and, in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivations necessary for success in education beyond secondary school. The Math and Science Program provides an intensive six-week summer math-science curriculum program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2064. 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 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–16684 Filed 7–2–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, July 31, 2002 1 p.m.–8:30 p.m.

**ADDRESSES:** New Mexico Highlands University, Student Center, Las Vegas, NM.

**FOR FURTHER INFORMATION CONTACT:** Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Board Meeting and Retreat Agenda:*

Wednesday, July 31, 2002

1–1:15 p.m. Call to Order by Ted Taylor, DDFO; Establishment of a Quorum; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of May 31–June 1, 2002 Meeting and Retreat Minutes
1:15–1:30 p.m Public Comment
1:30–2:30 p.m Board Business
A. Recruitment/Membership Update
B. Report from Chairman Brannon
—Update on SSAB Chair's Meeting and SSAB Workshop
—Amendment No. 2 to Bylaws
C. Report from DOE, Ted Taylor, DDFO
—Overview of Parliamentary Procedure
D. Report from Executive Director, Menice S. Manzanares
E. Report from Technical Advisor, Ben Latham
F. New Business
2:30–2:45 p.m. Break
2:45–3:45 p.m. Report from Committees
A. Environmental Restoration Committee, Dr. Fran Berting
B. Monitoring and Surveillance Committee, Dr. June Frabryka-Martin
C. Waste Management Committee, Richard Gale
D. Community Outreach Committee, Debra Welsh
E. Budget committee Report, Don Jordan
3:45–5 p.m.Presentation of FY 03 Work Plans and Budget by Each Committee
5–6 p.m. Dinner Break
6–7:30 p.m. Presentation by DOE on FY 03 Budget
7:30–7:45 p.m. Break
7:45–8:15 p.m. Public Comment
8:15–8:30 p.m. Recap of Meeting
8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on June 28, 2002.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 02–16695 Filed 7–2–02; 8:45 am]

BILLING CODE 6405–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 26, 2002.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 3, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0532.

*Title:* Scanning Receiver Compliance Exhibit, Sections 2.1033(b)(11) and 15.121.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; not-for-profit institutions; business or other for-profit entities; and State, Local or Tribal Government.

*Number of Respondents:* 40.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 40 hours.

*Total Estimated Cost:* $2,000.

*Needs and Uses:* The FCC rules under 47 CFR 2.1033(b)(11) require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control, and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission also requires manufacturers to submit information with any application for certification that describes: the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following:

*Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.*

*OMB Control Number:* 3060–0329.

*Title:* Equipment Authorization—Verification, 47 CFR 2.955.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Not-for-profit institutions; business or other for-profit entities; and State, Local or Tribal Government.

*Number of Respondents:* 5,655.

*Estimated Time per Response:* 18 hours (avg.).

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 101,790 hours.

*Total Estimated Cost:* $1,131,000.

*Needs and Uses:* Under certain sections of Part 15 and Part 18 of the Commission rules, manufacturers are required to gather and retain technical data to verify that the equipment being marketed complies with established technical standards and FCC regulations and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–16671 Filed 7–2–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[WC Docket No. 02–67; FCC 02–189]**

## Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, for Provision of In-Region, InterLATA Services in the State of New Jersey

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In the document, the Federal Communications Commission grants the section 271 application of Verizon New Jersey Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of New Jersey. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective July 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Alexis Johns, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *ajohns@fcc.gov.* The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in WC Docket No. 02–67, FCC 02–189, adopted June 24, 2002 and released June 24, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications.

**Synopsis of the Order**

1. *History of the Application.* On March 26, 2002, Verizon New Jersey Inc., *et al.,* filed its second application with the Commission to provide in-region, interLATA service in New Jersey (NJ II). Although Verizon initially filed a section 271 application for New Jersey with this Commission on December 20, 2001 (NJ I), that application was withdrawn on March 19, 2002 , as a result of ''process concerns'' that were raised with respect to certain pricing matters.

2. *The New Jersey Board of Public Utilities' (New Jersey Board) Evaluation.* The New Jersey Board conducted an extensive proceeding to facilitate competition in local exchange markets in which it approved and finalized a new Incentive Plan and conducted a lengthy pricing proceeding. Consequently, it recommended that the Commission grant Verizon's section 271 application for New Jersey.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Verizon's New Jersey Application on April 15, 2002. It recommended approval of the application subject to the Commission's review of Verizon's checklist compliance for certain pricing and operation support systems (OSS) issues.

**Primary Issues in Dispute**

4. *Compliance with Section 271(c)(1)(A).* Section 271(c)(1)(A) (Track A) requires the presence of facilities-based competitors serving both residential and business customers. The Commission concludes that Verizon satisfies the requirements of Track A in New Jersey. Verizon relies on interconnection agreements with MetTel, eLEC, and Broadview in support of its Track A showing, and the Commission finds that each of these carriers serves more than a *de minimis* number of end users predominantly over its own facilities and represents an ''actual commercial alternative'' to Verizon in New Jersey. Verizon notes that each of these carriers has increased the number of residential lines it serves since the time Verizon filed its NJ I application. Also, the New Jersey Board has stated its intention to take additional measures to further encourage local entry by competitors of Verizon New Jersey, if necessary.

5. *Checklist Item 2—Unbundled Network Elements: Pricing and OSS.* Based on the evidence in the record before us for this application, the Commission finds that Verizon's UNE rates in New Jersey are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's UNE rates in New Jersey satisfy checklist item two.

6. *Pricing.* Verizon filed its first application to provide interLATA service in New Jersey before the New Jersey Board had issued its final order on rates for unbundled network elements (UNEs). On day 76 of the NJ I proceeding, the New Jersey Board released its Final UNE Rate Order. On day 89 of the NJ I proceeding, Verizon notified the Commission that it was withdrawing its application as a result of ''process concerns'' that were raised with respect to the non-recurring charge for performing a hot cut. The next day, Verizon informed the New Jersey Board that, effective immediately, it would reduce the effective hot cut rate in New Jersey to the same level —$35— that was recently made effective in New York. On March 26, 2002, Verizon filed its second application to provide interLATA service in New Jersey. Both the Department of Justice and the New Jersey Board recommended approval of the NJ II application, although commenters reiterated pricing concerns from the NJ I application and also raised new pricing issues.

7. WorldCom contends that the New Jersey Board incorrectly approved Verizon's fiber/copper feeder and fill factor percentages. WorldCom disagrees with Verizon's assumption that 60 percent of feeder will be served on fiber cable with integrated digital loop carrier (IDLC) and that the remaining 40 percent served on copper feeder. The New Jersey Board considered this very issue and approved Verizon's 60/40 split between fiber and copper feeder. WorldCom presents no arguments or evidence that would cause us to find that these assumptions are inconsistent with TELRIC principles as applied to Verizon in New Jersey. WorldCom also claims that the New Jersey Board approved unreasonably low fill factors for fiber and copper cable, which allegedly results in overstated loop costs. The Board-approved fill factors are not inconsistent with those that the Commission has approved in prior section 271 orders, and the Commission finds no TELRIC errors in the New Jersey Board's analysis of Verizon's fill factors.

8. The NJDRA and WorldCom allege that Verizon improperly ''double charges'' for calls that both originate and terminate on the same switch. The commenters claim that Verizon should be allowed to charge only once for such intra-switch calls. Verizon's methodology is not inconsistent with our handling of this issue in prior applications. No commenter argues that the manner in which Verizon developed its switching rates is inconsistent with the manner in which Verizon imposes these rates. The Commission therefore rejects commenters' claims that charging both an originating and a terminating rate for every call, regardless of the number of switches involved, is by itself inappropriate or a violation of TELRIC.

9. WorldCom and AT&T also challenge Verizon's inclusion of vertical features in the switching rate. They argue that non-usage-sensitive elements, such as vertical features, should be included with the port charge and not charged on a per-minute basis. no commenter has stated that vertical features are provided over wholly dedicated facilities, nor have they provided evidence that the per-minute charge is inconsistent with the manner in which costs are incurred. Under our rules, the New Jersey Board could have properly directed Verizon to recover the costs of vertical features as part of flat-rated port charges, split the costs between the flat and per-minute switch elements, or recover the costs through the per-minute charge. The New Jersey Board's decision to allow the recovery of such costs in the per-minute switching rate fully complies with our rate structure rules. The Commission finds no TELRIC error in the New Jersey Board's handling of the vertical features costs issue.

10. WorldCom also claims that Verizon has overstated its switching costs by using an inappropriate switch vendor discount. The New Jersey Board directed Verizon to compute its switching costs as if 79.4 percent of the switches would receive the discount for purchases of new switches and 20.6 percent would receive the discount for purchases of growth switches. The Commission concludes that this issue is a fact-specific inquiry amenable in the first instance to determination by the state commissions; it is not a bright-line rule. The Commission has been presented with no evidence or rationale, beyond bare assertions, that would persuade us that the split chosen by the New Jersey Board amounts to a TELRIC error. It is satisfied that the New Jersey Board carefully evaluated this issue, properly rejected Verizon's proposed use of 100 percent growth switches, and validly established what it considered to be more appropriate and state-specific switching discounts.

11. WorldCom contends that Verizon improperly calculates its switching cost by dividing by minutes associated with only 251 business days in a calendar year. In our view, provided that an incumbent LEC's methodology is

reasonable and consistent, TELRIC does not by itself dictate the use of a particular number of days, whether 308, 251, or some other number. Even if the New Jersey Board erred in approving Verizon's use of 251 days together with other inputs, Verizon's non-loop rates in New Jersey pass a benchmark comparison to Verizon's non-loop rates in New York and therefore fall within the range that reasonable application of TELRIC principles would produce.

12. In this application, Verizon chooses to rely on a benchmark comparison of its rates in New Jersey to those in New York. The Commission agrees that New York is similar to New Jersey in terms of both geography and rate structure. Having found that New York is an appropriate benchmark state, the Commission finds that New Jersey's non-loop rates are roughly six percent lower than New York non-loop rates. The Commission also finds that New Jersey non-loop costs are roughly one percent higher than New York non-loop costs, after taking a weighted average of New Jersey and New York costs derived from the Commission's Synthesis Model. Therefore, it concludes that New Jersey's non-loop rates pass a benchmark comparison to New York's non-loop rates and that they therefore satisfy our benchmark analysis and the requirements of checklist item two.

13. AT&T argues that Verizon's DUF rates are inflated and do not comply with TELRIC. AT&T did not raise these issues before the New Jersey Board, and it has only recently challenged Verizon's DUF rates in a motion for reconsideration of the Final UNE Rate Order. AT&T's motion is presently pending before the New Jersey Board. The New Jersey Board should have the opportunity to evaluate AT&T's evidence and make any adjustments it finds appropriate. The Commission commends the New Jersey Board's commitment to TELRIC principles, defers to the New Jersey Board's forthcoming resolution of the DUF rate, and finds no TELRIC error on the record before us on this issue.

14. AT&T, ASCENT, the NJDRA, and XO challenge Verizon's ''hot cut'' charges. A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch. Commenters argue that the $35 hot cut rate is not TELRIC-compliant. They contend generally that the hot cut rate is merely a temporary credit that does not comport with TELRIC principles. During the NJ I proceeding, Verizon's $159.76 hot cut rate generated considerable controversy. Although Verizon continues to argue in NJ II that this rate is Board-approved and TELRIC-complaint, it voluntarily agreed to reduce the effective rates for six hot cut charges to $35.00. The $35.00 hot cut rate is a rate selected by Verizon and that has gone into effect in New Jersey. The $35.00 hot cut rate, which mirrors the effective rate in New York, bears the imprimatur of the New York PSC as well as the numerous competitive LECs who joined that settlement. The New Jersey Board is presently considering AT&T's motion for reconsideration of the hot cut rate and will have an opportunity to weigh AT&T's evidence of the appropriate rate level. We note that the $35 hot cut charge reflects a reduction of over 75 percent from the charge adopted by the New Jersey Board. The Commission also takes comfort that the $35 hot cut rate will remain in effect until at least March 1, 2004. Accordingly, it defers to the New Jersey Board's anticipated resolution of this matter and find no TELRIC error on the record before it in Verizon's $35 hot cut rate.

15. AT&T asserts that the $7.71 service order charge Verizon assesses on a competitive LEC whenever it adds or deletes a telephone feature service, such as caller identification, does not comply with TELRIC. A feature change service order charge is imposed only if a customer is already taking service from a competitive LEC. Even then, not all such customers request changes to their feature services. There is no evidence in the record that a feature change service order charge constitutes a barrier to market entry in the same way that a non-TELRIC hot cut charge could. The Commission notes that AT&T has filed a motion for reconsideration of this issue with the New Jersey Board. It believes that the New Jersey Board should have the opportunity to evaluate the evidence itself and make adjustments it regards as appropriate.

16. *OSS.* The Commission finds, as did the New Jersey Board, that Verizon provides non-discriminatory access to its OSS. In addition to New Jersey performance data, Verizon certifies that it provides competitive LECs in New Jersey with interfaces and gateways to the OSS common to those serving the rest of the former Bell Atlantic service area. Verizon engaged KPMG Consulting (KPMG) to test the interfaces and OSS serving New Jersey. In addition, Verizon engaged PricewaterhouseCoopers (PwC) to conduct two attestation reviews of Verizon's BOS BDT formatted bills in New Jersey in September 2001.

17. KPMG's testing included end-to-end testing and evaluation of integrated operations, including examination at a projected ''normal'' volume equivalent to the submission of 1.3 million orders per month into the New Jersey SOP. With regard to performance data, KPMG undertook a comprehensive review of Verizon's systems and procedures to measure and report its performance under the Carrier-to-Carrier Guidelines, and KMPG found that Verizon satisfied all 164 test points. The Commission finds, as did the New Jersey Board, that we can rely on the KPMG test results as significant evidence that Verizon provides nondiscriminatory access to its OSS. The Commission's reliance on the KPMG test results is warranted because of the thoroughness and rigorousness with which KMPG conducted its military-style test, which covered 536 transactions and included volume testing. Thus, it sees no need to question the reliability of the data Verizon submitted in its application and, in fact, we are encouraged by Verizon's efforts in coordination with the New Jersey Board, to ensure that its data are accurate, reliable, and widely disclosed.

18. Competitors in New Jersey raise several issues regarding notifier timeliness and accuracy, and the Department of Justice comments that the Commission should satisfy itself that Verizon returns BCNs on an accurate and timely basis. For example, MetTel raises a threshold accusation that Verizon issues ''false'' order completion notifiers. In contrast to more anecdotal-based challenges made by competitors in previous section 271 proceedings, MetTel has extensively documented and inventoried its submissions of orders and receipt of notifiers. We commend MetTel on its efforts to compile and submit independent evidence and construct an affirmative case for its position. Nevertheless, we continue to place primary reliance on the notifier data that Verizon has submitted with its application. At the same time, the Commission recognizes that, although the issues raised by MetTel do not generally demonstrate checklist noncompliance, Verizon has an affirmative obligation to continue to engage MetTel and attempt to reconcile its disagreements with MetTel through a carrier-to-carrier dispute resolution process. In this regard, it is noted that Verizon has begun a data reconciliation process with MetTel during the course of this proceeding that, although incomplete, has focused the number of issues in dispute and led to a more precise identification of the underlying data in dispute. As a result, it appears that much of the remaining gap between the performance results reported by Verizon and the performance results

generated by MetTel arise from an apparent disagreement over the application of various aspects of the Carrier-to-Carrier Guidelines. Although the record reveals that this reconciliation process has been contentious and adversarial, at this time we do not believe that Verizon is not engaged in a good-faith effort to resolve these issues. The Commission fully expects Verizon to continue these efforts at reconciliation as part of its nondiscrimination obligations and to continue to make efforts to improve its OSS performance. It also expects the New Jersey Board will make every effort to facilitate this reconciliation effort either formally through its dispute resolution process or through other administrative measures.

19. For purposes of checklist compliance, the Commission is convinced by the thoroughness and rigorousness of KPMG's independent audit that Verizon's performance data, including its data related to notifiers specifically, is sufficiently accurate. The fact that no other company questions whether Verizon's performance data related to the timeliness and accuracy of Verizon's notifier data gives us additional assurance that such data are reliable. Further, MetTel's attempts to introduce certain usage proxies as indicators of system events and reliance on measures not adopted by the New Jersey Board do not persuade us to abandon the more objective and industry standard performance measures approved by the Board. The Commission concludes that Verizon has demonstrated that it provides notifiers in a nondiscriminatory manner that allows efficient competitors a meaningful opportunity to compete. In reaching this determination, it recognizes that the processes for notifying competitors of the status of their orders, the set of metrics to measure notification, and the corresponding process to record notifier performance, are all evolving and will continue to do so. Accordingly, the Commission expects Verizon to continue to work with MetTel and other competitors in enabling them to understand the business rules and address carrier-specific problems.

20. *Billing.* The Commission finds that Verizon complies with its obligation to provide nondiscriminatory access to its billing functions on the basis of its provision of: (1) Timely and accurate service usage data to competitive LECs; and (2) wholesale billing in a manner that provides competing carriers with a meaningful opportunity to compete. No party raises any issues with Verizon's provision of service usage data to competitive LECs; and based on the evidence in the record, we find that Verizon's provision of the DUF meets its obligations in this regard. Several parties, however, raise issues with Verizon's provision of wholesale billing. Specifically, a number of parties dispute the accuracy of the wholesale bill, based on both the BOS BDT format and the retail format.

21. Verizon employs the same billing systems in New Jersey as it does in Pennsylvania, where our evidentiary finding that Verizon's wholesale bills were checklist compliant was a ''close call,'' and many of the issues commenters raise in New Jersey are similar to the issues raised in Pennsylvania. Accordingly, the Commission agrees with the Department of Justice that the competitive experience in New Jersey is informed by that of Pennsylvania. It recognizes, however, that while the billing systems in New Jersey and Pennsylvania are identical, the overall billing processes differ. The Commission cannot, therefore, merely rely on our previous review of Verizon's billing system in Pennsylvania to make our finding here. It finds that Verizon has made a sufficient showing that both its retail-formatted and BOS BDT bills are accurate, and we reject assertions by AT&T that KPMG's failure to test the BOS BDT bill format fatally undermines Verizon's showing.

22. The Commission finds that Verizon demonstrates the accuracy of the BOS BDT bill format based on the limited commercial performance data available from its use in New Jersey, and consistent with our findings in the Verizon Pennsylvania Order, the PwC attestation that Verizon's BOS BDT bills are consistent with the retail format. Our concerns are satisfied by the recent performance data, by the low and decreasing number of discrepancies between the electronic and paper bills, and by PwC's attestation that the BOS BDT bills in September contained a de minimis amount of erroneous charges. Further, we find that Verizon has adequately demonstrated the accuracy of the BOS BDT bill by having PwC attest that it is reconcilable against the retail-formatted bill, which KPMG had previously found reconcilable with the DUF. Since the retail-formatted bill has been tested for accuracy by KPMG, and PwC has reconciled the BOS BDT bill against the retail-formatted bill, it is reasonable to assume that the BOS BDT bill is also reconcilable with the DUF. As with all OSS functions, although we must judge Verizon's wholesale billing at the time of its application, we recognize that access to OSS is an evolutionary process and we expect that Verizon continue its efforts to improve its wholesale billing as industry standards evolve.

23. Several competitive LECs assert that their commercial experience shows that Verizon's systems produce recurring or ''systemic'' inaccuracies in its wholesale bills. We note that no commenter has put forth the type of detailed analysis of its wholesale billing dispute with Verizon that was present in our review of Verizon's application for section 271 authority in Pennsylvania As we stated in the Verizon Pennsylvania Order, ''we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate.'' The Commission cannot, without further evidence, find that the parties have demonstrated systemic inaccuracies in Verizon's wholesale bills that would require a finding of checklist noncompliance.

24. Finally, the Commission addresses AT&T's allegations that Verizon's BOS BDT bill does not comply with industry standards. Verizon explains that the issues raised by AT&T are in fact deviations that are allowed under the industry standard and for which Verizon has provided clear documentation. AT&T also acknowledges that Verizon has made attempts to comply with AT&T's specific requests regarding the BOS BDT bill. It finds that Verizon complies with its obligation to provide clear documentation and assistance to AT&T regarding the BOS BDT bill, and that AT&T provides insufficient evidence to support its claim that Verizon does not offer a ''readable and auditable'' electronic bill format or that Verizon's BOS BDT bill impermissibly deviates from accepted industry standards. Moreover, AT&T's assertions regarding Verizon's implementation of the BOS BDT bill format are a fact-specific, carrier-to-carrier dispute concerning AT&T's use of Verizon's BOS BDT bill. As the Commission has stated in prior proceedings, given the statutory period for our review, the section 271 process simply could not function if we were required to resolve every individual factual dispute between a BOC and each competitive LEC regarding the precise content of the BOC's obligations to each competitor. The Commission takes added comfort in the special measures that the New Jersey Board announced to ensure nondiscriminatory access to electronic billing.

25. *Flow Through.* The Commission concludes, as did the New Jersey Board, that Verizon's electronic processing of orders is sufficient to provide carriers

with a meaningful opportunity to compete. Flow-through measures the number of orders that are electronically processed by an incumbent LEC's OSS without the need for manual intervention. In New Jersey, while Verizon's achieved flow-through rate for UNEs has been below the 95 percent standard set by the New Jersey Board, there nevertheless, has been a consistent, upward trend in the rate, reaching 85.34 percent in January, 89.82 percent in February and 90.50 percent in March 2002. Even if the Commission looks beyond achieved flow-through to total flow-through rates and order reject rates, it notes that Verizon's performance appears to show an improving trend. Moreover, it notes that KPMG's OSS test included an examination of Verizon's ability to electronically process service orders in varying mixes of order types at reasonably foreseeable commercial volumes and that KPMG and the New Jersey Board found Verizon's performance satisfactory. The Commission finds that the positive trends in both Verizon's flow-through and order reject rates, along with Verizon's overall performance in providing service order information in a timely and accurate manner and KPMG's findings regarding the scalability of Verizon's OSS are sufficient to demonstrate checklist compliance.

26. *Checklist Item 4—Unbundled Local Loops.* Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271 and the Commission's rules. Specifically, the Commission's conclusion is based on its review of Verizon's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, and high capacity loops, and its review of Verizon's processes for line sharing and line splitting. As of February 2002, competitors in New Jersey have acquired from Verizon and placed into use approximately 59,000 stand-alone loops (including DSL loops), and about 51,000 loops provided as part of network element platforms that include switching and transport elements.

27. *Voice Grade Loops.* The Commission finds that Verizon provisions voice grade loops in a nondiscriminatory manner. It notes that voice grade loops comprise the overwhelming majority of loops ordered by competitive LECs in New Jersey. Verizon's performance in provisioning voice grade loops has met the relevant parity standard throughout the November-March period with respect to timeliness and quality. Furthermore, Verizon's performance for repair and maintenance timeliness under the mean time to repair metric also demonstrates parity during the November-March period.

28. *Hot Cut Activity.* Verizon is providing voice grade loops through hot cuts in New Jersey in a nondiscriminatory manner. Verizon has satisfied its benchmark for on time performance for hot cuts for each month of the relevant November-March period. Although Verizon's installation quality performance for hot cuts is not reported in the New Jersey Carrier-to-Carrier Performance Reports, Verizon does provide a calculation of its performance under the New York guidelines. Verizon states that its installation quality performance has consistently been better than the two percent New York benchmark for trouble reports received within seven days of installation.

29. *xDSL-Capable Loops.* Verizon demonstrates that it provides stand-alone xDSL-capable loops in a nondiscriminatory manner. Verizon makes xDSL-capable loops available in New Jersey under approved interconnection agreements, and provides timely order confirmation notices to competitors. Verizon's performance for all relevant months under the missed appointment metric indicates that Verizon provisions xDSL loops in a timely manner. With respect to installation quality, Verizon also maintained parity during the relevant months under the installation quality measure. For almost every month during the relevant period, Verizon also maintained parity for measures of repair and maintenance timeliness and quality.

30. *Digital Loops.* Verizon provisions digital loops to competitors in a nondiscriminatory fashion in New Jersey. As an initial matter, we note that digital loops only represent a small number of the total loops provided by Verizon in New Jersey. Verizon provided digital loops to competitors in a timely manner throughout the relevant period. Verizon also achieves parity from November through March with respect to the measure of installation quality we have traditionally relied on, which measures the percent of installation troubles reported within 30 days. In addition, Verizon achieved parity performance throughout the relevant period with respect to maintenance and repair timeliness under the mean time to repair metric. Verizon also maintained parity performance during the relevant period for every month except February with respect to a measure of maintenance and repair quality '' the percentage of repeat trouble reports within 30 days. Verizon's performance under this measure indicates a large disparity in February with respect to the percentage of repeat reports observed for competitive LECs and Verizon retail. Verizon explains, however, that the small sample size of competitive LEC trouble reports observed in February contributed to the wide fluctuation in performance under this measure. Moreover, this one month disparity is not competitively significant and does not warrant a finding of checklist noncompliance, given that Verizon returns to parity performance under this measure in March.

31. *High Capacity Loops.* Given the totality of the evidence, the Commission finds that Verizon's performance with respect to high capacity loops does not result in a finding of noncompliance for checklist item 4. Verizon states that, as of February 2002, competitive LECs have in service in New Jersey approximately 400 high capacity DS–1 loops, and no high capacity DS–3 loops, provided by Verizon. According to Verizon, high capacity loops represent only about 0.4 percent of all unbundled loops provisioned to competitors in New Jersey. Verizon's performance under the missed installation appointment metric suggests that Verizon has generally been timely in the provisioning of high capacity loops. Verizon achieved parity for repair and maintenance timeliness under the mean time to repair metric for three of the five relevant months. Verizon's performance with respect to repair and maintenance quality also indicates parity for four of the five months during the relevant period. The Commission recognizes, however, that Verizon does not achieve parity during the relevant period other than in February with respect to the installation quality metric, the percentage of installation troubles reported within 30 days. Verizon contends that this measure may not be an accurate indicator of its performance because the retail group for this metric (Verizon retail) does not provide a meaningful comparison. Verizon also argues that the small number of installation trouble reports received during the relevant period for high capacity loops, interoffice facilities, and loop/transport combinations are too few to provide meaningful performance results, and are ''not as reliable an indicator of checklist compliance.'' The Commission does not find that Verizon's performance with respect to troubles reported within thirty days warrants a finding of checklist

noncompliance, given that high capacity loops represent less than one percent of the unbundled loops that Verizon provides to competitors in New Jersey, and in light of Verizon's generally good performance under the other measures of high capacity loop provisioning, maintenance, and repair discussed above.

32. *Line Sharing and Line Splitting.* Verizon demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting. Verizon generally has met the relevant performance standards for provisioning, maintaining and repairing line-shared loops for competitors in New Jersey. Commenters in this proceeding do not criticize Verizon's performance with regard to the provisioning, maintenance and repair of line shared loops. Verizon also provides nondiscriminatory access to line-splitting in accordance with our rules. Verizon provides carriers that purchase line splitting with access to the same pre-ordering capabilities as carriers that purchase unbundled DSL loops or line sharing. In addition, working with competitive LECs through the New York DSL Collaborative, Verizon implemented a permanent OSS process for line splitting on October 20, 2001, throughout the Verizon East territory, including New Jersey. We note that AT&T raises challenges to Verizon's ordering process for line splitting, but we find that this process allows competitors a meaningful opportunity to compete. Accordingly, the Commission finds that Verizon complies with the requirements of this checklist item with respect to its line sharing and line splitting processes.

**Other Checklist Items.**

33. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory. Based on the Commission's review of the record, it concludes, as did the New Jersey Board, that Verizon complies with the requirements of this checklist item. In reaching this conclusion, the Commission examined Verizon's performance in providing collocation and interconnection trunks to competing carriers, as it has done in prior section 271 proceedings. It notes that no commenter faults Verizon's interconnection quality or timeliness, and that the New Jersey Board found that Verizon provides equal-in-quality interconnection on terms and conditions that are just and reasonable and in accordance with the section 271.

34. *Checklist Item 8—White Pages Directory Listings.* Based on the record, the Commission finds that Verizon provides white page directory listings for customers of the other carrier's telephone exchange service and permits competitive providers of telephone exchange service and toll service to have access to directory listings in compliance with checklist item 8.

35. *Checklist Item 13—Reciprocal Compensation.* The Commission finds that Verizon demonstrates that it provides reciprocal compensation as required by checklist item 13.

36. *Checklist Item 14—Resale.* Based on the evidence in the record, the Commission concludes that Verizon satisfies the requirements of this checklist item in New Jersey in that it makes telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

37. *Checklist Items 3, 5, 6, 7, 9, 10, 11 and 12.* An applicant under section 271 must demonstrate that it complies with checklist item 3 (poles, ducts, conduits, and rights of way), item 5 (transport), item 6 (switching), item 7 (911/E911, directory assistance, and operator services), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), and item 12 (local dialing parity). Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it is in compliance with checklist items 3, 5, 6, 7, 9, 10, 11, and 12 in New Jersey. The New Jersey Board also concludes that Verizon complies with the requirements of each of these checklist items.

38. *Section 272 Compliance.* Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in accordance with the requirements of section 272.

39. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From the Commission's extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, it finds that barriers to competitive entry in New Jersey's local exchange market have been removed, and that the local exchange market is open to competition. It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

40. *Price Squeeze Analysis.* Commenters allege the existence of a price squeeze in New Jersey that, they assert, compels a finding that the grant of Verizon's NJ II application is not in the public interest. While no commenter argues that the $35 hot cut rate in New Jersey effects a price squeeze on competitors, XO contends that the Commission must determine whether Verizon's previous hot cut rates of $159.76 and $233.13 constitute a price squeeze. XO specifically alleges that the $35 rate in New Jersey, unlike that in New York, is merely a temporary credit. There is no evidence that the specific hot cut terms in New York differ significantly from those in New Jersey. We therefore reject commenters' argument that that there are material differences between the New Jersey and New York hot cut rates that would warrant disapproval of the NJ II application, and we also decline to conduct a price squeeze analysis using Verizon's previous hot cut rates of $159.76 and $233.13.

41. The Commission also rejects the UNE price squeeze arguments of AT&T and WorldCom from NJ I, which they incorporate by reference in NJ II. Both commenters make related arguments concerning the allegedly insufficient profit margin available to them in the residential telephone market in New Jersey. Significantly, neither commenter claims that it cannot earn a positive gross margin in New Jersey. As it has noted previously, conducting a price squeeze analysis requires a determination of what a ''sufficient'' profit margin is. Resolving that issue requires more than simply determining what is sufficient for a particular carrier. The evidence before us demonstrates that competitive LECs in New Jersey can realize positive margins in 100 percent of the state and that the statewide average gross margin is $5.62. There is no record evidence before us that these profit margins are inadequate for an efficient competitor. The Commission also notes that the New Jersey Board itself considered allegations of a price squeeze in the New Jersey residential market. During a November 20, 2001 state hearing, staff of the New Jersey Board presented evidence that the average residential customer generates approximately $30.00 in monthly revenue. New Jersey Board staff noted that local competitors such as AT&T

who are also long distance carriers would receive net access savings or revenues. After subtracting UNE-platform costs from estimated monthly residential rates, staff of the New Jersey Board determined that competitors could expect to earn a monthly gross profit of approximately $6.50. The Commission commends the New Jersey Board's independent analysis of the price squeeze issue and finds that it provides additional support for our conclusion that commenters have not established the existence of a price squeeze in New Jersey. It rejects commenters' allegations of a price squeeze and conclude that there is no evidence in the record that warrants disapproval of this application based on such contentions, whether couched as a violation of the public interest standard or as discrimination in violation of checklist item two.

42. *Section 271(d)(6) Enforcement Authority.* Working with the New Jersey Board, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 02–16739 Filed 7–2–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. R–1125]**

## Privacy Act of 1974; Notice of New System of Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is publishing notice of the establishment of a new system of records, entitled Visitor Log (BGFRS–32). We invite public comment on this new system of records.

**DATES:** Comment must be received on or before August 2, 2002.

**ADDRESSES:** Comments, which should refer to Docket No. R–1125, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays and to the security control room outside of those hours. The mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Managing Senior Counsel, Legal Division (202/452–2418), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of the Telecommunications Device for the Deaf (TDD) only, contract 202/263–4869.

**SUPPLEMENTARY INFORMATION:** In light of the heightened concerns regarding security of federal government personnel and buildings, the Board is implementing a procedure to screen visitors to the Board's premises before admission to those premises. To conduct this screening, the Board will request, in advance, that each visitor provide his or her name, date of birth, and social security number or passport number. Persons who refuse to provide the requested information may be denied admittance to the premises. This information will be used to facilitate searches of law enforcement databases to determine whether the visitor may present a risk to the security of the Board. As required by the General Records Schedule 18, published by the National Archives, the records will be retained for two years from date of admittance to the Board.

In accordance with 5 U.S.C. 552a(r), a report of this new system of records is being filed with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Office of Management and Budget. This new system of records will become effective on August 12, 2002, without further notice, unless the Board publishes a notice to the contrary in the Federal Register.

**BG FRS–32**

**System name:** BGFRS–32 – Visitor Log

**System location:**

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

**Categories of individuals covered by the system:**

All visitors to the buildings maintained by the Board of Governors of the Federal Reserve System (''Board'').

**Categories of records in the system:**

Information concerning the identity of an individual who wishes to enter a building maintained by the Board. Such information will include the individual's name; social security number, passport number, or visa number; and date of birth. In addition, information derived from law enforcement data bases may be included in some records.

**Authority for maintenance of the system:**

12 U.S.C. 243

**Purpose(s):**

The purpose of this system of records is to permit the Board to provide for the security of its premises and the personnel in those premises by pre–screening visitors.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**

a. Disclosure to the Department of Justice and other Federal, state, and local governmental agencies having a prosecutive function for the use by attorneys, magistrates, and judges; and parole and probation authorities for the purpose of prosecuting, sentencing, and determining the parole and probation status of criminal offenders or suspected criminal offenders.

b. Disclosure to personnel of Federal, state, and local governmental agencies, and other government agencies, foreign or domestic, where such disclosures are considered reasonably necessary for the purpose of furthering efforts to determine the risk posed by an individual wishing to visit the Board.

c. Disclosure to personnel of Federal, state, and local law enforcement agencies and other governmental agencies, foreign or domestic, where there is a showing of a reasonable need to accomplish a valid enforcement purpose.

d. Disclosure to personnel of private institutions and to private individuals of identifying information pertaining to actual or suspected criminal offenders or other individuals wishing to visit the Board for the purpose of furthering efforts to evaluate the danger such individuals pose.

e. Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of discovery proceedings for the purpose of enforcing, or prosecuting, a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statue or particular program statue, or by regulation, rule or order issued pursuant thereto.

f. Disclosures and/or responses to Federal, state or local agencies maintaining civil, criminal or other relevant law enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the issuance of a contract, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

g. Disclosure to the National Archives and Records Administration in connection with

records management inspections and its role as Archivist.

h. Disclosure to contractors, grantees or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Board.

**Disclosure to consumer reporting agencies:**

Not applicable.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:**Records are maintained in paper and electronic format.

**Retrievability:** Electronically–stored information may be retrieved based on name, social security number, passport or visa number, or date of birth.

**Safeguards:** Only authorized personnel will have access to this information. Access to information derived from law enforcement data bases will be extremely limited.

**Retention and disposal:** Information in this system of records will be destroyed two years after the date the individual is admitted to the Board's premises.

**System manager(s) and address:**

Billy Sauls, Chief of Uniform Security, Management Division, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

**Notification procedure:**

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security or passport number, and approximate date of record.

**Record access procedures:**

Same as ''Notification procedure'' above.

**Contesting record procedures:**

Same as ''Notification procedure'' above.

**Record source categories:**

Information will be gathered primarily from the individual who wishes to enter the Board's premises. Additional information may be gathered from law enforcement data bases where appropriate.

**Systems exempted from certain provisions of the act:**

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

By order of the Board of Governors of the Federal Reserve System, June 27, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 02–16724 Filed 7–2–02; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

**[File No. 011 0132]**

## Biovail Corporation and Elan Corporation, plc; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 29, 2002.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Joseph Simmons or Randall Marks, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3300 or 326–2571.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 28 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 27, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/06/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

### Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement and proposed consent order with Biovail Corporation (''Biovail'') and Elan Corporation, plc (''Elan''), settling charges that the two companies illegally agreed to restrain competition in the market for generic Adalat CC. The Commission has placed the proposed consent order on the public record for thirty days to receive comments by interested persons. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by either Biovail or Elan that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

*Background*

Biovail is a Canadian manufacturer of branded and generic pharmaceutical products. Elan is an Irish manufacturer of branded and generic pharmaceutical products. Biovail and Elan are the only two sellers of generic forms of Adalat CC (''generic Adalat''), a once-a-day antihypertension medication. No other company has even sought Food and Drug Administration (''FDA'') approval to sell a 30 mg or a 60 mg dosage form of generic Adalat. Bayer AG (''Bayer'') manufactures branded Adalat CC. In 1999, before the entry of generic equivalents to Adalat CC, Bayer's United States sales of the 30 mg and 60 mg doses of Adalat CC were in excess of $270 million.

Biovail was the first to file an Abbreviated New Drug Application (''ANDA'') for FDA approval on the 60 mg dosage, and Elan was the first to file an ANDA for FDA approval on the 30 mg dosage. Thus, Elan had 180 days of exclusivity for the 30 mg product upon receiving final FDA approval, and Biovail had the 180-day exclusivity on the 60 mg product upon receiving final FDA approval. Each was the second to file on the other dosage.

In October 1999, after both Biovail and Elan (hereinafter sometimes referred to as ''Respondents'') had filed for FDA approval of their 30 mg and 60 mg generic Adalat products, they entered into an agreement involving all

four of their generic Adalat products. That agreement (the ''Agreement''), and the Respondents' conduct arising out of that Agreement, are the subject of the Commission's complaint. The complaint alleges that, by entering the Agreement, Respondents illegally created market power in the United States market for sales of 30 mg and 60 mg dosages of generic Adalat. There is little prospect of new entry in the near future, because no other companies have applied for FDA approval of a 30 mg or a 60 mg generic Adalat product.

*The Challenged Conduct*

Under the Respondents' Agreement, Elan appointed Biovail as the exclusive distributor of Elan's 30 mg and 60 mg generic Adalat products. At the time of the Agreement, neither Elan nor Biovail distributed its own generic drugs in the United States. Teva Pharmaceuticals, Inc. (''Teva''), a distributor of some of Biovail's products, participated in the negotiations leading up to the Agreement. The Agreement provided that Biovail appoint Teva to sub-distribute Elan's 30 mg generic Adalat product in the United States. With respect to Elan's 60 mg product, the Agreement provided that, upon notice from Elan that Elan's 60 mg product was ready for commercial launch, Biovail would appoint either Teva or another company as a sub-distributor of that product. The Agreement has a minimum term of 15 years.

The FDA approval Elan's mg generic Adalat product in March 2000 and its 60 mg product in October 2001. It approved Biovail's 30 mg and 60 mg generic Adalat products in December 2000. Biovail began selling Elan's 30 mg product immediately after receiving final FDA approval. Biovail began selling its own 60 mg product through Teva immediately after the FDA gave final approval to that product. Neither Elan's 60 mg product nor Biovail's 30 mg product, however, has ever been launched commercially. Thus, although two 30 mg generic Adalat products and two 60 mg generic Adalat products have had FDA approval for many months, consumers can purchase only one product at each strength.

The complaint alleges that, in exchange for the right to distribute Elan's products and share in the profits of those products, Biovail agreed to make specified payments to Elan. To date, Biovail has paid Elan approximately $33 million in connection with its distribution of Elan's 30 mg generic Adalat product, and $12.75 million in connection with the right to distribute Elan's 60 mg generic Adalat product.

As the complaint alleges, the Agreement gave Biovail substantial incentives not to launch its own 30 mg product. Although Biovail has had final FDA approval to market its 30 mg product for over one year, and the Agreement purports to require Biovail to use ''reasonable commercial endeavors'' to launch that product ''with reasonable dispatch,'' Biovail has not yet launched that product. Biovail's launch of its own 30 mg product could be expected to cause a significant reduction in the price of Elan's incumbent 30 mg product, and generate for Elan's product lower total profits, which Biovail shares with Elan. For the same reasons, the Agreement diminished Biovail's incentives to exercise maximum efforts at eliminating the technological obstacles, if any, that Biovail asserts have impeded its ability to launch a self-manufactured 30 mg product. Elan also does not have any incentive to enforce the Agreement's provision requiring that Biovail use reasonable efforts to launch its 30 mg product in competition with Elan's product.

Similarly, the complaint alleges that the Agreement gave Elan substantial incentives not to launch its 60 mg product. Under the Agreement, in exchange for receiving a large up-front payment, Elan, in effect, stood to receive no royalties upon launch of its 60 mg product, until that product generated certain profits for Biovail. It would take several years of sales before Elan's 60 mg product would generate such profits, and once that triggering event happened, Elan's royalty was to be only 6% of profits. Accordingly, the complain alleges that the Agreement compensated Elan for its 60 mg product up-front and pre-entry, while substantially diminishing that product's value to Elan thereafter. The Agreement also diminished Elan's incentives to exercise maximum efforts at eliminating any technological obstacles to launching its 60 mg product, if any, that Elan has asserted to exist. Moreover, neither Elan nor Biovail had any financial incentives to enforce the provision requiring launch of Elan's 60 mg product. As with the launch of Biovail's 30 mg product, Respondents knew that Elan's launch of its own 60 mg product could be expected to cause a reduction in the price of Biovail's incumbent 60 mg product by a significant amount and generate lower total profits for Biovail's product. It was in Bilvail's strategic interest, therefore, for Elan not to launch its 60 mg products.

The complaint further alleges that even its Bilvail had launched its 30 mg product and Elan had launched its 60 mg product, the Agreement allows Biovail to control or influence pricing and other competitive features of both its and Elan's 30 mg and 60 mg generic Adalat products. Biovail was thus in a position to profit by suppressing competition between its and Elan's products.

For the above reasons, the complaint alleges that Respondents' Agreement is an agreement not to compete between the only two producers of the 30 mg and 60 mg generic Adalat products. As a result, Teva, Biovail's distributor, is the only firm selling generic Adalat to consumers in the United States, and consumers have had access to only one of two approved generic Adalat products at each strength. Moreover, the Agreement is not justified by an countervailing efficiency.

*The Proposed Order*

The proposed order remedies the Respondents' anticompetitive conduct by requiring them to end their anticompetitive Agreement and barring them from engaging in similar conduct in the future. It maintains supply of the incumbent generic Adalat products while Respondents unwind their anticompetitive Agreement and eliminates the anticompetitive obstacles to entry of a second 30 mg and a second 60 mg generic Adalat product.

Paragraph I of the proposed order contains definitions, one of which defines the ''Adalat CC Agreement'' as the ''License, Distribution & Supply Agreement'' covering generic Adalat that Biovail and Elan executed on October 4, 1999, and all modifications and amendments thereto. We discuss other definitions below, as needed to explain the substantive provisions of the proposed order.

Paragraph II of the proposed order is a core provision, prohibiting Biovail or Elan from repeating the instant conduct by entering anticompetitive price, output, or distribution agreements with other generic drug companies. This provision targets agreements between either Respondent and other persons concerning a generic drug for which both parties to the agreement have filed for FDA approval of an ANDA referencing the same pioneer drug product. It aims to prohibit agreements between competing generic drug manufacturers that restrict the marketing of competing generic drugs.

Paragraph III of the proposed order requires Biovail and Elan to terminate their agreement on generic Adalat no later than the date on which the order becomes final. Paragraph 13 of the Agreement Containing Consent Order required them to start the termination process upon their execution of that

document. The proviso to Paragraph III allows Biovail and Elan to resolve financial issues connected to the termination of their agreement on generic Adalat on mutually agreeable terms; however, they cannot resolve those financial issues by using sales, revenues, or profits generated by generic Adalat or any other drug product, or by transferring rights connected to any drug product. This limitation is intended to ensure that, in resolving the financial issues, Respondents do not perpetuate the anticompetitive effects of the Agreement by continuing the entanglements between them on generic Adalat or on other drug products.

Paragraph IV of the proposed order prohibits Elan from distributing its generic Adalat product through Teva. This prohibition is necessary because Biovail and Teva have a longstanding commercial relationship, whereby Teva distributes some of Biovail's product. Forbidding Elan from distributing this generic Adalat products through Teva will minimize the risk of inappropriate information exchange among Biovail, Elan, and Teva regarding generic Adalat, by eliminating any legitimate reason for all three companies to discuss their marketing of the products. Thus, it will help ensure that the termination of the Agreement fully restores the proper competitive incentives for each company.

The proviso to Paragraph IV requires Elan to supply Teva, through Biovail, with Elan's 30 mg product, until the earlier of Biovail's launch of its own 30 mg product or May 31, 2003 (the ''Interim Supply Agreement''). This provision eliminates any disruption of supply of the 30 mg product to consumers while Elan makes alternate arrangements for the distribution of its products. Once Elan begins to distribute its own product through an independent distributor, the Interim Supply Agreement will assure that consumers have access to two generic 30 mg Adalat products. The Interim supply Agreement may continue for up to a year, to give consumers the continued benefit of two 30 mg generic Adalat products while Biovail solves its purported manufacturing difficulty. Biovail has assured the Commission that it expects to overcome any manufacturing problems it has and launch its 30 mg generic Adalat product within a year. (Paragraph V further addresses Biovail's launch of its own 30 mg product, as we discuss below.)

Paragraph IV prohibits Elan from charging Biovail more than Elan's ''Cost'' for the product. Paragraph I of the proposed order defines ''Cost'' to mean Elan's actual manufacturing cost. The cost definition is narrow, to minimize Elan's ability to profit from the Interim Supply Agreement through manipulation of the definition. Preventing Elan from profiting by supplying Biovail with the Elan 30 mg generic Adalat product gives Elan a strong incentive to launch its own 30 mg product through an indecent distributor as quickly as possible. Only through that launch will Elan begin to earn a profit on its 30 mg product. Because, under the Interim Supply Agreement, Biovail will receive Elan's 30 mg product at Elan's 30 mg product at Elan's manufacturing cost, Biovail will be in the same competitive position with respect to the cost of the 30 mg product as will Elan. In addition, Biovail will have to compete with Elan's new distributor to gain and maintain market share. Thus, the narrow cost definition will also give consumers the benefit of immediate price competition between the 30 mg product marketed by Teva and the 30 mg product marketed by Elan's independent distributor.

Paragraph V of the proposed order require Elan to use best efforts to launch its 30 mg and 60 mg generic Adalat products as promptly as possible through a distributor other than Teva. It also requires Biovail to use best efforts to manufacture and distribute its 30 mg Adalat product, and to use best efforts to continue to manufacture and distribute its 60 mg generic Adalat product through a distributor other than Elan's generic Adalat distributor. Paragraph V.C states that the purpose of these requirements is to restore competitive incentives in the market for generic Adalat, and to remedy the lessening of competition resulting from the anticompetitive practices alleged in the Commission's complaint. This provision covers all four generic Adalat products, to ensure that Biovail and generic market their 30 mg and 60 mg products through separate distributors. The proposed order defines ''Launch'' to require Biovail and Elan to deliver commercial quantities of their generic Adalat products to a viable pharmaceutical distributor pursuant to a commercially reasonable, multi-year contract. This definition will ensure that the launch of Elan's 60 mg product and of Biovail's 30 mg product is on a competitive scale.

The Commission will closely monitor Respondents' efforts to market their products. To facilitate this, the proposed order includes reporting requirements. Paragraph VIII requires Biovail and Elan to submit to the Commission verified written reports detailing each of their efforts to comply with the proposed order. Biovail and Elan must submit these reports every thirty days until they have complied with the proposed order.

Paragraph VI of the proposed order requires Biovail and Elan to give the Commission notice of two types of agreements with other pharmaceutical manufacturers. First, Paragraph VI.A requires Biovail and Elan to give notice of agreements where, at the time of the agreement, the parties to the agreement each own, control, or license another product that is in the same ''Therapeutic Class'' as the product covered by the agreement. (The proposed order defines ''Therapeutic Class'' as a class of drugs categorized by the Unified System of Classification contained in the most recent version of the IMS Health Incorporated publication Market Research Database: Product Directory.) Aa proviso excepts from the reporting requirement agreements that only transfer ''Drug Delivery Technology'' in exchange for a commercially reasonable cash royalty not to exceed drive per cent of revenue. The proposed order defines ''Drug Delivery Technology'' to mean technology that controls the release rate, or enhances the absorption or utilization of a pharmaceutical compound.)

Second, Paragraph VI.B requires Biovail and Elan to give notice of agreements involving a product for which one party to the agreement has an ANDA that references a New Drug Application (''DNA'') that the other party owns, controls, or licenses. The notification provisions contained in Paragraph VI are necessary, because the core prohibition in Paragraph II only reaches agreements involving ANDAs that reference the same branded drug. Paragraph VI ensures that the Commission will receive notice of potentially anticompetitive agreements not covered by Paragraph II (*i.e.*, agreements involving potentially competitive branded products, and agreements regarding a brand product and its generic equivalent.)

Paragraphs VII, VIII, IX, and X of the proposed order contain reporting and other standard Commission order provisions designed to assist the Commission in monitoring compliance with the order. Paragraph XI provides that the order will expire in ten years.

*Opportunity for Public Comment*

The proposed order has been placed on the public record for thirty days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the agreement

containing the proposed order or make the proposed order final.

By accepting the proposed order subject to final approval, the Commission anticipates that the competitive issues alleged in the complaint will be resolved. The purpose of this analysis is to facilitate public comment on the agreement. It is not intended to constitute an official interpretation of the agreement, the complaint, or the proposed consent order, or to modify their terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 02–16711 Filed 7–2–02; 8:45 am]

**BILLING CODE 6750–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–02–67]**

### 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 Seleda Perryman, 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:* Descriptive Epidemiology of Missed or Delayed Diagnosis for Conditions Detected by Newborn Screening—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

**Background**

Every state in the United States and Washington DC has a public health program to test newborn babies for congenital metabolic and other disorders through laboratory testing of dried blood spots. These programs screen between 4 and 30 different conditions including phenylketonuria (PKU) and congenital hypothroidism, with testing performed in both state laboratories and private laboratories contracted by state health departments. The screening process or system is broader than the state public health newborn screening program, which is composed only of the laboratory and follow-up personnel. It involves the collection of blood from a newborn, analysis of the sample in a screening laboratory, follow up of abnormal results, confirmatory testing and diagnostic work up.

Parents, hospitals, medical providers including primary care providers and specialists, state laboratory and follow-up personnel, advocates, as well as other partners such as local health departments, police, child protection workers and courts play important roles in this process. Most children born with metabolic disease are identified in a timely manner and within the parameters defined by the newborn screening system of each state. These children are referred for diagnosis and treatment. However, some cases are not detected at all or the detection comes too late to prevent harm. These ''missed cases'' often result in severe morbidity such as mental retardation or death.

In this project, we will update and expand a previous epidemiological study of missed cases of two disorders published in 1986. We will assess the number of cases of each disorder missed, the reasons for the miss and legal outcomes, if any. The reasons for the miss will be tabulated according to which step or steps of the screening process it occurred. Data will be collected by asking state public health laboratory directors, newborn screening laboratory managers, follow up coordinators, lawyers and parent groups with an interest in newborn screening for information regarding missed cases. An estimated 250 subjects will be requested to complete a short questionnaire that asks for information regarding the details of any missed cases of which they are aware. Follow-up telephone calls may be necessary to clarify responses. There is no cost to the respondents.

The survey will highlight procedures and actions taken by states and other participants in newborn screening systems to identify causes of missed cases and to modify policies and procedures to prevent or minimize recurrences. The information gleaned from this study may be used to help craft changes in the screening protocols that will make the process more organized and efficient and less likely to fail an affected child. Further, it is not clear that there is a systematic assessment of missed cases on a population basis; this project will seek to identify procedures for routine surveillance of missed cases.

| Respondents | Number of respondents | Number of responses/respondents | Average burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Questionnaire | 125 | 2 | 15/60 | 62 |
| Telephone Follow-up | 75 | 2 | 10/60 | 24 |
| Total | | | | 86 |

Dated: June 26, 2002.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 02–16673 Filed 7–2–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02136]**

### Reducing Sexual Risk for HIV Transmission in Substance-Using Men Who Have Sex With Men, Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 funds for a cooperative agreement program to support research on Reducing Sexual Risk for HIV Transmission in Substance-Using Men Who Have Sex With Men, was published in the **Federal Register** dated May 24, 2002, Vol. 67, No. 101, pages 36608–36610. On page 36609, section E. Application Content, third sentence, should be amended to read: ''The narrative should be no more than 40 double-spaced pages, printed on one side with one inch margins in a 12-point font. The budget and budget justification are not included in the 40 page limit.''

Dated: June 27, 2002.

**Sandra R. Manning,**

*CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–16701 Filed 7–2–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Request for Nominations for Voting Members on Public Advisory Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Allergenic Products Advisory Committee, Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Transmissible Spongiform Encephalopathies Advisory Committee, and the Vaccines and Related Biological Products Advisory Committee in the Center for Biologics Evaluation and Research (CBER). Nominations will be accepted for vacancies that will or may occur through December 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

**DATES:** Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

**ADDRESSES:** All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding nominations except for consumer representatives*: Jane Brown, Scientific Advisors and Consultants Staff, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314.

*Regarding nominations for consumer representatives*: Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations of voting members with appropriate expertise for vacancies listed as follows:

1. Allergenic Products Advisory Committee: Three vacancies occurring August 31, 2003; immunology, pediatrics, internal medicine, biochemistry, statistics, consumer interest, and related scientific fields.

2. Blood Products Advisory Committee: One vacancy occurring September 30, 2002; and six vacancies occurring September 30, 2003; clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, statistics, biological and physical sciences, and other related scientific fields.

3. Transmissible Spongiform Encephalopathies Advisory Committee: Five vacancies occurring January 31, 2003; clinical administrative medicine, hematology, virology, neurology, infectious diseases, immunology, blood banking, surgery, internal medicine, biochemistry, biostatistics, epidemiology, biological and physical sciences, sociology/ethics, and other related professions.

4. Vaccines and Related Biological Products Advisory Committee: Five vacancies occurring January 31, 2003; immunology, molecular biology, recombinant deoxyribonucleic acid (rDNA), virology, bacteriology, epidemiology, biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, biochemistry, and consumer interest.

**Functions**

*1. Allergenic Products Advisory Committee*

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic diseases.

*2. Blood Products Advisory Committee*

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood and products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases.

*3. Transmissible Spongiform Encephalopathies Advisory Committee*

Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

*4. Vaccines and Related Biological Products Advisory Committee*

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases.

**Qualifications**

Persons nominated for membership on the committees shall have adequately diversified experience appropriate to the work of the committee in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the

field of activity of the committee. The particular needs at this time for each committee are shown in the first paragraph of the **SUPPLEMENTARY INFORMATION** section of this document. The term of office is up to 4 years, depending on the appointment date.

**Nomination Procedures**

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member (name of committee(s) must be specified), and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

**Consumer Representatives**

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Selection of members representing consumer interests is conducted through procedures that include use of a group of consumer organizations that has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nominations shall include a complete curriculum vita of each nominee, current address and telephone numbers, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or in any advisory committee. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 24, 2002.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 02–16692 Filed 7–2–02; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02P–0043]**

### Determination That Piperacillan for Injection USP, 40–Gram Pharmacy Bulk Package, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that piperacillan for injection USP (PIPRACIL), 40-gram (g) pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for piperacillan for injection USP, 40-g pharmacy bulk package.

**FOR FURTHER INFORMATION CONTACT:** Nicole Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Piperacillan for injection USP, 40-g pharmacy bulk package, is the subject of approved NDA 50–545 held by Lederle (part of Wyeth-Ayerst Pharmaceuticals) under the trade name PIPRACIL. Piperacillan for injection USP, 40-g pharmacy bulk package, is a broad-spectrum penicillin indicated for the treatment of serious infections and for prophylactic use in surgery. According to information from Wyeth-Ayerst submitted in 2001, production of the 40-g pharmacy bulk package was discontinued. On January 17, 2002, Mr. Michael Lisjak submitted a citizen petition (Docket No. 02P–0043) under 21 CFR 10.30 and 314.122, requesting that the agency determine whether piperacillan for injection USP, 40-g pharmacy bulk package, was withdrawn from sale for reasons of safety or effectiveness. The petitioner seeks this determination in preparation for filing an ANDA for piperacillan for injection USP, 40-g pharmacy bulk package.

The agency has determined that Wyeth-Ayerst's piperacillan for injection USP, 40-g pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. Two grounds support the agency's finding. First, Wyeth-Ayerst continues to market PIPRACIL in 2-, 3-, and 4-g vials. The 40-g pharmacy bulk package is a larger package of the same product; it contains up to 20 doses of piperacillan for injection USP. Second, the petitioner identified no data or other information suggesting that PIPRACIL (piperacillan for injection USP, 40-g pharmacy bulk package) was withdrawn

from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports, but has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, Wyeth-Ayerst's piperacillan for injection USP, 40-g pharmacy bulk package, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list piperacillan for injection USP, 40-g pharmacy bulk package, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to piperacillan for injection USP, 40-g pharmacy bulk package, may be approved by the agency.

Dated: June 24, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16668 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Food and Drug Administration/Industry Exchange Workshops on Food Security and Recalls; Public Workshops

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshops.

**SUMMARY:** The Food and Drug Administration (FDA) and the Pacific Region Small Business Office, in cooperation with the Western Association of Food and Drug Officials (WAFDO), is announcing a series of workshops on food security and recalls. Topics for discussion include: Food safety and security guidance and procedures, preparing for and conducting a food recall, the use of tamper-evident packaging to avoid product counterfeiting, and the introduction of adulterants. These 1-day workshops for the food industry target food manufacturers, repackers, growers, and transporters. The workshops will include both industry and FDA perspectives.

*Date and Time*: The public workshops are scheduled as follows:

1. Thursday, July 25, 2002, 8:30 a.m. to 4:30 p.m., Oakland, CA.
2. Wednesday, August 28, 2002, 8:30 a.m. to 4:30 p.m., Los Angeles, CA.
3. Tuesday, September 24, 2002, 8:30 a.m. to 4:30 p.m., Seattle, WA.

*Location*: The public workshops will be held at the following locations:

1. Oakland—Ronald V. Dellums Federal Building Auditorium and Conference Center, 1301 Clay St., Oakland, CA.
2. Los Angeles—Ronald Reagan State Building Auditorium, 300 South Spring St., Los Angeles, CA.
3. Seattle, WA—Seattle Center, Lopez Room, 300 First Ave. North, corner of Republican Street, Seattle, WA.

*Contact*: Marcia Madrigal, Industry and Small Business Representative, Food and Drug Administration, Oakland Federal Building, 1301 Clay St., suite 1180N, Oakland, CA 94612, 510–637–3980, FAX 510–637–3977, or e-mail: mmadriga@ora.fda.gov.

*Registration*: Send registration information (including name, title, firm name, address, telephone, and fax number) and registration fee to Chuck Henry at WAFDO, 14344 East Caley Ave., Aurora, CO 80016, FAX 303–753–6809, or e-mail: chuck.henry@state.co.us.

The registration fee will be used to offset the expenses of hosting the conferences, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marcia Madrigal at least 7 days in advance of the workshop.

**SUPPLEMENTARY INFORMATION:** The ''Food Security and Recalls'' workshops help fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by preventing and countering terrorism related to the nation's food supply. FDA has made providing security guidance and information to the food industry a high priority.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: June 26, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–16667 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on July 8, 2002, from 1 p.m. to 5 p.m., and July 9, 2002, from 8 a.m. to 5 p.m.

*Location*: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet address of http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

*Agenda*: On July 8, 2002, the committee will discuss and make recommendations on the classification of a preamendment device, the silicone elastomer for scar management. The committee will also discuss and make recommendations on the reclassification of a transitional class III device, the absorbable hemostatic agent and dressing device intended for hemostasis during surgical procedures. On July 9, 2002, FDA and two manufacturers of approved saline inflatable breast implant devices will present postmarket

information to the committee for their consideration. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1-business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 8, 2002, session will be posted on July 5, 2002; material for the July 9, 2002, session will be posted on July 8, 2002.

*Procedure*: On July 8, 2002, from 1:30 p.m. to 5 p.m., and on July 9, 2002, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 5, 2002. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:15 p.m. and 4 p.m. and 4:30 p.m. on July 8, 2002; and between approximately 8:30 a.m. and 10:30 a.m. on July 9, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by July 5, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On July 8, 2002, from 1 p.m. to 1:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, by July 5, 2002.

FDA regrets that it was unable to publish this notice 15 days prior to the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 25, 2002.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 02–16734 Filed 6–28–02; 3:10 pm]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov and http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 716–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115, (Formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.)
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories*, 14940–123 Ave., Edmonton, Alberta Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500
Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/ 800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/ 800–800–2387
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/ 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/ 800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/ 800–541–7891x8991
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–842–6152, (Moved from the Dallas location on 033101; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline qBeecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, Fort Meade, Building 2490, Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–7085

* The Standards Council of Canada (SCC) voted to end its Laboratory

Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 Federal Register, 9 June 1994, Pages After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Patricia Bransford,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 02–16696 Filed 7–2–02; 8:45 am]

BILLING CODE 4160–20–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**DATES:** Written comments on these permit applications must be received within 30 days of the date of publication.

**ADDRESSES:** Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Chief, Endangered Species Division, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request to the address above for a copy of such documents within 30 days of the date of publication of this notice.

**SUPPLEMENTARY INFORMATION:**

**Permit No. TE–056457**

*Applicant:* Peter Stacey, Albuquerque, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/absence and monitoring surveys for southwestern willow flycatcher (Empidonax traillii extimus) within New Mexico.

**Permit No. TE–055107**

*Applicant:* Adam Crateau, Santa Fe, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within San Juan Counties of New Mexico and Utah.

**Permit No. TE–055111**

*Applicant:* Animas Environmental, Farmington, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within San Juan County, New Mexico.

**Permit No. TE–055339**

*Applicant:* USDA, ARS, Grassland, Soil and Water Research Laboratory, Temple, Texas

Applicant requests a permit for recovery purposes to collect live plants and stem cuttings of Johnston's Frankenia (Frankenia johnstonii) within Texas.

**Permit No. TE–055419**

*Applicant:* Turner Biological Consulting, LLC, Tuscola, Texas

Applicant requests a permit for recovery purposes to conduct presence/absence surveys and assess habitat for black-capped vireo (Vireo atricapillus) and to assess habitat for northern aplomado falcon (Falco femoralis septentrionalis), golden-cheeked warbler (Dendroica chrysoparia), and interior least tern (Sterna antillarum). All activities are to occur within Texas.

**Permit No. TE–035885**

*Applicant:* Melvin J. Wilhelm, Vernon, Arizona

Applicant requests an amendment to an existing permit to allow presence/absence surveys for southwestern willow flycatcher (Empidonax traillii extimus) within Arizona and New Mexico.

**Permit No. TE–056119**

*Applicant:* Marlin B. Sawyer, San Antonio, Texas

Applicant requests a permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: black-capped vireo (Vireo atricapillus), golden-cheeked warbler (Dendroica chrysoparia), red-cockaded woodpecker (Picoides borealis), ocelot (Leopardus pardalis), jaguarundi (Herpailurus yagouaroundi cacomitli), and Houston toad (Bufo houstonensis).

**Permit No. TE–056118**

*Applicant:* Charles L. Black, Albuquerque, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/absence and monitoring surveys for southwestern willow flycatcher (Empidonax traillii extimus) within New Mexico.

**Permit No. TE–056471**

*Applicant:* Gregory Tickle, Santa Fe, New Mexico

Applicant requests a permit for recovery purposes to conduct presence/absence surveys within Texas for the following species: black-capped vireo (Vireo atricapillus), golden-cheeked warbler (Dendroica chrysoparia), and southwestern willow flycatcher (Empidonax traillii extimus).

**Permit No. TE–038050**

*Applicant:* Trevor Hare, Tucson, Arizona

Applicant requests an amendment to an existing permit to allow presence/absence surveys for desert pupfish (Cyprinodon macularius) and Gila

topminnow (Poeciliopsis occidentalis) within Arizona.

**Susan MacMullin,**

*Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.*

[FR Doc. 02–16702 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–076–4610–00]**

## Proposed Area of Critical Environmental Concern; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of correction.

**SUMMARY:** On June 28, 2002, the Bureau of Land Management published a notice in the **Federal Register** (67 FR 43680) concerning proposed Area of Critical Environmental Concern Designations (ACEC) in Idaho. The notice contained an incorrect date for when the public comment period begins. The correct date is June 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bill Baker, Field Manager, Shoshone Field Office, (208) 732–7286.

### Correction

In the **Federal Register** of June 28, 2002 on page 43680 in the third column correct the **DATES** caption to read:

**DATES:** The public comment period on the proposed ACEC designations begins on June 28, 2002. Written comments on the Shoshone Land Use Plans Draft Amendments/EA must be submitted or postmarked no later than August 27, 2002. Comments, including the names and street addresses of respondents, will be available for public review at the address listed below during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Meetings will be held to receive public comments on the Draft Amendments/EA; the dates, times, and locations of these public meetings will be announced locally through public mailings and area media.

Dated: June 28, 2002.

**Michael Schwartz,**

*Group Manager, Regulatory Affairs.*

[FR Doc. 02–16829 Filed 7–1–02; 1:21 pm]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AZ030–2800–ER–00; AZA–28734]**

## Notice of Availability of Final Environmental Impact Statement for The Diamond Bar Road Improvement Project

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of a Final Environmental Impact Statement for the Diamond Bar Road Improvement Project.

**SUMMARY:** The Bureau of Land Management (BLM), Kingman Field Office, Arizona, has prepared a final environmental impact statement (EIS) in response to an application for a right-of-way across public lands. The EIS analyzes the effects of a proposal to realign and improve approximately 11 miles of the Diamond Bar Road across public lands to access the Hualapai Indian Reservation. The EIS was prepared with assistance from Bureau of Indian Affairs (BIA) and National Park Service (NPS) as cooperating agencies. The BLM will be making the decision to grant a right-of-way, BIA will be making the decision on the expenditure of Federal Highway Trust Funds to construct the road, and NPS has special expertise concerning the effect on the National Natural Landmark, which the proposed road traverses. The analysis was prepared under the authority of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976.

**DATES:** BLM and BIA will issue separate Records of Decision no earlier than 30 days from the date the Environmental Protection Agency publishes the notice of filing for the final EIS in the **Federal Register**.

**ADDRESSES:** Copies of the final EIS may be obtained from the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

**FOR FURTHER INFORMATION CONTACT:** Don McClure, phone: (928) 692–4400; e-mail, *don__mcclure@blm.gov*; address, BLM, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

**SUPPLEMENTARY INFORMATION:** Diamond Bar Road provides access to Grand Canyon West, mainly for commercial and private vehicles originating from Las Vegas. Grand Canyon West is a development on the Hualapai Indian Reservation near the rim of the Grand Canyon. This development now consists of an airport and terminal building, a food service facility, restrooms, and a permit office. Implementing the 1994 Master Plan for Grand Canyon West is expected to increase the number of visitors up to sixfold over a 10-year period. This increase would greatly increase the number of vehicles on Diamond Bar Road. The proposed road improvement would accommodate this increased volume by providing a roadway designed for up to 2,400 vehicles per day.

Management concerns that have been addressed in the final EIS include impacts on vegetation, visual quality, recreation, cultural resources, socioeconomic conditions, public safety, and the Joshua Tree Forest Area of Critical Environmental Concern. Studies conducted include a native plant inventory, biological evaluation, cultural resource survey, traffic study, and visual impact analysis. Tribal consultation is ongoing under section 106 of the National Historic Preservation Act of 1966, as amended. The EIS has been prepared by an interdisciplinary team of resource specialists in vegetation, wildlife, visual quality, archaeological and traditional cultural resources, soils, range management, realty, and roadway design.

There were 41 comment letters received on the draft EIS. The concerns in these letters have been addressed in the final EIS. Most of the concerns were about the Entrance Realignment Option and related to the following: Building the road through a residential area and impacting residential quality of life; traffic, including traffic safety; noise; air quality; wildlife and Joshua trees; visual impacts; private property; access; and economics and efficiency. The BLM Preferred Alternative in the final EIS documents the preference of not using the Entrance Realignment Option. The final EIS addresses the above concerns as well as providing responses to individual comments.

If you wish to comment on the final EIS, please mail or hand deliver comments to the address listed in the **ADDRESSES** section of this notice. Comments will be accepted during this

30-day period with the comments being conveyed to the BLM Field Manager in Kingman, Arizona, who is the person authorized to make the decision for BLM on this project. The public may review the comments, including names and street addresses of respondents, at the above address from 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. The comments may be published as part of the project record or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or disclosure under the Freedom of Information Act, you must state this request prominently at the beginning of your written comment. BLM will honor such requests to the extent allowed by law. The public may inspect in its entirety any submission from organizations or businesses or from representatives or officials of organizations or businesses.

Dated: June 3, 2002.

**Willie R. Taylor,**

*Director, Office of Environmental, Policy and Compliance.*

[FR Doc. 02–16828 Filed 7–1–02; 1:09 pm]

BILLING CODE 4310–32–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Presidential Commission for the National Museum of African American History and Culture; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the Presidential Commission for the National Museum of African American History and Culture will meet July 16th and 17th, 2002, in Ballroom 2 of the Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC. The Board will convene at 8 a.m. on the 16th and at 9 a.m. on the 17th, and adjourn at 5:30 p.m. on the 16th and at 12:30 PM on the 17th.

During the morning session on July 16th, 2002, after the swearing-in of the Commissioners, the Bill sponsors will be invited to address the members of the Commission on their vision of what a National Museum of African American History and Culture might be and what the charge of the Commission is in regards to a Plan of Action for a National Museum. These sponsors include: Representative John Lewis, (D–GA); Representative J.C. Watts, (R–OK); Senator Sam Brownback, (R–KS); and Senator Max Cleland, (D–GA).

National Park Service Director Fran Mainella will address the Board and then Commissioners will have the opportunity to introduce themselves.

Dr. John Hope Franklin, Professor Emeritus, Duke University, has been invited to deliver an address to the Commissioners about the meaning of a National Museum dedicated to African American History and Culture.

In the afternoon, the Commission will travel to various locations on or adjacent to the Mall to visit sites that may be considered for use as the location for a National Museum of African American History and Culture.

On the morning of July 17th, 2002, the Commission will hear from representatives of the Association of African American Museums, the Association for the Study of African American Life and History, the Joint Center for Political and Economic Studies, the African American Cultural Complex, Inc.; the Friends of the National Museum of African American History and Culture; the American Association of Museums, and the Smithsonian Institution.

Later in the morning, beginning at 10:30 AM, the Commission will hear public testimony regarding the National Museum for African American History and Culture.

The Commission meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis.

**Assistance to Individuals With Disabilities at the Public Meeting**

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice at least two weeks (2 weeks) before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file a written statement concerning the establishment of a National Museum for African American History and Culture with the Commission. The Commission may also permit attendees to address the assembled Commission, but may restrict the length of the presentations, as necessary to allow the Commission to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Kate Stevenson, Office of Historic Preservation, Recreation & Partnerships, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone (202) 208–7625).

Draft minutes of the meeting will be available for public inspection approximately 12 weeks after the meeting, in room 3327, Main Interior Building, 1849 C Street, NW, Washington, DC.

**Kate Stevenson,**

*Associate Director, Historic Preservation, Recreation & Partnerships, National Park Service.*

[FR Doc. 02–16710 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Information Collection Activities; Extension of a Currently Approved Collection; Comment Request

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to extend a current information collection approved under the Office of Management and Budget's (OMB) emergency approval procedures. The collection is entitled Summary of Water Requirements for Crops Grown on Eligible Land, OMB No. 1006–0024. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of that form.

**DATES:** Comments on this notice must be received by September 3, 2002.

**ADDRESSES:** Address all comments concerning this notice to Bureau of Reclamation, Northern California Area Office, Attention: Donald A. Bultema, PO Box 988, Willows, California 95988.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the proposed collection information form, contact Rita F. Hoofard at (530) 934–1359.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed

collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Title:* Summary of Water Requirements for Crops Grown on Eligible Land.

*Abstract:* Reclamation developed Form LS–924, Summary of Water Requirements for Crops Grown on Eligible Land, to facilitate and standardize the submission of data from the Sacramento River settlement contractors that divert water from Sacramento River sources. The information requested is required to ensure the proper implementaion of 43 CFR 426.15 and the commingling provisions in the Sacramento River settlement contracts.

*Description of respondents:* There are approximately 44 Sacramento River settlement contractors (individual/districts) that are required to file Form LS–924 for the purpose of contract administration.

*Frequency:* Annually.

*Estimated completion time:* An average of 60 minutes per respondent.

*Annual responses:* 44 respondents.

*Annual burden hours:* 44.

**Public Comments**

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. 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, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 12, 2002.

**Rayleen Cruz,**

*Acting Manager, Property and Office Services Division.*

[FR Doc. 02–16700 Filed 7–2–02; 8:45 am]

BILLING CODE 4310–MN–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 25, 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 995 (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 Email *Howze-Marlene@dol. gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Administration (ESA).

*Title:* Rehabilitation Action Report.

*OMB Number:* 1215–0182.

*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:* 15 minutes.

*Total Burden Hours:* 1,750.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* Section 8104(a) of the Federal Employees' Act provides that eligible injured workers are furnished vocational rehabilitation services. The costs of these services are paid from the Employee's Compensation Fund. Section 8111(b) provides that persons undergoing vocational rehabilitation may receive additional compensation. The OWCP–44 is the Rehabilitation Action Report submitted to the Office of Worker's Compensation Programs by the rehabilitation counselor to report transition periods during vocational rehabilitation and to request prompt adjudication claims action. If the OWCP–44 were not utilized, delays in acting would cause waste of government funds and potential fraud and abuse.

**Ira L. Mills,**

*Department Clearance Officer.*

[FR Doc. 02–16716 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–CH–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 28, 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 email *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Type of Review:* Revision of a currently approved collection

*Agency:* Bureau of Labor Statistics (BLS).

*Title:* Labor Market Information (LMI) Cooperative Agreement.

*OMB Number:* 1220–0079.

*Affected Public:* State, Local, or Tribal Government.

*Frequency:* Monthly, Quarterly and Annually.

*Number of Respondents:* 55.

*Number of Annual Responses:* 832.

*Estimated Time Per Response and Total Burden Hours:*

| Form | Total respondents | Frequency | Total responses | Average minutes | Estimated total burden (in hours) |
|---|---|---|---|---|---|
| Work Statements | 55 | 1 | 55 | 1–2 hrs. | 55–110 |
| BIF (LMI 1A, 1B) | 55 | 1 | 55 | 1–6 hrs. | 55–330 |
| Quarterly Automated Financial Reports | 48 | 4 | 192 | 10–50 min. | 32–160 |
| Monthly Automated Financial Reports | 48 | *8 | 384 | 5–25 min. | 32–160 |
| BLS Cooperative Statistics Financial Report (LMI 2A) | 7 | 12 | 84 | 1–5 hrs. | 84–420 |
| Quarterly Status Report (LMI 2B) | 1–30 | 4 | 4–120 | 1 hr. | 4–120 |
| Total | 1–55 | | 774–890 | | 264–1300 |
| Average Totals | 55 | | 832 | | 781 |

*Reports are not received for end-of-quarter months, i.e., December, March, June, and September.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The LMI Cooperative Agreement (CA) includes all information needed by the State Employment Security Agencies (SESAs) to apply for funds to assist them to operate one or more of the five LMI programs operated by the Bureau of Labor Statistics, and, once awarded, report on the status of obligation and expenditure of funds as well as close out the Cooperative Agreement. Information collected under the CA is used by Federal regional and national office staffs to carry out their fiduciary responsibilities to negotiate the CA funding levels with the SESAs, monitor their financial and programmatic performance, and monitor their adherence to administrative requirements imposed by 29 CFR part 97.

**Ira L. Mills,**

*DOL Clearance Officer.*

[FR Doc. 02–16808 Filed 7–2–02; 8:45 am]

**BILLING CODE 4510–24–M**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Mass Layoff Statistics (MLS) Program 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 below on or before September 3, 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. Ms. Hobby can be reached on 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

Section 309 (2) (a) (1) (A) (iii) of the Workforce Investment Act (WIA) states that the Secretary of Labor shall oversee development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings. Prior to the WIA, Section 462(e) of PL 97–300, the Job Training Partnership Act (JTPA), provided that the Secretary of Labor develop and maintain statistical data relating to permanent mass layoffs and plant closings and issue an annual report. The report includes, at a minimum, the number of plant closings and mass layoffs, and the number of workers affected. The data are summarized by geographic area and industry.

The Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. The

program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic and economic characteristics on the individual;
- The telephone contact of those employers meeting mass layoff criteria to obtain specific information on the nature of the layoff and characteristics of the establishment;
- The identification of the continuing impact of the mass layoff on individuals by matching affected initial claimants with persons in claims status; and,
- The measurement of the incidence of the exhaustion of regular state UI benefits by affected workers.

In the program, State Employment Security Agencies (SESAs) submit seven comprehensive reports each quarter, and a preliminary, summary report each month. These computerized reports contain information from State administrative files and information obtained from those employers meeting the program criteria of a mass layoff.

Congress has provided for the implementation of the MLS program by the Bureau of Labor Statistics (BLS) through the Fiscal Years 1984–1992 appropriations for the Departments of Labor, Health and Human Services, Education, and related agencies. The program was not operational in Fiscal Years 1993 and 1994. Program operation resumed in Fiscal Year 1995 with funds provided by the Employment and Training Administration (ETA).

At the present time, all states (including the District of Columbia and Puerto Rico and the Virgin Islands) are participating in the program.

**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 Actions**

Office of Management and Budget clearance is being sought for the Mass Layoff Statistics (MLS) Program.

In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SESAs, and the U.S. Department of Labor for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. Congress used these data in conjunction with the findings from a supplemental study of layoff actions in the development of the Worker Adjustment and Retraining Notification (WARN) Act, which was enacted in August 1988. Furthermore, the ETA uses MLS microdata in the evaluation of dislocated worker programs to assess the effectiveness of those activities and services.

A Congressionally mandated use of mass layoff data includes the WIA, which replaces Title III of the JTPA. Section 133 of the WIA encourages the use of MLS data in substate allocations relating to dislocated worker employment and training activities.

State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; ailing or troubled industries; specific employers needing assistance; outreach activities for the unemployed; and workers in need of temporary health care services.

There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs and plant closings; therefore, none of the aforementioned data requirements could be fulfilled if this data collection did not occur.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Mass Layoff Statistics Program.

*OMB Number:* 1220–0090.

*Affected Public:* Business or other for profit; not-for-profit institutions; farms; Federal Government; State, Local or Tribal Government.

*Total Respondents:* 23,053.

*Frequency:* SESAs report quarterly and monthly. Affected employers report on occasion.

*Total Responses:* 23,848.

*Average Time Per Response:* 60 minutes for SESAs and 20 minutes for employers.

*Estimated Total Burden Hours:* 81,547 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 17th day of June, 2002.

**Jesús Salinas,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 02–16717 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–24–P

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## 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 reinstatement of the ''National Longitudinal Survey of Women.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 3, 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 National Longitudinal Survey of Women (NLSW) has been conducted since the late 1960s. Historically, the NLSW was collected as two surveys, the Survey of Work Experience for Mature Women (which includes women born from April 1, 1922 to March 31, 1937) and the Survey of Work Experience for Young Women (which includes women born in the years 1943 to 1953). In 1995, the Bureau of the Census, which collects the data for the Bureau of Labor Statistics, combined the mature and young women's cohorts into a single survey, a change that has improved the efficiency of survey operations.

The data collected in the NLSW contribute to the knowledge about opportunities and services for women who are in the labor force, want to re-enter the labor force, or choose not to participate in the labor force. Survey data also contribute to the knowledge about women's ability to succeed in the job market and how their levels of success relate to educational attainment, vocational training, prior occupational experiences, general and job-specific experiences, and retirement decisions.

The mission of the Department of Labor (DOL) is to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to this mission by gathering information about the labor force and labor market and disseminating it to policy makers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSW contributes to the formation of national policy in the areas of education, training and employment programs, unemployment compensation, and retirement income from pensions and Social Security. In addition, members of the academic community publish articles and reports based on NLSW data for the Department of Labor (DOL) and other funding agencies. The DOL uses the measurement of changes in the labor market to design programs that would ease employment and unemployment problems. The survey design provides data gathered over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, and the DOL could not perform its policy- and report-making activities, as described above.

## 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 Actions

The Bureau of Labor Statistics seeks approval to conduct the 2003 NLSW. The 2003 NLSW will document work experience, labor force attachment, participation in educational or training programs, financial status, health, and health insurance coverage. The survey will continue to obtain detailed information on the work history and pension coverage of respondents and their husbands. In addition, the survey will obtain information on intergenerational transfers of time and money between respondents and their children or their spouses' children. Respondents living in long-term care institutions who are mentally competent to answer questions will be interviewed in the 2003 NLSW; institutionalized respondents were considered to be out of scope in prior rounds of the survey. The 2003 NLSW will include contacts with approximately 6,677 women (2,810 ages 66 to 80 and 3,867 ages 49 to 60). A subsample of 50 women will be selected for a pretest to be conducted in January 2003 to ensure that the survey instrument and all procedures are working properly before the main fielding begins in June. Assuming the pretest works successfully, these 50 women will not be interviewed a second time during the main fielding. As in previous administrations of the NLSW, 10 percent of the sample in 2003 will be asked to participate in a brief follow-up interview that will last approximately 5 minutes. This reinterview is a quality-control tool, in which managers at the Census Bureau ask respondents a few questions to verify that an interview took place.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Agency:* Bureau of Labor Statistics.

*Title:* National Longitudinal Survey of Women.

*OMB Number:* 1220–0110.

*Affected Public:* Individuals or households.

| Form | Total respondents | Frequency | Total responses | Average time per response (minutes) | Estimated total burden (hours) |
|---|---|---|---|---|---|
| 2003 NLSW Pretest | 50 | Biennially | 50 | 70 | 58 |
| 2003 NLSW Main Fielding | 6,627 | Biennially | 6,627 | 70 | 7789 |
| Reinterview | 663 | Biennially | 663 | 5 | 55 |
| Totals | 6,677 | | 7,340 | | 7,902 |

**Note:** The difference between the total number of respondents and the total number of responses reflects the fact that 663 respondents will be interviewed twice, once in either the pretest or the main fielding and a second time in the quality-control reinterview. An additional 58 burden hours have been included for the main fielding to account for the possibility of having to interview the 50 women selected for the pretest again in the main fielding in the unlikely event that the pretest fails completely.

*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 24th day of June 2002.

**Jesús Salinas,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 02–16718 Filed 7–2–02; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No: D–10936]**

### Adoption of Amendment to Prohibited Transaction Exemption 96–62 (PTE 96–62) To Permit Certain Authorized Transactions Between Plans and Parties in Interest

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Adoption of amendment to PTE 96–62.

**SUMMARY:** This document amends PTE 96–62 (61 FR 39988, July 31, 1996). PTE 96–62 permits certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to two individual exemptions granted by the Department within the 60 month period ending on the date of filing of a written submission seeking authorization for the transaction. The amendment affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

**EFFECTIVE DATE:** This amendment is effective July 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration at (202) 693–8540 (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On March 20, 2002, notice was published in the **Federal Register** (67 FR 13019) of the pendency before the Department of a proposed amendment to PTE 96–62. PTE 96–62 provides relief from a restriction described in sections 406(a) and 406(b) of the Employee Retirement Income Security Act (ERISA or the Act) or a parallel restriction described in section 8477(c)(2) of the Federal Employees' Retirement Systems Act (FERSA), and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code. The amendment adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

The notice gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No public comments or requests for a hearing were received.

For the sake of convenience, the entire text of PTE 96–62, as amended, has been reprinted with this notice.

**Description of the Exemption**

Section I of PTE 96–62 provides relief from certain of the restrictions described in section 406(a) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, for a transaction between a plan and a party in interest with respect to such plan, provided the conditions of the exemption are met. Under section II, additional relief is provided from certain of the restrictions described in section 406(b) of ERISA and the parallel restrictions described in section 8477(c)(2) of FERSA, as well as from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F). Sections I(a) and II(a) require that the transaction be substantially similar (as defined in section IV(a) of PTE 96–62) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60-month period ending on the date of filing of the written submission.[2]

The amendment granted by this notice expands sections I(a) and II(a) to permit parties to either base their submission on substantially similar transactions described in two individual exemptions granted within the past 60 months; or on one individual exemption granted within the past 120 months and one transaction which received final authorization by the Department under PTE 96–62 within the past 60 months (the Authorized Transaction). The Department believes that the alternate method for satisfying the requirements of sections I(a) and II(a) will continue to ensure that the transactions that the party compares to its proposed transaction reflect the current policies of the Department.[3] The amendment also adds a definition for the term ''Authorized Transaction'' in section IV(g).

The Department notes that all other conditions contained in PTE 96–62 must continue to be satisfied with respect to those parties seeking to base their submissions on an Authorized Transaction rather than on two substantially similar individual exemptions. Accordingly, these parties should submit, among other things, a comparison of the proposed transaction with the Authorized Transaction and the transaction which was the subject of the individual exemption, including an explanation as to why any differences should not be considered material.

**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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in

[1] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] Section IV(a) defines the term ''substantially similar'' to mean alike in all respects as determined by the Department, in its sole discretion.

[3] The Department maintains, on its website (*www.dol.gov/pwba*) a list of Authorized Transactions. This list includes the following information: The final authorization numbers, the name of the applicants, a description of the transactions, and the grant numbers and **Federal Register** citations of the exemptions on which the submissions were based. Parties wishing to base their submissions on an Authorized Transaction will be able to refer to the submissions previously filed by parties under PTE 96–62 and to the two granted individual exemptions identified as substantially similar for additional information regarding the subject transactions.

accordance with section 404(a)(1)(B) of ERISA. This exemption, if granted, does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the exemption is administratively feasible, in the interests of the plan(s) and of participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan(s);

(3) This amendment is supplemental to and not in derogation of any other provisions of ERISA or the Code, including statutory or administrative exemptions and transitional 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

(4) The amendment is applicable to a transaction only if the transaction satisfies the conditions specified in the class exemption.

*Exemption*

Accordingly, PTE 96–62 is amended under the authority of section 408(a) of ERISA, section 4975(c)(2) of the Code and section 8477(c)(3) of FERSA, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

*Section I—General Exemption.* Effective July 31, 1996, a restriction described in section 406(a) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

*Section II—Specific Exemption.* Effective July 31, 1996, a restriction described in section 406(b) of ERISA, or a parallel restriction described in section 8477(c)(2) of FERSA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, or if FERSA relief is requested, the ERISA relief provided parallels the restrictions of section 8477(c)(1) of FERSA, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) Where either of the previously granted exemptions identified in the written submission described in section III, required the involvement of an independent fiduciary, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary described in section II(d) represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary described in section II(d)—

(1) Represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(2) Enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(3) Ensures that the transaction remains in the interests of the plan.

*Section III—Authorization Requirements.* The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) A separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption,

(2) All information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B,

(3) A specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries,

(4) A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department, or the subject of an individual exemption granted by the Department within the 120-month period and an Authorized Transaction, and an explanation as to why any differences should not be considered material for purposes of this exemption, and

(5) A complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to a transaction described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) The identity of the independent fiduciary,

(2) A description of such fiduciary's independence from the parties in interest involved in the subject transaction,

(3) A statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interest and protective of the participants and beneficiaries of the plan(s) involved,

(4) An agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction, and

(5) A description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

*Section IV—Definitions.* (a) The term ''substantially similar'' means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term ''notice'' means written notification to interested persons which includes—

(1) An objective description of the transaction, including all material terms and conditions,

(2) The approximate date on which the transaction will occur,

(3) A statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) A statement apprising interested persons of their right to comment to the Department on the proposed transaction at the following address: Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Ave, NW, Room N–5649, Washington, DC 20210,

(5) The expiration date of the comment period, and

(6) The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, ''tentative authorization'' occurs upon the earlier of:

(1) The expiration of the 45-day period following an acknowledgment by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption, or

(2) The issuance of a written determination by the Department during the 45-day period that the proposed transaction meets the requirements for tentative authorization.

(d) For purposes of this exemption, ''final authorization'' occurs upon the expiration of:

(1) The five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) If necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five-day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term ''comment period'' means the 25-day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction. For this purpose, distribution of notice by first class mail will be deemed complete three business days following the date of mailing to interested persons.

(f) The term ''substantive adverse comments'' means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department.

(g) The term ''Authorized Transaction'' means a transaction that has received final authorization pursuant to PTE 96–62 within a 60-month period ending on the date of the filing of the written submission referred to in section III(a).

*Section V—Optional Checklist.* Completion and submission of the following optional checklist to accompany the written submission described in section III(a) will assist the Department in the consideration of the transaction under the class exemption.

The written submission filed with the Department contains the following information:

[ ] A separate written declaration of the intent to comply with the conditions of the class exemption.

[ ] All information required to be submitted with an individual exemption application under 29 CFR 2570 subpart B.

[ ] A statement demonstrating that the transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries.

[ ] A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted within the 60-month period ending on the date of the filing, or the subject of one individual exemption that was granted by the Department within the 120-month period ending on the date of filing, and at least one Authorized Transaction and an explanation why any differences should not be considered material.

[ ] A complete and accurate draft of the notice to interested persons (as described in section IV(b)).

[ ] A description of the proposed method of distribution for such notice.

If either of the previously granted exemptions or the Authorized Transactions identified in the written submission required the involvement of an independent fiduciary, the written submission must contain the following additional information:

[ ] The identity of the independent fiduciary responsible for reviewing the proposed transaction, and representing the interests of the plan in the execution of the transaction. (If the transaction is continuing in nature, the independent fiduciary represents the interests of the plans for the duration of the transaction and takes all necessary action on behalf of the plan.)

[ ] A description of such fiduciary's independence from the parties involved in the transaction.

[ ] A statement from the independent fiduciary explaining why the transaction is in the interests and protective of the plan participants and beneficiaries.

[ ] An agreement by the independent fiduciary to represent the interests of the plan.

[ ] A description of the procedures for the replacement of the independent fiduciary, if necessary, during the term of the transaction.

The notice to interested persons filed with the Department includes the following information:

[ ] An objective description of the transaction, including all material terms and conditions.

[ ] The approximate date on which the transaction will occur.

[ ] A statement that the transaction has met the requirements for tentative authorization under the exemption.

[ ] A statement apprising interested persons of their right to comment on the proposed transaction at the address contained in the exemption.

[ ] The expiration date of the comment period.

[ ] The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by

the party as substantially similar to the contemplated transaction.

Signed at Washington, DC this 28th day of June, 2002.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 02–16737 Filed 7–2–02; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Application No. D–10991, et al.]**

## Proposed Exemptions; Deutsche Bank AG and Its Affiliates

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Deutsche Bank AG and Its Affiliates, Located in Frankfurt am Main, Germany

[Application No. D–10991]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I—Transactions

If the exemption is granted, 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, as of April 24, 2001, to

(a) the lending of securities, under certain ''exclusive borrowing'' arrangements, to

(1) Deutsche Bank AG (Deutsche Bank); or

(2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank AG, New York Branch (DBNY), and the ''Foreign Borrowers,'' as defined in Section III (collectively, with Deutsche Bank, referred to as the ''Borrowers,'' as defined in Section III)

by employee benefit plans (Plans), including commingled investment funds holding assets of such Plans, with respect to which the Borrowers are a party in interest; and

(b) The receipt of compensation by Deutsche Bank or its affiliates in connection with the securities lending transactions, provided that the conditions, set forth in Section II, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the 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 the Plan (including a fiduciary) solely by reason of providing services to the 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 a Plan fiduciary that is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a 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 the exclusive right to borrow certain securities, the Plan receives from the 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

[1] For purposes of the proposed exemption, all references to specific provisions of Title I of the Act, unless otherwise indicated, shall refer also to the corresponding provisions of the Code.

equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the 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 the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee)(the Lending Fee and the Shared Earnings Compensation are collectively 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 such 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 the 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 the loaned securities are delivered to the Borrower, the Plan receives from the 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 Deutsche Bank or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) (and as further amended or superseded).[2] 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 with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower that is a trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

(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 of the market value of the loaned securities on the close of business on the day preceding the date of the loan and, if the market value of the collateral at any time falls below 100 percent (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. The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its affiliates, including Deutsche Bank Trust Company Americas (DBT), which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The Borrowing Agreement will provide the Plan with a continuing security interest in, and a lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

(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 the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition.

(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 the Plan would have received (net of tax withholdings)[3] 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 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,

[2] 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.

[3] The Department notes the Borrowers' 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.

the Borrower will indemnify the Plan in the United States 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, Germany, the United Kingdom, Japan, Canada, and/or Australia, 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 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 is 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 this exemption, if granted, (and the notice of pendency) is 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.[4]

(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 the following sentence, 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 subject to regulation by (i) the Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(3) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(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 CFR 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, Deutsche Bank or 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 Deutsche Bank or the Foreign Borrower will occur in the U.S. courts.

(s) Deutsche Bank or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are

[4] The Department notes the Borrowers' 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 Borrowers 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 Borrowers or their affiliates may monitor the level of collateral and the value of the loaned securities.

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 circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-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 provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in 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 Internal 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 employer; 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 to examine the trade secrets of Deutsche Bank 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 ''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 such person is an officer, director, or employee, or in which such person is a partner.

(b) The term ''Foreign Borrower'' or ''Foreign Borrowers'' means any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

(c) The term ''Borrower'' or ''Borrowers'' means Deutsche Bank, DBS, DBNY, the Foreign Borrowers, and any other affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

*Effective Date:* The proposed exemption, if granted, will be effective as of April 24, 2001.

**Summary of Facts and Representations**

1. Deutsche Bank AG, a full service universal bank, is organized under German law and is regulated by the Deutsche Bundesaufsichtsamt fuer das Kreditwesen (i.e., the BAK) and the Deutsche Bundesbunk. Deutsche Bank, as of December 31, 2000, had approximately 697,306,000 in assets and 19,807,000 in stockholders' equity.

Deutsche Bank Trust Company Americas (i.e., DBT), a wholly owned subsidiary of Deutsche Bank, is a New York banking corporation and a leading commercial bank, providing a wide range of banking, fiduciary, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors. Deutsche Bank indirectly owns all of the equity interest of DBT, which is also a member bank of the Federal Reserve system. DBT is one of the largest trustees of ERISA plans and a large manager of passively managed funds. Other Deutsche Bank asset managers may also manage ERISA assets in passively managed styles in the future.

Deutsche Bank AG, New York Branch (i.e., DBNY) is subject to regulation by the New York State Banking Authority and the Board of Governors of the Federal Reserve Bank. In addition, DBNY is subject to regulation by the BAK and the Deutsche Bundesbank. Deutsche Bank Securities Inc. (i.e., DBS), an affiliate of Deutsche Bank, is incorporated under the laws of the State of Delaware and is registered with and regulated by the SEC as a U.S. broker-dealer under Section 15 of the 1934 Act. As of December 31, 2000, DBS had approximately $98,070,582,098 in assets and $6,705,615,063 in stockholders' equity. Deutsche Bank has foreign branches and affiliates worldwide that are in the business of trading securities and engaging in broker-dealer activities (among other investment and trading activities) in their respective countries. The affiliated foreign broker-dealers or banks of Deutsche Bank to be covered by this proposed exemption (i.e., the Foreign Borrowers), and their respective regulating entities, are as follows:

(a) Deutsche Bank AG, located in Frankfurt am Main, is subject to regulation in Germany by the BAK and the Deutsche Bundesbank;

(b) Deutsche Bank AG, London Branch, located in London, is subject to regulation by the BAK and the Deutsche Bundesbank and, in the United Kingdom, is subject to regulation by the Securities and Futures Authority in respect of the conduct of investment business;

(c) Morgan Grenfell & Co., Ltd., located in London, is subject to regulation in the United Kingdom by the Financial Services Authority in respect of prudential supervision;

(d) Deutsche Bank Securities Limited, Tokyo Branch, located in Tokyo, is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

(e) Deutsche Bank AG, Canada Branch, Deutsche Bank Canada, and Deutsche Bank Securities Limited, located in Toronto, are subject to regulation in Canada by the Office of the Superintendent of Financial Institutions Canada and the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization. In addition, Deutsche Bank AG, Canada Branch is also subject to regulation by the BAK and the Deutsche Bundesbank; and

(f) Deutsche Bank AG, Sydney Branch and Deutsche Securities Australia Ltd., located in Sydney, are subject to regulation in Australia by the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and the Australian Stock Exchange Limited. In addition, Deutsche Bank AG, Sydney Branch is

also subject to regulation by the BAK and the Deutsche Bundesbank.

Deutsche Bank requests an individual exemption to cover the Foreign Borrowers identified above, as well as any broker-dealer or bank that, now or in the future, is an affiliate of Deutsche Bank that is subject to regulation by (i) the BAK, and the Deutsche Bundesbank in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia.

2. The Borrowers, acting as principals, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Borrowers represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

3. Deutsche Bank represents that the Foreign Borrowers are subject to regulation by a governmental agency in the foreign country in which they are located. Deutsche Bank further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: The protection of the investor by the regulation of securities markets.

With respect to Germany, the BAK, a federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration, and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Deutsche Bank by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Deutsche Bank. German banking law mandates penalties to ensure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

Germany, the United Kingdom, Japan, Canada, and Australia all have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

4. Deutsche Bank represents that, in addition to the protections afforded by the applicable foreign regulatory body, compliance by the Foreign Borrowers with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (and the amendments and interpretations thereof) will offer further protections to the Plans.[5] SEC Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term ''major U.S. institutional investor'' is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million, or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[6] The Borrowers represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Borrowers represent that under SEC Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance

[5] According to the Borrowers, section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term ''foreign broker-dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Borrowers are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[6] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a No-Action letter issued by the SEC. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (April 9, 1997 No-Action Letter).

with Rule 15a–6 [7] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by SEC Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [8] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Borrowers represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor.[9] (See April 9, 1997 No-Action Letter.)

5. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or rebate fee and keep the earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as 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.

6. The Borrowers request an individual exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Deutsche Bank or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to the 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. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. It is represented that because the Borrowers, by exercising their contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrowers, the lending of securities to the Borrowers may be outside the scope of relief provided by PTE 81–6.[10]

7. For each Plan, the Borrowers will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrowers. Under the Borrowing Agreement, the Borrowers will have exclusive access for a specified period of time to borrow certain securities of the Plan, pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrowers pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be 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.

8. The Borrowers 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.

9. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement), (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) (i.e., the Exclusive Fee).

If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the 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 the Plan, or the Plan may agree to pay the Borrower a rebate fee

[7] If it is determined that applicable regulation under the 1934 Act does not require Deutsche Bank or the Borrower to comply with SEC Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Item 4 above.

[8] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Deutsche Bank or between a Plan and the Foreign Borrower. The Borrowers note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[9] The term ''foreign associated person'' as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[10] PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

and retain the earnings on the collateral (i.e., the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee. The Lending Fee, together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee.

The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such 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. For example, in addition to the Borrower's paying different fees to different Plans, the Borrower may pay different fees for different portfolios of securities (i.e., the fee for a domestic securities portfolio may be different from the fee for a foreign securities portfolio). The Borrower may also pay different fees for securities of issuers in different foreign countries; for example, there may be a different fee for German securities than for French securities. In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities.

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 the 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.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities 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 the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

10. By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan will receive from the 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 U.S. banks other than Deutsche Bank or its affiliates, or other collateral permitted under PTE 81–6 (as amended or superseded). Such collateral will be deposited and maintained in an account on behalf of a Plan 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. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

The market value (or in the case of a letter of credit, a stated amount) of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Plan, its independent fiduciary or its designee, which may be Deutsche Bank or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (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 at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The Borrowing Agreement will provide the Plan with a continuing security interest in, and lien on, the collateral, or will provide for the transfer of title to the collateral to the Plan.

If the Borrower deposits cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower—except that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of a comparable arm's length transaction between unrelated parties, taking into account the exclusive arrangement, and will be based upon an objective methodology which takes into account several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO [11] rate, or the like), and anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan. If the Borrower deposits non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to the earnings on its non-cash collateral—except that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending 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.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. 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.

11. Before entering into a Borrowing Agreement, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as

[11] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes, and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition. Further, the Borrowing Agreement will contain 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.

12. Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the Plan, and the Borrower will inform the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.

13. With regard to those Plans for which Deutsche Bank or any of its affiliates provides custodial, directed trustee, clearing and/or reporting functions relative to securities loans, Deutsche Bank and a Plan fiduciary independent of Deutsche Bank and its affiliates will agree in advance, and in writing, to any fee that Deutsche Bank or any of its affiliates is to receive for such custodial, directed trustee, clearing and/or reporting services. Such fees, if any, would be fixed fees (e.g., Deutsche Bank or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount), and any such fee would be in addition to any fee Deutsche Bank or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Deutsche Bank or any of its affiliates to provide such functions relative to securities loans to the Borrowers will be terminable by the Plan within five business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrowers of a pro-rata portion of the Exclusive Fee paid by the Borrowers to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrowers.

14. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver 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 business days of written notice of termination or the customary settlement period for such securities.

15. 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 United States 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.

16. Except as provided herein, all the procedures under the Borrowing Agreement will, 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, Germany, the United Kingdom, Japan, Canada and/or Australia, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, 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

(a) In the case of two or more 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 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 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.

(b) In the case of two or more 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 is formed for the sole purpose of making loans of securities.)

The Borrowers represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrowers under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

17. In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a bank which is subject to regulation by (a) the BAK and the Deutsche Bundesbank in Germany, (b) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (c) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (d) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities

Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the 1934 Act that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(iii) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81–6 (as amended or superseded);

(iv) 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 CFR 2550.404(b)–1; and

(v) Prior to entering into a transaction involving a Foreign Borrower, Deutsche Bank or the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint a Process Agent in the United States;

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by Deutsche Bank or the Foreign Borrower will occur in the U.S. courts.

18. In summary, the Borrowers represent that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) Each Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement, and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any 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 business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in Section II(o) above) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, Germany, the United Kingdom, Japan, Canada and/or Australia, as appropriate.

*For Further Information Contact:* Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Goldman Sachs & Co. (located in New York, NY) and its Affiliates**

[Application No. D–11084]

*Proposed Exemption*

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[12]

Section I—Transactions

If the exemption is granted, 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 as of March 22, 2002, to:

(a) The lending of securities, under certain exclusive borrowing arrangements, to:

(1) Goldman, Sachs & Co. (Goldman) and any affiliate of Goldman that, now or in the future, is a U.S. registered broker-dealer, a government securities broker or dealer or U.S. bank (together with Goldman, the ''U.S. Broker-Dealers'');

(2) Goldman Sachs Canada Inc., which is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association;

(3) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), which are subject to regulation in the United Kingdom by the Financial Services Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA));

(4) Goldman, Sachs & Co. oHG, which is subject to regulation in Germany by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, e.g., der Bundesaufsichtsamt für das Kreditwesen (the BAK);

(5) Goldman Sachs (Japan) Ltd., which is subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange;

(6) Goldman Sachs Australia Pty Limited, which is subject to regulation in Australia by the Australian Securities & Investments Commission (the ASIC);

(7) Goldman, Sachs & Co. Bank, which is subject to regulation in Switzerland by the Swiss Federal Banking Commission; and

(8) Any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation

[12] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK FSA in the United Kingdom, the Deutsche Bundesbank and/or the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia or the Swiss Federal Banking Commission in Switzerland (each such affiliated foreign broker-dealer or bank referred to as a ''Foreign Borrower,'' and, together with the U.S. Broker-Dealers, collectively referred to as the ''Borrowers''), by employee benefit plans, including commingled investment funds holding assets of such plans (Plans) with respect to which Goldman or any of its affiliates is a party in interest; and

(b) The receipt of compensation by Goldman or any of its affiliates in connection with securities lending transactions, provided that the following conditions set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the 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 the Plan (including a fiduciary) solely by reason of providing services to the 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 a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a 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 the exclusive right to borrow certain securities, the Plan receives from the 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, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the 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 the 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, any earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the ''Lending Fee'') (the Lending Fee and the Shared Earnings Compensation are referred to herein as the ''Transaction Lending Fee''). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such 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 the 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 of portfolio value 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 the 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 Goldman or an affiliate of Goldman, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or superseded) [13] having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. 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 a custodian of the Plan. If maintained by an affiliate of the Borrower, the collateral will be segregated from the assets of such affiliate.

(h) If the market value of the collateral at any time falls below 100 percent (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. The level of the collateral is monitored daily by the Plan or its designee, which may be Goldman or any of its affiliates which provides custodial or directed 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 the Plan should enter into or 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

[13] 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 adealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

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, any cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[14] 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 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 and paragraph (l) above, the Plan's remedy will be 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. against any losses resulting from its use of the borrowed securities equal 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, Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, 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 Borrower; 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 Borrower, 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 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 Borrower, 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 Borrower, a copy of this exemption, if granted, (and the notice of pendency) is 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.[15]

(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 the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrower. 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 a Foreign Borrower must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

[14] The Department notes that Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreing tax withholdings and that the Borrower will alwsays put the Plan back in at least as good a position as it would have been had it not loaned securities.

[15] 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, e.g., 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.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the Securities Exchange Act of 1934 (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-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(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 CFR 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) Goldman or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such 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 circumstances beyond the control of Goldman and/or its affiliates, the records are lost or destroyed prior to the end of the six 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 provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in 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 Internal 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 employer; 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 to examine the trade secrets of Goldman 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 ''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 such person is an officer, director or employee, or in which such person is a partner.

(b) The term ''Foreign Borrower'' or ''Foreign Borrowers'' means Goldman Sachs Canada Inc. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in the United Kingdom by the UK FSA, Goldman, Sachs & Co. oHG or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Germany by the Deutsche Bundesbank and the BAK, Goldman Sachs (Japan) Ltd. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange, Goldman Sachs Australia Pty Limited or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Australia by the ASIC, Goldman, Sachs & Co. Bank or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Switzerland by the Swiss Federal Banking Commission.

(c) The term ''Borrower'' includes Goldman, the U.S. Broker-Dealers, and the Foreign Borrowers.

*Effective Date:* This proposed exemption, if granted, will be effective as of March 22, 2002.

**Summary of Facts and Representations**

1. Goldman, Sachs & Co. (Goldman), a New York limited partnership, is a wholly owned subsidiary and the principal operating subsidiary of The Goldman Sachs Group, Inc. (the GS Group), a Delaware corporation. Goldman, a full-line investment services firm, is registered with and regulated by the Securities and Exchange Commission (the SEC) as a broker-dealer and as an investment adviser, is registered with and regulated by the Commodity Futures Trading Commission (the CFTC) as a futures commission merchant, is a member of the New York Stock Exchange (the NYSE) and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. (the NASD). As of August 31, 2001, the GS Group had approximately $302 billion in assets and $17.96 billion in shareholders' equity.

Goldman has several foreign affiliates which are broker-dealers or banks. The affiliated foreign broker-dealers or banks of Goldman that will be covered by this proposed exemption (the Foreign Borrowers), and their respective regulating entities, are as follows: (a) Goldman Sachs Canada Inc., located in Toronto, is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, (b) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), located in London, are subject to regulation by the Securities and Futures Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA)) in the United Kingdom, (c) Goldman, Sachs & Co. oHG, located in Frankfurt, is subject to regulation by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt für das Krewitwesen (the BAK) in Germany, (d) Goldman Sachs (Japan) Ltd., located in Tokyo, is subject to regulation by the Financial Services

Agency and the Tokyo Stock Exchange in Japan, (e) Goldman Sachs Australia Pty Limited, located in Sydney, is subject to regulation by the Australian Securities & Investments Commission (the ASIC) in Australia, (f) Goldman, Sachs & Co. Bank, located in Zurich, is subject to regulation by the Swiss Federal Banking Commission in Switzerland, and (g) any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK SFA in the United Kingdom, the Deutsche Bundesbank and the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia, or the Swiss Federal Banking Commission in Switzerland.

2. The Borrowers, acting as principal, actively engage in the borrowing and lending of securities. The Borrowers utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. The Applicants represent that in the United States, as described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales, for non-purpose loans to exempted borrowers, or in the event of a failure to receive securities that a broker-dealer is required to deliver.

The Applicants wish to enter into exclusive borrowing arrangements with employee benefit plans, including commingled investment funds holding the assets of such plans (Plans), for which Goldman or any affiliate of Goldman may be a party in interest. For example, Goldman or an affiliate may be an investment manager for assets of a Plan that are unrelated to the assets involved in the transaction. Goldman or any of its affiliates may provide securities custodial services, directed trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to the Plan.

3. The Applicants represent that although the Foreign Borrowers will not be registered with the SEC, their activities are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicants further represent that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

4. The Applicants represent that although Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any other foreign broker-dealer of Goldman in the United Kingdom will not be registered with the SEC, their activities are governed by the rules, regulations and membership requirements of the UK FSA. In this regard, the Applicants state that these broker-dealers are subject to the UK FSA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. The Applicants represent that the UK FSA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the UK FSA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, the Applicants state that the UK FSA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements. In this regard, required records must be produced at the request of the UK FSA at any time. The Applicants further state that the rules and regulations of the UK FSA for broker-dealers are backed up by potential fines and penalties as well as a comprehensive disciplinary system.

5. With respect to Canada, the United Kingdom, Japan, and Australia, all these countries have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

6. With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Goldman, Sachs & Co. oHG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Goldman, Sachs & Co. oHG by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Goldman, Sachs & Co. oHG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

7. With respect to Switzerland, the powers of the Swiss Federal Banking Commission include licensing banks, issuing directives to address violations by or irregularities involving banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. The Swiss Federal Banking Commission exercises oversight over Swiss banks, such as Goldman, Sachs & Co. Bank, through independent auditors known as ''Recognized Auditors,'' which act on behalf of the Commission under detailed statutory provisions. Each Swiss bank, including Goldman, Sachs & Co. Bank, must appoint a recognized Auditor and notify the Swiss Federal Banking Commission of an intent to change its auditor. The Recognized Auditor may take action within a bank as deemed necessary or as instructed by the Swiss Federal Banking Commission and must inform the Commission of supervisory matters. The Swiss Federal Banking Commission insures that Goldman, Sachs & Co. Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration, and

financial resources. The Swiss Federal Banking Commission reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the Recognized Auditor.

The Swiss Federal Banking Commission obtains information on the condition of Goldman, Sachs & Co. Bank and its foreign offices and subsidiaries by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the Recognized Auditor. The Swiss Federal Banking Commission also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposures from Goldman, Sachs & Co. Bank.

Swiss banking law mandates penalties to insure correct reporting to the Swiss Federal Banking Commission. Recognized Auditors face penalties for gross violations of their duties in auditing, or reporting misleading information, omitting essential information from the audit report, failing to request pertinent information or failing to report to the Swiss Federal Banking Commission.

8. With respect to Australia, Goldman Sachs Australia Pty Limited is subject to regulation by ASIC, and as a participating organization, by the Australian Stock Exchange Limited (ASX). The rules of ASX (which are more detailed than those of ASIC) require each firm to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of ASX set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the ASX impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting, and recordkeeping requirements, to the effect that required records must be produced upon request. ASIC also has rules covering these matters. Finally, the rules and regulations of ASX and ASIC impose potential fines and penalties on broker-dealers, establishing a comprehensive disciplinary system.

9. Goldman represents that, in connection with the transactions covered by this proposed exemption, the Foreign Borrowers' compliance with any applicable requirements of Rule 15a–6 (17 C.F.R. 240.15a–6) of the 1934 Act (as discussed further in Paragraph 10, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.[16]

10. Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''major U.S. institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended. The term ''major U.S. institutional investor'' is defined as a person that is a U.S. institutional investor that has, or has under management, total assets in excess of $100 million or an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[17] The Applicants represent that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicants represent that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 [18] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to the transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating the terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);[19] and

[16] According to the Applicants, section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15a–6(b)(3) provides that the term ''foreign broker-dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the [1934 Act].'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, the Applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments to Rule 15a–6.

[17] Note that the categories of entities that qualify as ''major U.S. institutional investors'' has been expanded by a Securities and Exchange Commission No-Action letter. See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (April 9, 1997 No-Action Letter).

[18] If it is determined that applicable regulation under the 1934 Act does not require Goldman or the Borrower to comply with Rule 15a–6, both entities will nevertheless comply with subparagraphs (a) and (b) of Representation 10.

[19] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Goldman or between a Plan and the Foreign

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person [20] and the U.S. institutional investor (other than a major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. The Applicants represent that, under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. If the borrower deposits cash collateral, the lender invests the collateral, and the borrowing agreement may provide that the lender pay the borrower a previously-agreed upon amount or rebate fee and keep any earnings on the collateral. If the borrower deposits government securities, the borrower is entitled to the earnings on its deposited securities and may pay the lender a lending fee. If the borrower deposits irrevocable bank letters of credit as collateral, the borrower pays the lender a fee as compensation for the loan of its securities. These fees, defined below as 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.

12. The Applicants request an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Goldman or any of its affiliates is a party in interest (including a fiduciary) solely by reason of providing services to the 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. For each Plan, neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. The Applicants represent that because the Borrower, by exercising its contractual rights under the proposed exclusive borrowing arrangement, will have discretion with respect to whether there is a loan of particular Plan securities to the Borrower, the lending of securities to the Borrower may be outside the scope of relief provided by PTE 81–6.[21]

13. For each Plan, the Borrower will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of the Borrower. Under the Borrowing Agreement, the Borrower will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards.[22] The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that the Borrower pay all transfer fees and transfer taxes relating to the securities loans. The terms of each loan of securities by a Plan to a Borrower will be 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.

14. 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 of portfolio value or other percentage determined pursuant to an objective formula.

15. In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the 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 deposits cash collateral, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the 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 the 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 deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the ''Lending Fee'') (the Lending Fee and the Shared Earnings Compensation are referred to herein as the ''Transaction Lending Fee''). The Transaction Lending Fee, if any, may be in addition to the Exclusive Fee or an offset against such 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. For example, in addition to the Borrower paying different fees for different portfolios of securities (i.e., the fee for a domestic securities portfolio may be different than the fee for a foreign securities portfolio), the Borrower may also pay different fees for securities of issuers in different foreign countries (i.e., there may be a different fee for German securities than for French securities). In addition, with respect to, for example, the French securities, there may be different fees for liquid securities than for illiquid securities. Any change in, or a change in the method of determining, the Exclusive Fee or the Transaction Lending Fee that the Applicants pay to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the 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

Borrower. The Applicants note that in such situations, the U.S. registered broker-dealer will not be acting as principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

[20] The term ''foreign associated person'' as defined in Rule 15a–6(b)(2) means any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the 1934 Act, of the foreign broker-dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under Rule 15a–6(a)(3).

[21] PTE 81–6 requires in part that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

[22] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

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.

The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities 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 the Plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

16. An independent fiduciary of a Plan may provide written instructions directing that the investment of any cash collateral, or any portion thereof, be managed by Goldman or any of its affiliates or be invested in one or more mutual funds managed by Goldman or any of its affiliates. Goldman or such affiliate, as applicable, may receive a reasonable and customary investment management fee, provided that the independent fiduciary of the Plan approves of such compensation arrangement after receiving written disclosure of the compensation arrangement to be paid to Goldman or such affiliate, as applicable, in connection with such investment management. The independent fiduciary of the Plan may revoke such written instructions at any time.[23]

17. By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan will receive from the 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 U.S. banks other than Goldman or an affiliate of Goldman, or other collateral permitted under PTE 81–6 (as amended or superseded) having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such collateral will be deposited and maintained in an account on behalf of the Plan 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. The Plan, its independent fiduciary or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan, will monitor the level of the collateral daily and, if the market value of the collateral on the close of a business day falls below 100 percent (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 at the close of business on such day, the Borrower will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to at least 102 percent. The applicable Borrowing Agreement will 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.

If the Borrower pledges cash collateral, the Plan invests the collateral, and all earnings on such cash collateral shall be returned to the Borrower; provided that the Borrowing Agreement may provide that the Plan receive Shared Earnings Compensation, which, as discussed above, may be a percentage of the earnings on the collateral which may be retained by the Plan or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral. The terms of the rebate fee for each loan will be at least as favorable to the Plan as those of comparable arm's length transactions between unrelated parties taking into account the exclusive arrangement, and will be based upon an objective methodology which may take into account one or more of several factors, including potential demand for the loaned securities, the applicable benchmark cost of fund indices (typically, the U.S. Federal Funds rate established by the U.S. Federal Reserve System (the Federal Funds), the overnight REPO[24] rate, or the like) and/or the anticipated investment return on overnight investments permitted by the independent fiduciary of the Plan. If the Borrower pledges non-cash collateral, such as government securities or irrevocable bank letters of credit, the Borrower shall be entitled to any earnings on its non-cash collateral; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a Lending 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.

The Borrower will provide a monthly report to the independent fiduciary of the Plan which includes the following information. 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.

18. Before entering into a Borrowing Agreement, the Borrower will furnish 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 the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain 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.

19. Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption, if granted, (and the notice of pendency) is 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.

[23] This transaction is outside the scope of the proposed exemption. The Department notes that it is the responsibility of Goldman to determine whether the conditions of ERISA section 408(b)(2) will be met with respect to the transaction (i.e., the reasonable contract or arrangement requirement and the reasonable compensation requirement).

[24] An overnight REPO is an overnight repurchase agreement that is an arrangement whereby securities dealers and banks finance their inventories of Treasury bills, notes and bonds. The dealer or bank sells securities to an investor with a temporary surplus of cash, agreeing to buy them back the next day. Such transactions are settled in immediately available Federal Funds, usually at a rate below the Federal Funds rate (the rate charged by the banks lending funds to each other).

20. With regard to those Plans for which Goldman or any of its affiliates provides custodial, directed trustee, clearing and/or reporting functions relative to securities loans, Goldman or its applicable affiliate and a Plan fiduciary independent of Goldman and its affiliates will agree in advance and in writing to any fee that Goldman or any of its affiliates is to receive for such services. Such fees, if any, would be fixed fees (e.g., Goldman or any of its affiliates might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services, or to receive a stated dollar amount) and any such fee would be in addition to any fee Goldman or any of its affiliates has negotiated to receive from any such Plan for standard custodial or other services unrelated to the securities lending activity. The arrangement for Goldman or any of its affiliates to provide such functions relative to securities loans to the Borrower will be terminable by the Plan within five business days of the receipt of written notice without penalty to the Plan, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, if the Plan has also terminated its exclusive borrowing arrangement with the Borrower.

21. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, the Borrower will deliver 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 business days of written notice of termination or the customary settlement period for such securities.

22. In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement and the immediately preceding paragraph, the Plan's remedy will be 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. against any losses resulting from its use of the borrowed securities equal 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.

23. Except as provided herein, all the procedures under the Borrowing Agreement will, 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, Canada, the United Kingdom, Germany, Japan, Australia or Switzerland, as appropriate. In addition, in order to ensure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(a) 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 C.F.R. 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, 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 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.

(b) 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 Borrower, 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.)

The Applicants represent that the opportunity for the Plans to enter into exclusive borrowing arrangements with the Borrower under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the return on the lending portfolio.

24. In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(i) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

(ii) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 C.F.R. 240.15a–6) under the 1934 Act which provides foreign broker-dealers a limited exception from United States registration requirements;

(iii) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(iv) 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

(v) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to the service of process on the Process Agent; and

(4) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

25. In addition to the protections cited above, Goldman or the Borrower will maintain, or cause to be maintained, within the United States for a period of six years from the date of a transaction, such records as are necessary to enable the Department and other persons (as specified herein in Section II(t)(1)) to determine whether the conditions of the exemption have been met.

26. In summary, the Applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Borrower will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan;

(b) The Plans will be permitted to lend to the Borrower, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities;

(c) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Borrower will pay the Plan the Exclusive Fee, which as discussed above may be either (i) a flat fee (which may be a percentage of the value of the total securities subject to the Borrowing Agreement), (ii) a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii);

(d) Any change in the Exclusive Fee or Shared Earnings Compensation that the Borrower pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the Exclusive Fee or Shared Earnings Compensation changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) The Borrower will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to the Borrower;

(f) The collateral posted with respect to each loan of securities to the Borrower initially will have, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent and will be monitored daily by the independent fiduciary or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan;

(g) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, except for the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan, and whereupon the Borrower will return any 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 business days of written notice of termination or the customary settlement period for such securities;

(h) Neither the Borrower nor any of its affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan;

(i) The minimum Plan size requirement (as specified in Section II(o)) will ensure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and

(j) All the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia or Switzerland, as appropriate.

*Effective Date*: This proposed exemption, if granted, will be effective as of March 22, 2002.

*For Further Information Contact*: Karen E. Lloyd, U.S. Department of Labor, 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 of the Act and/or the Code, including any prohibited transaction 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 02–16736 Filed 7–2–02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–11039]**

### Notice of Proposed Individual Exemption To Amend Prohibited Transaction Exemption (PTE) 95–31 Involving the Financial Institutions Retirement Fund (the Fund) and the Financial Institutions Thrift Plan (the Thrift Plan) Located in White Plains, NY

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of proposed individual exemption to amend PTE 95–31.

**SUMMARY:** This document contains a notice of pendency before the U.S. Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 95–31 (60 FR 18619, April 12, 1995), an exemption granted to the Fund and the Thrift Plan. PTE 95–31 involves the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to: Employers (the Employers) that participate in the Fund and the Thrift Plan; and employee benefit plans (the Plans) sponsored by such Employers.

If granted, the proposed exemption would incorporate, by reference, certain of the facts, representations and conditions contained in PTE 95–31. However, the proposed exemption would expand the scope of PTE 95–31 by allowing for the provision of certain trust services, and the receipt of compensation for such services, by Trustco, a wholly-owned subsidiary of Pentegra, to the Plans, the Employers, the Thrift Plan, and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals). In addition, the proposed exemption would permit the provision of certain services, and the receipt of compensation with respect to such services, by Pentegra to the Thrift Plan and the IRAs.

Thus, the proposed exemption will affect the Fund, the Thrift Plan, the Plans, the Employers, the IRAs, the Individuals, and, when relevant, the participants and beneficiaries thereof.

**DATES:** Written comments and requests for a public hearing should be received by the Department on or before September 16, 2002.

**ADDRESSES:** All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11039. Interested persons are also invited to submit comments and/or hearing requests to PWBA via email to *moffittb@pwba.dol.gov* or by fax to (202) 219–0204. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8544. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption to amend PTE 95–31. PTE 95–31 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code.

The proposed exemption has been requested in an application filed on behalf of the Fund and the Thrift Plan (together, the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption is being issued solely by the Department.

PTE 95–31 provides that—

• The restrictions of sections 406(a) and 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 provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that [certain] conditions are met.

As set forth in the Summary of Facts and Representations contained in the proposed notice to PTE 95–31 (60 FR 5700 (January 30, 1995)), the exemption provides relief for the provision of administrative services by Pentegra to the Plans and the Employers, and the receipt of compensation by Pentegra for such provision of services. The services provided by Pentegra include document preparation, the procurement of favorable determination letters from the Internal Revenue Service, the maintenance of plan books, and other similar plan administration services. At the time the exemption was granted, Pentegra did not offer trust services to any of its clients, including the Plans and/or the Employers.

The Applicants state that, to date, Pentegra has been successful in providing services to 66 defined contribution plans, 72 employee stock ownership plans, and 32 nonqualified plans. In addition, the Applicants represent that, in building a large and diverse client base, the Fund and the Thrift Plan complied with all of the conditions contained in PTE 95–31. The Fund now intends to create Trustco, a for-profit, limited purpose, national trust company as a means of providing trust services to, among others, the Plans, the Employers, the Thrift Fund, and the IRAs. The Applicants represent that the Fund seeks to create Trustco primarily in response to requests by numerous of Pentegra's current and prospective clients that Pentegra offer trust services to complement its various other administrative services.

The Applicants state that, once established, Trustco will offer trust services that are similar in nature to the services described in PTE 95–31. In this regard, the Applicants state that Trustco will provide only directed, non-discretionary trust services.[1] Accordingly, the Applicants request that such provision of services be subject to substantially the same conditions as those contained in PTE 95–31.

The Applicants state that the Fund, the Plans, the IRAs, and the Thrift Plan will be adequately protected with respect to the receipt by each such entity of services from Trustco. In this

[1] In so doing, the applicant represents, Trustco, will not participate in securities lending transactions or provide cash management services.

regard, with respect to the Fund, the Applicants state that the provision of trust services by Trustco to the Thrift Plan, the Plans, the IRAs and the Employers will be subject to, among other things, the prior approval of an independent fiduciary. In addition, the financial statements of Trustco will be subject to an annual audit conducted by an independent certified accountant and an annual review conducted by an independent fiduciary. With respect to the adequate protection of the Plans and the IRAs, the Applicants state that, among other things, the terms associated with any receipt of services by the Plans and the IRAs from Trustco will be no less favorable to the Plans and the IRAs than the terms contained in comparable agreements for services between unrelated parties. With respect to the adequate protection of the Thrift Plan, the Applicants state that, among other things, any selection of Trustco as provider of trust services to the Thrift Plan will be made by the Board of Directors of the Thrift Plan upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable.[2]

The Applicants additionally seek relief for the provision of certain services by Pentegra to the Thrift Plan and the IRAs. The Applicants state that such provision of services is important to the continued success of Pentegra given that the employer market for pension plan services appears to be declining. The Applicants state that the proposed transactions involve services of the same nature and type as those described in PTE 95–31 and request that the terms and conditions applicable to this proposed provision of services be substantially the same as the terms and conditions contained therein. The Applicants state that the Thrift Plan will be adequately protected since, among other things, any selection of Pentegra as provider of trust services to Thrift Plan will be made by the Board of Directors of the Thrift Plan, such Board being independent of Pentegra as described in footnote 2, upon the Thrift Plan Board's determination that the services are necessary and the associated fees are reasonable. The Applicants additionally state that the IRAs will be adequately protected since, among other things, the terms associated with any receipt of services by the IRAs from Pentegra will be no less favorable to the IRAs than the terms contained in comparable agreements for services between unrelated parties.

Accordingly, this proposed exemption amends and revises the operative language of PTE 95–31 through the addition of: (1) The provision of non-discretionary, directed trust services by Trustco to the Plans, the Employers, the IRAs, and the Thrift Plan; and (2) the provision of certain services by Pentegra to the IRAs and the Thrift Plan.

**Notice to Interested Persons**

*Notice to Interested Persons:* The applicant represents that notice to interested persons will be made within forty-five (45) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than seventy-five (75) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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

(5) This proposed exemption, if granted, is subject to the express condition that the facts and representations set forth in the notice of proposed exemption relating to PTE 95–31 and this notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

**Section I. Covered Transactions**

If the exemption is granted, the restrictions of sections 406(a) and 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 provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, and Trustco, a wholly-owned subsidiary corporation of Pentegra (collectively, the Service Providers), to: The Thrift Plan;

[2] In this regard, the Applicants state that the Thrift Plan's Board of Directors will at all times be independent of the Fund's Board of Directors, Trustco's Board of Directors, and Pentegra's Board of Directors. Specifically, with respect to the provision of services by Trustco (Pentegra) to the Thrift Plan, a majority of the members of the Thrift Plan Board will not contemporaneously participate as members of the Trustco Board (Pentegra Board). Moreover, to the extent a Thrift Plan Board member does participate as a member of the Trustco Board (Pentegra Board), such member: will abstain from any discussions or deliberations involving the provision of services by Trustco (Pentegra); and will not otherwise exercise, with respect to such provision of services, any of the authority, control or responsibility which makes him or her a fiduciary.

employers that participate in the Fund and/or the Thrift Plan (the Employers); employee benefit plans sponsored by the Employers (the Plans); and the individual retirement accounts (the IRAs) established by certain employees, officers, directors and/or shareholders of the Employers (the Individuals); provided that the following conditions are met:

(a) A qualified, independent fiduciary of the Fund determines that the services provided by the Service Providers are in the best interests of the Fund and are protective of the rights of the participants and beneficiaries of the Fund;

(b) The terms associated with the provision of services by the Service Providers to the Plans, the Thrift Fund, and the IRAs, at the time such services are entered into, are not less favorable to all parties to the transaction than the terms generally available in comparable arm's-length transactions involving unrelated parties;

(c) The Service Providers receive reasonable compensation for the provision of services, as determined by an independent fiduciary;

(d) Prior to the provision of services by the Service Providers, the independent fiduciary will first review such services and will determine that such services are reasonable and appropriate for the Service Providers, taking into account such factors as: whether the Service Providers have the capability to perform such services, whether the fees to be charged reflect arm's-length terms, whether Service Provider personnel have the qualifications to provide such services, and whether such arrangements are reasonable based upon a comparison with similarly qualified firms in the same or similar locales in which the Service Providers propose to operate;

(e) No services will be provided by the Service Providers without the prior review and approval of the independent fiduciary;

(f) Not less frequently than quarterly, the independent fiduciary will perform periodic reviews to ensure that the services offered by the Service Providers remain appropriate for the Service Providers and that the fees charged by the Service Providers represent reasonable compensation for such services;

(g) Not less frequently than annually, the Service Providers will provide a written report to the board of directors of the Fund describing in detail the services provided to the Plans, the Employers, the IRAs, and the Thrift Plan, a detailed accounting of the fees received for such services, and an estimate as to the amount of fees the Service Providers expect to receive during the following year from such Plans and Employers;

(h) Not less frequently than annually, the independent fiduciary will conduct a detailed review of approximately 10 percent of all transactions completed by the Service Providers which will include a reasonable cross-section of all services performed; such transactions will be reviewed for compliance with the terms and conditions of this exemption;

(i) The financial statements of the Service Providers will be audited each year by an independent certified public accountant, and such audited statements will be reviewed by the independent fiduciary;

(j) The independent fiduciary shall have the authority to prohibit the Service Providers from performing services that such fiduciary deems inappropriate and not in the best interests of the Service Providers and the Fund;

(k) Each Service Provider contract with an Employer, an IRA, the Thrift Plan or a Plan will be subject to termination without penalty by any of the parties to the contract for any reason upon reasonable written notice;

(l) Trustco will act solely as a directed trustee and will not:

(1) Have any investment discretion with respect to the assets being held in trust,

(2) engage in any securities lending transactions, and/or

(3) provide any cash management services; and

(m) A majority of the Board of Directors of the Thrift Plan will at all times be independent of, and separate from, the Board of Directors of the Fund, the Board of Directors of Pentegra, and the Board of Directors of Trustco, and, with respect to the selection of Trustco and/or Pentegra as provider(s) of services to the Thrift Plan:

(1) Such majority members alone will give prior approval upon determining that such services are necessary and the associated fees charged are reasonable; and

(2) Any member of the Board of Directors of the Thrift Plan contemporaneously participating as a member of the Board of Directors of Pentegra (Trustco) will remove himself or herself from all consideration by the Thrift Plan regarding the provision of services by Trustco (Pentegra) to the Thrift Plan and will not otherwise exercise, with respect to such provision(s) of services, any of the authority, control or responsibility which makes him or her a fiduciary.

**Section II. Recordkeeping**

(1) The independent fiduciary and the Fund will maintain, or cause to be maintained, for a period of 6 years, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the independent fiduciary and the Fund, or their agents, the records are lost or destroyed before the end of the six year period; and (b) no party in interest other than the independent fiduciary and the Board of Directors of the Fund 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 paragraph (2) below.

(2)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any employer participating in the Fund and/or Thrift Plan or any duly authorized employee or representative of such employer;

(3) Any participant or beneficiary of the Fund, Thrift Plan, or Plan or any duly authorized representative of such participant or beneficiary; and

(4) Any Individual.

(b) None of the persons described above in subparagraphs (a)(2) and (a)(3) of this paragraph (2) shall be authorized to examine trade secrets of the independent fiduciary or the Fund, or their affiliates, or commercial or financial information which is privileged or confidential.

(3) For purposes of this section, references to the Fund shall also include the Service Providers.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of

the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 95–31, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 28th day of June, 2002.

**Ivan L. Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 02–16735 Filed 7–2–02; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

*Theater/Musical Theater (A):* July 15–19, 2002, Room 714 (Creativity category). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on July 18th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 15th to 17th, 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on July 18th, and from 9:30 a.m. to 5 p.m. on July 19th, will be closed.

*Literature:* July 30–August 1, 2002, Room 730 (Creativity and Organizational Capacity categories). A portion of this meeting, from 9 a.m. to 10:30 a.m. on August 1st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7 p.m. on July 30th and July 31st, and from 10:30 a.m. to 4 p.m. on August 1st, will be closed.

*Theater (B):* August 5–9, 2002, Room 714 (Creativity and Organizational Capacity categories). A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on August 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on August 5th–7th, from 9:30 a.m. to 2:30 p.m. and 4:30 p.m. to 6:30 p.m. on August 8th, and from 9:30 a.m. to 5 p.m. on August 9th, will be closed.

*Dance:* August 5–9, 2002, Room 716 (Creativity and Organizational Capacity categories). A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 5th–8th, and from 10:30 a.m. to 4 p.m. on August 9th, will be closed.

*Local Arts Agencies (A):* August 7–8, 2002, Room 730 (Creativity category). A portion of this meeting, from 9 a.m. to 9:45 a.m. on August 8th, will be open to the public for policy discussion. The remaining portion of this meeting, from 9 a.m. to 5:30 p.m. on August 7th, will be closed.

*Local Arts Agencies (B):* August 8, 2002, Room 730 (Organizational Capacity category). A portion of this meeting, from 1:15 p.m. to 1:45 p.m., will be open to the public for policy discussion. The remaining portion of this meeting, from 10 a.m.. to 1:15 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 27, 2002.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 02–16669 Filed 7–2–02; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewals

The NSF management officials having responsibility for the four advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq*. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Committee on Equal Opportunities in Science and Engineering (#1173).
2. Advisory Committee for Computer and Information Sciences and Engineering (#1115).
3. Advisory Committee for Mathematical and Physical Sciences (#66).
4. Advisory Committee for Social, Behavioral & Economic Sciences (#1171).

Effective date for renewal is July 1, 2002. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–16727 Filed 7–2–02; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewals

The NSF management officials having responsibility for the advisory committees listed below determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* The committees will be renamed (the previous name is in parenthesis). The committee number is the stay the same. This determination following consultation with the Committee Management Secretariat, General Services Administration.

1. #1209—Proposal Review Panel for Polar Programs (Special Emphasis Panel in Polar Programs).
2. #1185—Proposal Review Panel for Advanced Computational Infrastructure and Research (Special Emphasis Panel in Advanced Computational Infrastructure and Research).
3. #1207—Proposal Review Panel for Advanced Networking and

Infrastructure Research (Special Emphasis Panel in Advanced Networking and Infrastructure Research).

4. #1192—Proposal Review Panel for Computer—Communications Research (Special Emphasis Panel in Computing—Communications Research).

5. #1193—Proposal Review Panel for Experimental and Integrative Activities (Special Emphasis Panel in Experimental and Integrative Activities).

6. #1200—Proposal Review Panel for Information and Intelligent Systems (Special Emphasis Panel in Information and Intelligent Systems).

7. #1186—Proposal Review Panel for Astronomical Sciences (Special Emphasis Panel in Astronomical Sciences).

8. #1191—Proposal Review Panel for Chemistry (Special Emphasis in Chemistry).

9. #1203—Proposal Review Panel for Materials Research (Special Emphasis Panel in Materials Research).

10. #1204—Proposal Review Panel for Mathematical Sciences (Special Emphasis Panel in Mathematical Sciences).

11. #1208—Proposal Review Panel for Physics (Special Emphasis Panel in Physics).

12. #57—Proposal Review panel for Graduate Education (Special Emphasis Panel in Graduate Education).

13. #1214—Proposal Review panel for Undergraduate Education (Special Emphasis Panel in Undergraduate Education).

14. #1198—Proposal Review Panel for Experimental Programs to Stimulate Competitive (Special Emphasis Panel in Experimental Programs to Stimulate Competitive).

15. #59—Proposal Review Panel for Elementary, Secondary, and Informal Education (Special Emphasis Panel in Elementary, Secondary, and Informal Education).

16. #1765—Proposal Review Panel for Educational Systemic Reform (Special Emphasis Panel in Educational Systemic Reform).

17. #1199—Proposal Review Panel for Human Research Development (Special Emphasis Panel in Human Research Development).

18. #1210—Proposal Review Panel for Research, Evaluation, and Communication (Special Emphasis Panel in Research, Evaluation, and Communication).

19. #1189—Proposal Review Panel for Bioengineering and Environmental Systems (Special Emphasis Panel in Bioengineering and Environmental Systems).

10. #1205—Proposal Review Panel for Civil and Mechanical Systems (Special Emphasis Panel in Civil and Mechanical Systems).

21. #1190—Proposal Review Panel for Chemical and Transport Systems (Special Emphasis Panel in Chemical and Transport Systems).

22. #1194—Proposal Review Panel for Design, Manufacture, and Industrial Innovation (Special Emphasis Panel in Design, Manufacture, and Industrial Innovation).

23. #1196—Proposal Review Panel for Electrical and Communications Systems (Special Emphasis Panel in Electrical and Communication Systems).

24. #173—Proposal Review Panel for Engineering Education and Centers (Special Emphasis Panel in Engineering Education and Centers).

Effective date for renewal is July 1, 2002. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: June 28, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–16726 Filed 7–2–02; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket 72–30]**

## Maine Yankee Atomic Power Company; Independent Spent Fuel Storage Installation, Issuance of Environmental Assessment and Finding of No Significant Impact for the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Maine Yankee Atomic Power Company (MYAPC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214. The licensee is planning to use the NAC–UMS Storage System to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow MYAPC to deviate from requirements of the NAC–UMS Certificate of Compliance No. 1015 (CoC or Certificate), Appendix A, Limiting Condition for Operation (LCO) Items 3.2.1.a and 3.2.1.b, ''CANISTER Surface Contamination.'' Specifically, the requested exemption would allow an increase in removable contamination limits on the accessible NAC–UMS exterior canister surfaces and interior transfer cask surfaces from 1000 dpm/100 $cm^2$ for beta-gamma sources and 20 dpm/100 $cm^2$ for alpha sources, which is required by the Certificate, to 10,000 dpm/100 $cm^2$ for beta-gamma sources and 100 dpm/100 $cm^2$ for alpha sources. The potential increase in radiation dose to members of the public from this exemption request was determined to be up to 1.42 mrem/year at 100 meters. Even with this potential increase in dose, the overall potential dose to members of the public would remain within the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301.

### Environmental Assessment (EA)

*Identification of Proposed Action:* By letter dated October 30, 2001, as supplemented on November 29, 2001, and February 7, 2002, MYAPC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214 to deviate from the requirements in CoC No. 1015, Appendix A, LCO Items 3.2.1.a and 3.2.1.b. MYAPC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR Part 72. The licensee indicated that it plans to use the NAC–UMS Storage System to store spent fuel from the Maine Yankee Atomic Power Station at an Independent Spent Fuel Storage Installation (ISFSI) located in Wiscasset, Maine.

By exempting MYAPC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214, MYAPC will be authorized to increase the removable contamination limits on the accessible exterior canister surfaces and interior transfer cask surfaces. The contamination limits required by CoC No. 1015 are 1000 dpm/100 $cm^2$ for beta-gamma source and 20 dpm/100 $cm^2$ for alpha sources. Instead, MYAPC requested to limit removable contamination on the accessible exterior canister surface and interior transfer cask surface to 10,000 dpm/100 $cm^2$ for beta-gamma sources and 100 dpm/100 $cm^2$ for alpha sources.

The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.The NRC staff has reviewed the exemption request and determined that the revised LCO contamination limits are consistent with the safety analyses previously reviewed for the NAC–UMS system, and would have no impact on the design basis and would not be inimical to public health and safety.

*Need for the Proposed Action:* The MYAPC fuel loading campaign is scheduled to begin in July 2002. An avoidance of potential excessive

radiological exposure to workers during this campaign could be achieved if the storage canisters were allowed to be stored with higher surface contamination. The licensee calculated that a reduction in radiological exposure to the operators, fuel handlers, and security personnel involved in handling, preparing and transferring the canisters could be over 5 rem during the dry spent fuel loading campaign with the revised contamination limits in the exemption request.

*Environmental Impacts of the Proposed Action:* MYAPC requested the exemption to increase storage canister contamination limits. The staff performed a safety evaluation of the proposed exemption. The analysis in the NAC–UMS Safety Analysis Report (SAR) for radioactive particulate release was previously reviewed by NRC staff. The analysis demonstrated that residual contamination levels of approximately 157,000 dpm/100 $cm^2$ from beta-gamma sources, and 524 dpm/100 $cm^2$ from alpha sources yields a dose from direct exposure of 2 mrem at a distance of 100 meters for an array of 20 canisters. MYAPC's proposed LCO contamination limits are 10,000 dpm/100 $cm^2$ for beta-gamma sources, and 100 dpm/100 $cm^2$ for alpha sources. These proposed new limits remain significantly less than those assumed in the currently approved NAC–UMS SAR. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that increasing the removal surface contamination limits to 10,000 dpm/100 $cm^2$ beta-gamma and 100 dpm/100 $cm^2$ alpha has minimal impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

MYAPC submitted two independent calculations to support the exemption request. In the first case, MYAPC assumed that a contamination release fraction of 5% of the removable surface contamination from 20 canisters is instantaneously released through the storage overpack vents to the environment. The analysis showed that the off-site impact from the event is 0.72 mrem/year at 100 meters. In the second analysis, MYAPC conservatively assumed that the entire isotopic inventory of the cask surface was released at 100 meters away, ignoring the wake effects of the berm surround the cask storage pad. These assumptions lead to a calculated does of 1.42 mrem/year at 100 meters. The staff reviewed the assumptions and calculation and agrees that the analyses are conservative. Therefore, the environmental impact of increasing the LCO contamination limits is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–UMS Storage System (65 FR 62581, dated October 19, 2001).

The proposed action will not significantly increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the system to perform its safety function, nor significant environmental impacts, as a result of increasing the contamination limits in LCO 3.2.1.a and 3.2.1.b.

*Alternative to the Proposed Action:* Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would result in a potential dose increase to workers involved in cask decontamination activities.

*Agencies and Persons Consulted:* On March 14, 2002, Mr. Patrick J. Dostie of the Office of Nuclear Safety Division of Health Engineering for the State of Maine submitted comments to the NRC on the MYAPC exemption request. The potential safety issues raised by Mr. Dostie were considered by NRC staff in the evaluation of the exemption request and did not provide sufficient basis to deny the exemption request. The Commission addressed Mr. Dostie's comments in a letter dated June 21, 2002.

**Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214 allowing MYAPC to increase contamination limits for the accessible exterior surfaces of the storage canisters and accessible interior surfaces of the transfer cask from 1000 dpm/100 $cm^2$ for beta-gamma sources to 10,000 dpm/100 $cm^2$ and from 20 dpm/100 $cm^2$ for alpha sources to 100 dpm/100 $cm^2$ will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–30. For further details with respect to this action, see the exemption request dated October 30, 2001, as supplemented November 29, 2001, and February 7, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of June 2002.

For the Nuclear Regulatory Commission.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 02–16719 Filed 7–2–02; 8:45 am]

BILLING CODE 7590–01–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### July 18, 2002 Public Hearing, Sunshine Act

*Time and Date:* 2 p.m., Thursday, July 18, 2002.

*Place:* Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

*Status:* Hearing Open to the Public at 2 PM.

*Purpose:* Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**Procedures**

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 15, 2002. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a

timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, July 15, 2002. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. the agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

*Contact Person for Information:* Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov*.

Dated: July 1, 2002.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 02–16822 Filed 7–1–02; 11:46 am]

BILLING CODE 3210–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 236—SEC File No. 270–118, OMB Control No. 3235–0095.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995(44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 236 under the Securities Act of 1933 (''Securities Act'') requires issuers choosing to rely on an exemption from Securities Act registration for the issuance of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

The information is needed to establish qualification for reliance on the exemption. The information provided by Rule 236 is required to obtain or retain benefits. All information provided to the Commission is available to the public for review upon request.

General comments regarding the above information should be directed to the following persons: (I) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 24, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16687 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27544]**

### Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

June 28, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 18, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 18, 2002 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**National Grid Group plc, et al. (70–10025)**

National Grid Group plc (''National Grid''), a registered holding company, 15 Marylebone Road, London NW1 5JD, United Kingdom; National Grid's registered holding company subsidiary National Grid USA (''Grid USA'') 01582; Grid USA's exempt holding company subsidiary, New England Power Company (''NEP''), both located at 25 Research Drive, Westborough, MA; and Vermont Yankee Nuclear Power Corporation (''Vermont Yankee''), an electric public utility subsidiary company of NEP, 185 Old Ferry Road, Brattleboro, VT 05703 (together, ''Applicants''), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant (''Plant'') located in Vernon, Vermont. Vermont Yankee is owned by New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc, both registered holding companies, owns 23.89% of the outstanding common stock of Vermont Yankee.[1] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee (''Sponsoring Utilities'').[2] The Sponsoring Utilities

[1] Connecticut Power & Light Company (''CP&L''), Western Massachusetts Electric Company (''WME''), and Public Service Company of New Hampshire (''PSC''), all public utility subsidiaries of Northeast Utilities (''Northeast''), a registered holding company, own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee. Central Maine Power Company (''Central Maine''), an indirect electric utility subsidiary of Energy East Corporation (''Energy East''), a registered holding company, also owns 4.25% of the outstanding common stock of Vermont Yankee. Northeast and Energy East have filed applications S.E.C. File Nos. 70–10033 and 70–10070, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[2] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power

Continued

and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission (''FERC'') and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement (''PSA'') with Entergy Nuclear Vermont Yankee, L.L.C. (''ENVY''), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale (''Closing'') of:

1. Substantially all of the assets comprising the Plant,

2. The funds in Vermont Yankee's decommissioning trust (''Decommissioning Trust''), which had a fair market value of approximately $299.6 million as of September 30, 2001,[3]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[4] under a power purchase agreement (''PPA'') between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements (''Amendatory Agreements'') with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, ''Power Contracts'') to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[5]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

**Northeast Utilities, et al. (70–10033)**

Northeast Utilities (''Northeast''), a registered holding company, 107 Selden Street, Berlin, CT 06037; Northeast's wholly owned direct public utility subsidiaries, The Connecticut Light and Power Company (''CP&L''), 107 Selden Street, Berlin, CT 06037, Western Massachusetts Electric Company (''WME''), 174 Brush Hill Avenue, West Springfield, MA 01090, and Public Service Company of New Hampshire (''PSC''), 1000 Elm Street, Manchester, NH 03101; and Vermont Yankee Nuclear Power Corporation (''Vermont Yankee''), an indirect electric public utility subsidiary of Northeast 185 Old Ferry Road, Brattleboro, VT 05703 (together, ''Applicants''), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant (''Plant'') located in Vernon, Vermont. CP&L, WME, and PSC own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee.[6] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee (''Sponsoring Utilities'').[7] The Sponsoring Utilities and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission (''FERC'') and additional power contracts.

On August 15, 2001, Vermont Yankee entered into a purchase and sale agreement (''PSA'') with Entergy Nuclear Vermont Yankee, L.L.C. (''ENVY''), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale (''Closing'') of:

1. Substantially all of the assets comprising the Plant,

Corporation, CP&L, Central Maine, PSC, WME, and Cambridge Electric Light Company.

[3] Although the PSA provides that Vermont Yankee may be required to fund fully or ''top-off'' the Decommissioning Trust, Applicants state that any ''top-off'' payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no ''top-off'' payment will be required. Second, any ''top-off'' payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a ''top-off'' payment at the Closing, although this expectation could change based on a change in circumstances.

[4] The Plant's remaining licensed life ends March 21, 2012.

[5] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

[6] New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc (''National Grid''), both registered holding companies, also owns 23.89% of the outstanding common stock of Vermont Yankee. Central Maine Power Company, an indirect electric utility subsidiary of Energy East Corporation (''Energy East''), a registered holding company, also owns 4.25% of the outstanding common stock of Vermont Yankee. National Grid and Energy East have filed applications, S.E.C. File Nos. 70–10025 and 70–10070, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[7] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power Corporation, CP&L, Central Maine Power Company, PSC, WME, and Cambridge Electric Light Company.

2. The funds in Vermont Yankee's decommissioning trust (''Decommissioning Trust''), which had a fair market value of approximately $299.6 million as of September 30, 2001,[8]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[9] under a power purchase agreement (''PPA'') between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements (''Amendatory Agreements'') with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, ''Power Contracts'') to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[10]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

**Energy East Corporation, et al. (70–10070)**

Energy East Corporation (''Energy East''), a registered holding company, CMP Group, Inc. (''CMP''), an exempt holding company subsidiary of Energy East,[11] both located in Albany, NY 12212–2904, Central Maine Power Company (''Central Maine''), a wholly owned electric utility subsidiary company of CMP, 83 Edison Drive, Augusta, ME 04336, and Vermont Yankee Nuclear Power Corporation (''Vermont Yankee''), an indirect electric public utility subsidiary of Energy East, 185 Old Ferry Road, Brattleboro, VT 05703 (together, ''Applicants''), have filed a declaration under sections 6(a), 7, and 12(d) of the Act and rules 44, 53, and 54 under the Act.

Vermont Yankee is a single purpose electric utility which operates a 540 MW nuclear powered electric generating plant (''Plant'') located in Vernon, Vermont. Central Maine owns 4.25% of the outstanding common stock of Vermont Yankee.[12] Vermont Yankee's output is currently shared by the eight utility companies which own Vermont Yankee (''Sponsoring Utilities'').[13] The Sponsoring Utilities and Vermont Yankee currently operate under cost-of-service power contracts approved by the Federal Energy Regulatory Commission (''FERC'') and additional power contracts.

On August 15, 2001,Vermont Yankee entered into a purchase and sale agreement (''PSA'') with Entergy Nuclear Vermont Yankee, L.L.C. (''ENVY''), a subsidiary of Entergy, a registered holding company doing business in Texas, among other states. The PSA states that Vermont Yankee proposes to sell to ENVY substantially all of its assets, including the Plant. The PSA contemplates that ENVY will pay a purchase price of $180 million, subject to closing adjustments, and will assume Vermont Yankee's obligation for operating and decommissioning the Plant in exchange for the transfer at the closing of the sale (''Closing'') of:

1. Substantially all of the assets comprising the Plant,

2. The funds in Vermont Yankee's decommissioning trust (''Decommissioning Trust''), which had a fair market value of approximately $299.6 million as of September 30, 2001,[14]

3. Vermont Yankee's rights with respect to the funds held by the State of Vermont in connection with the Texas

[8] Although the PSA provides that Vermont Yankee may be required to fund fully or ''top-off'' the Decommissioning Trust, Applicants state that any ''top-off'' payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no ''top-off'' payment will be required. Second, any ''top-off'' payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a ''top-off'' payment at the Closing, although this expectation could change based on a change in circumstances.

[9] The Plant's remaining licensed life ends March 21, 2012.

[10] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

[11] *See* Holding Co. Act Release No. 27224 (Aug. 31, 2000), approving CMP's exemption from registration under the Act.

[12] New England Power Company, a subsidiary of each of National Grid USA and National Grid Group plc (''National Grid''), both registered holding companies, also owns 23.89% of the outstanding common stock of Vermont Yankee. Connecticut Power & Light Company (''CP&L''), Western Massachusetts Electric Company (''WME''), and Public Service Company of New Hampshire (''PSC''), all public utility subsidiaries of Northeast Utilities (''Northeast''), a registered holding company, own an aggregate of 16.99% of the outstanding common stock of Vermont Yankee. National Grid and Northeast have filed applications, S.E.C. File Nos. 70–10025 and 70–10033, respectively, regarding the sale of Vermont Yankee's assets and the Commission is issuing a notice of those filings simultaneously with the issuance of this notice.

[13] The eight Sponsoring Utilities are: Central Vermont Public Service Corporation, New England Power Company, Green Mountain Power Corporation, CP&L, Central Maine Power Company, PSC, WME, and Cambridge Electric Light Company.

[14] Although the PSA provides that Vermont Yankee may be required to fund fully or ''top-off'' the Decommissioning Trust, Applicants state that any ''top-off'' payment is contingent on several factors. First, if the value of the assets of the Decommissioning Trust at Closing meets or exceeds the Nuclear Regulatory Commission required minimum, no ''top-off'' payment will be required. Second, any ''top-off'' payment will be capped at $5.4 million, which represents the difference between the amount that would have been collected by Vermont Yankee before the recent settlement in a FERC proceeding relating to secondary purchaser issues ($16.8 million) and the amount that would be collected under that settlement ($11.4 million). Based on an analysis of all relevant factors at the time of execution of the PSA, Vermont Yankee does not anticipate that it will have to make a ''top-off'' payment at the Closing, although this expectation could change based on a change in circumstances.

Low-Level Radioactive Waste Disposal Compact,

4. Certain human and site assets related to the Plant,

5. The Plant's switchyards and certain transmission assets, and office property located in Brattleboro, Vermont.

After the Closing, Vermont Yankee will continue its existence as a corporation. Its operations will be limited to its obligations under the PSA. The PSA contemplates that Vermont Yankee will purchase, from ENVY, 100% of the output of the Plant, based on the Plant's current configuration and capacity during the Plant's remaining licensed life[15] under a power purchase agreement (''PPA'') between Vermont Yankee and ENVY. Vermont Yankee will resell that output at wholesale to the Sponsoring Utilities under certain amendatory agreements (''Amendatory Agreements'') with each of the Sponsoring Utilities that modify existing power contracts and additional power contracts (collectively, ''Power Contracts'') to reflect the proposed transaction. The Power Contracts also require the Sponsoring Utilities to pay Vermont Yankee's remaining unamortized net plant investment and Vermont Yankee's ongoing costs after Closing.[16]

In addition, the PSA contains a Security Agreement between Vermont Yankee and ENVY under which Vermont Yankee pledges its rights to the payments from the Sponsoring Utilities under the Power Contracts to ENVY, if Vermont Yankee defaults on power payments. Applicants state that the Security Agreement amounts to a pass-through to ENVY of Vermont Yankee's right to payment obligations that the Sponsoring Utilities will have under the Power Contracts. The Security Agreement provides that if Vermont Yankee fails to pay ENVY for power provided, ENVY has the right to receive the payments under the Power Contracts that the Sponsoring Utilities would otherwise pay to Vermont Yankee.

In preparation for the Closing it will be necessary for Vermont Yankee to redeem its outstanding first mortgage bonds and to repay the outstanding indebtedness under its current secured credit agreement. The cash required to satisfy these obligations will come from the cash proceeds to be paid by ENVY at the Closing.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16832 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[15] The Plant's remaining licensed life ends March 21, 2012.

[16] It is important for Vermont Yankee to remain in existence because the Power Contracts between Vermont Yankee and the Sponsoring Utilities are within the jurisdiction of the FERC and have been accepted by the FERC. Under the present Power Contracts, the Sponsoring Utilities may include Power Contract payments in the calculation of rates to their customers. If Vermont Yankee ceased to exist, and the Sponsoring Utilities were to enter into Power Contracts directly with ENVY, their ability to include those Power Contract payments in their rate calculations would be uncertain and a method to cover other ongoing Vermont Yankee costs, including unamortized net plant investment, and residual obligations under the PSA would be necessary.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46122; File No. SR–Amex–2001–95]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Its Performance Evaluation Procedures for Option, Equity and ETF Specialists

June 26, 2002.

On February 19, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Exchange's performance evaluation procedures for options, equity and Exchange Traded Fund (''ETF'') specialists. The Amex filed Amendment Nos. 1,[3] 2,[4] and 3 [5] to the proposed rule change, respectively. The proposed rule change, as amended, was published for public comment in the **Federal Register** on April 1, 2002.[6] The Commission received no comments on the proposal. On May 28, 2002, the Amex filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended.

### I. Description of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to revise the current system for evaluating option, equity and ETF specialists by adding and codifying a number of objective criteria in the rating scheme and implementing defined consequences for poor performance. The Exchange also proposes to codify its existing market share methodology for evaluating options specialist performance.[8]

Under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange would notify specialists of any changes to the criteria, and the weightings thereof, in advance of the calendar quarter in which the change would be implemented.

The Exchange proposes to use the following performance criteria for specialist evaluation until further notice:

*Option Specialist Evaluation Criteria*

- Percentage of trades executed at or better than the National Best Bid and Offer (''NBBO'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation (''Division''), Commission (December 13, 2001) (''Amendment No. 1'').

[4] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (January 31, 2002) (''Amendment No. 2'').

[5] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (February 14, 2002) (''Amendment No. 3'').

[6] *See* Securities Exchange Act Release No. 45643 (March 25, 2002), 67 FR 15434 (proposing SR–Amex–2001–95).

[7] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (May 24, 2002) (''Amendment No. 4''). Amendment No. 4 clarifies that the Exchange may change the performance rating criteria and their weightings from time to time as warranted by market conditions without filing such changes pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b), provided that the Exchange follows the procedures in the proposed rule for changing the criteria and their weightings. This was a technical amendment and is not subject to notice and comment.

[8] The Exchange notes that upon implementation of the new evaluation system for equity specialists, the Performance Committee will no longer assign performance ratings for specific transactions, but may take such other action as is available to the Performance Committee that would be appropriate in the circumstances. The Exchange will continue to order ticket reviews for options and ETFs for regulatory purposes. The Exchange may incorporate the results of these reviews into the performance evaluation rating system with the criteria that measure the number of Minor Floor Violation Disciplinary actions.

• Percentage of orders that receive price improvement.
• Percentage of time at NBBO.
• Average bid/offer spread.
• Liquidity enhanced trades.[9]
• Average execution time.
• Size of orders eligible for Auto-Ex.
• Timeliness of openings relative to the underlying security.
• Floor Broker Questionnaire rankings.
• Average number of Performance Committee actions per option.
• Average number of Minor Floor Violation Disciplinary Committee actions [10] per option.

*Equity Specialist Evaluation Criteria*

• Percentage of volume executed better than the NBBO.
• Percentage of volume at the NBBO.
• Percentage of time at the NBBO.
• Percentage of market orders executed within sixty seconds.
• Percentage of manual display of better limit orders.
• Number of issues opened after 9:45.
• Floor Broker Questionnaire rankings.
• Average response time to ITS [11] commitments.

*ETF Specialist Evaluation Criteria*

• Percentage of orders that receive price improvement.
• Percentage of time at the NBBO.
• Average bid/offer spread.
• Average execution time for market and marketable limit orders.
• Floor Broker Questionnaire rankings.
• Average response time to ITS commitments.
• Average number of Performance or Minor Floor Violation Disciplinary Committee actions per ETF.

The Exchange would rate all specialists from ''1'' to ''5'' on a curve based upon their scores with respect to the criteria. ETFs would be ''tiered'' and evaluated for rating purposes in separate groups based upon trading volume to ensure that comparisons between specialists are based upon securities with similar trading characteristics. The Exchange would notify specialists of their ratings following calculation.[12] The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings system described above, the Exchange also proposes to codify its current program for evaluating options specialists based upon market share. Under this program, options specialists are regularly evaluated with respect to non-market maker contract volume in options that are actively traded in the United States.[13] The Exchange may change the minimum market share criteria used to evaluate specialists from time to time as warranted by market conditions. The Exchange would notify specialists of any changes to the market share criteria in advance of the calendar quarter in which the change will be implemented. The Exchange also would notify specialists of their market share.

The market share evaluation program for options specialists would be separate from the performance ratings system. Thus, for example, an options specialist with performance ratings that would not trigger remedial action could be referred to the Performance Committee for consideration of reallocation or other action based upon sub-standard market share in one or more options.

## II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's procedures 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.[15]

The Commission believes that codifying the Exchange's performance evaluation procedures for options, equity and ETF specialists should help to protect investors, issuers and ETF sponsors by ensuring that the better qualified specialists receive and retain allocations, thus potentially making this marketplace more competitive. The Commission also believes that the proposal helps the Exchange maintain market quality and integrity by providing the Exchange's Performance Committee with a means to identify the specialists that fail to satisfy market responsibilities. Further, the Commission believes that the proposal provides specialists more guidance regarding how the Exchange evaluates market performance.

The Commission notes that under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange will notify specialists of their ratings.[16] The Commission notes that the Exchange may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange will notify specialists of any changes to the criteria, and/or weightings thereof, in advance of the calendar quarter in which the change will be implemented, which should provide specialists with reasonable notice of the measures being used to judge their market performance.

[9] The Amex states that liquidity enhancement is a measure of the depth of a market. The percentage of trades that receive liquidity enhancement equals the percentage of trades where an order for more than 20 contracts was executed at one price, at or between the NBBO.

[10] The Amex states that the term ''action'' would be defined to include any time the Committees did something other than ''no action'' the matter. For example, an admonitory letter from the Performance or Minor Floor Violation Disciplinary Committee would be considered ''action'' for the purposes of calculating specialist performance ratings.

[11] The term ''ITS'' means Intermarket Trading System.

[12] A rating of ''1'' would represent the best possible score. A specialist unit that received a ''4'' or a ''5'' rating in any quarter would be referred to the Performance Committee for consideration of a preclusion on new allocations, or other appropriate remedial action. A specialist unit that received a ''5'' rating in any two of four consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. A specialist unit that received ratings of ''4'' or ''5'' in any three of six consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action.

[13] The Exchange represents that options specialists are not evaluated on their market share in a newly listed option for the six months following listing on the Exchange. In addition, under the program, a specialist that falls below the minimum market share criteria in one or more options is referred to the Performance Committee for consideration of reallocation or other remedial action based upon poor market share in one or more options.

[14] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes Amex Rule 26(e), amongst other things, provides that the Performance Committee may meet with specialists who fail to satisfy minimum performance standards. In such an event, specialists would be notified in writing of the grounds to be considered by the Performance Committee and given access to all written materials to be reviewed by the Performance Committee.

## III. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2001–95), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16689 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46123; File No. SR–BSE–2001–09]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Clearly Erroneous Transactions in Nasdaq Securities

June 26, 2002.

## I. Introduction

On December 26, 2001, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change related to clearly erroneous transactions in The Nasdaq Stock Market, Inc. (''Nasdaq'') securities. The proposed rule change was published for comment in the **Federal Register** on April 30, 2002.[3] No comments were received on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to add a section to Chapter XXXV of its rules, which pertains to the trading of Nasdaq securities on the Exchange. Proposed Section 30 would govern situations in which there is an obvious error in any part of a Nasdaq security transaction. In large part, the proposed Section 30 conforms to Nasdaq Rule 11890, Clearly Erroneous Transactions, and obliges Exchange specialists to cooperate with officers of Nasdaq in their review of clearly erroneous transactions occurring on a Nasdaq system.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45799 (April 22, 2002), 67 FR 21304.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[4] in general, and section 6(b)(5) of the Act,[5] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposal establishes a BSE rule that is an analogue to Nasdaq Rule 11890(b) and (c), regarding clearly erroneous transactions. This rule will foster cooperation between BSE specialists and officers of Nasdaq who are reviewing trades on Nasdaq systems to determine if they are clearly erroneous. This cooperation is particularly important because BSE currently participates in Nasdaq's SuperSoes and SelectNet systems and intends to participate in Nasdaq's SuperMontage system once it is launched. The proposal should help to ensure that clearly erroneous transactions are dealt with in such a manner that a fair and orderly market is maintained and that investors and the public interest are protected.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–BSE–2001–09) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16691 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 5 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–2(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46119; File No. SR–CBOE–2002–16]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Removal of the Restriction on Floor Brokers From Trading in the Same Crowds as Affiliated Designated Primary Market-Makers

June 25, 2002.

On April 18, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete existing CBOE Rule 8.91(d) that prohibits a member affiliated with a Designated Primary Market-Maker (''DPM'') from acting as a floor broker in any trading crowd in which that DPM is the appointed DPM.

The proposed rule change was published for comment in the **Federal Register** on May 17, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act[4] and the rules and regulations thereunder.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which, among other things, requires that the CBOE's rules be designed to facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. According to the CBOE, its Rule 8.91(d) was originally intended to prevent DPMs from circumventing their affirmative obligations, such as placing eligible public orders in the book, according priority to any order which the DPM acts as agent over the DPM's

[1] 15 U.S.C. 78s(b)(1).

[1] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45909 (May 10, 2002), 67 FR 35165.

[4] 15 U.S.C. 78f.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

principal transactions, not charging any brokerage commission for the execution of orders for which the DPM acts as both agent and principal and not representing discretionary orders. The CBOE represented that its current rules will continue to prohibit DPMs from circumventing their obligations.[7] Therefore, the Commission believes that the regulatory concerns that CBOE Rule 8.91(d) was intended to address will continue to be prevented. The Commission expects the CBOE to surveil its DPMs and affiliated floor brokers to ensure that they are not using their affiliations to circumvent CBOE rules.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2002–16) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16690 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[7] For example, according to the CBOE, its Rule 6.43, Manner of Bidding and Offering, prohibits a DPM from directing its trades to particular members. Also, according to the CBOE, its Rule 7.4, Obligations for Orders, requires a DPM to ''use due diligence to execute the orders placed in his custody at the best prices available to him under the Rules of the Exchange.'' Finally, the CBOE represented that its Rule 4.1, Just and Equitable Principles of Trade, provides a general protection from any illicit intentions by stating that: ''No member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with members shall have the same duties and obligations as members under the Rules of this Chapter [IV].''

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release 34–46135; File No. 600–23]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency

June 27, 2002.

The Securities and Exchange Commission (''Commission'') is publishing this notice and order to solicit comments from interested persons and to extend the Government Securities Clearing Corporation's (''GSCC'') temporary registration as a clearing agency through June 30, 2003. On May 24, 1988, pursuant to sections 17A(b) and 19(a) of the Act [1] and Rule 17Ab2–1 promulgated thereunder,[2] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[3] The Commission subsequently has extended GSCC's registration through June 30, 2002.[4] GSCC requested that the Commission extend GSCC's temporary registration until such time as the Commission is prepared to grant GSCC permanent registration.[5]

The Commission today is extending GSCC's temporary registration as a clearing agency in order that GSCC may continue to act as a clearing agency while the Commission seeks comment on granting GSCC permanent registration as a clearing agency.[6] GSCC acts as the central clearing entity for the U.S. Government securities trading and financing marketplaces.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] 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 application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. All submissions should refer to File No. 600–23 and should be submitted by July 24, 2002.

*It is therefore ordered* that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through June 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16706 Filed 7–2–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78q–1(b) and 78s(a).

[2] 17 CFR 240.17Ab2–1.

[3] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[4] Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; and 45164 (December 18, 2001), 66 FR 66957.

[5] Letter from Jeffrey Ingber, Managing Director, General Counsel, and Secretary, GSCC (June 4, 2002).

[6] The Commission continues to consider two issues related to GSCC's permanent registration status: (1) GSCC's organizational structure after its integration with The Depository Trust & Clearing Corporation and (2) the appropriate standard of care for GSCC.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(1506).

## SECURITIES AND EXCHANGE COMMISSION

**[Release 34–46136; File No. 600–22]**

## Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

June 27, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 2002, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through June 30, 2003.

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act [3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through June 30, 2002.[6]

The Commission today is extending MBSCC's temporary registration as a

[1] 15 U.S.C. 78s(a).

[2] Letter from Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, MBSCC (June 4, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; and 45607 (March 20, 2002), 67 FR 14755.

clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. MBSCC provides for the safe and efficient clearance and settlement of transactions in mortgage backed securities.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or institution proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All submissions should refer to File No. 600–22 and should be submitted by July 24, 2002.

*It is therefore ordered* that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through June 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16707 Filed 7–2–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46124; File No. SR–MSRB–2002–06]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Disclosures in Connection With New Issues

June 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on June 21, 2002 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–06). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 Board is filing herewith a proposed amendment to Rule G–32, on disclosures in connection with new issues, as well as amendments to Rule G–8, on books and records, and Rule G–9, on preservation of records (hereafter referred to as ''the proposed rule change''). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G–32. Disclosures in Connection With New Issues

(a) Customer Disclosure Requirements. No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or, if an official statement in final form is not being prepared by or on behalf of the issuer, a written notice to that effect together with a copy of an official statement in preliminary form, if any; provided, however, that:

(A) No change

(B) (1) No change

(2) sends to the customer a copy of the official statement in final form, by first class mail or other equally prompt means, no later than the business day following receipt thereof by the broker, dealer or municipal securities dealer; [and]

(B) *if two or more customers share the same address, a broker, dealer or municipal securities dealer may satisfy the delivery obligations set forth in this section (a)(i) by complying with the requirements set forth in Rule 154 of the Securities Act of 1933, on delivery of prospectuses to investors at the same address. In addition, any such broker, dealer or municipal securities dealer shall comply with paragraph (c) of Rule 154, on revocation of consent, if subject to the delivery requirements in section (a)(i)(A) of this rule, concerning a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program; and*

(ii) No change.

(b) through (d) No change.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xii) No change.

(xiii) Records Concerning Deliveries of Official Statements. A record of all deliveries to purchasers of new issue municipal securities, of official statements or other disclosures concerning the underwriting arrangements required under rule G–32[.] *and, if applicable, a record evidencing compliance with section (a)(i)(C) of rule G–32.*

(xiv)–(xxi) No change.

(b)–(g) No change.

Rule G–9. Preservation of Records

(a) No change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less that three years:

(i)–(ix) No change.

(x) all records of deliveries of rule G–32 disclosures *and, if applicable, a record evidencing compliance with section (a)(i)(C) of rule G–32* required to be retained as described in rule G–8(a)(xiii);

(xi)–(xv) No change.

(c)–(g) No change.

* * * * *

(a) Not applicable.

### II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB 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*

SEC Rule 154, on delivery of prospectuses to investors at the same address, permits a broker-dealer or

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[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(30).

[1] 15 U.S.C. 78s(b)(1).

issuer to satisfy its prospectus delivery requirements under the Securities Act of 1933 with respect to two or more investors sharing the same address by sending a single prospectus to that address, subject to certain conditions.[2, 3] The SEC refers to this process as ''householding.'' In adopting Rule 154, the SEC noted that, as a result of increased ownership of securities by individuals through different accounts (*e.g.*, brokerage accounts, individual retirement accounts and custodial accounts for minors), duplicate copies of disclosure documents often were mailed to a single household.[4] The purpose of Rule 154 is to reduce the number of duplicate disclosure documents delivered to such investors, thereby resulting in greater convenience for investors and cost savings for broker-dealers and issuers.[5]

SEC Rule 154 permits broker-dealers to satisfy their delivery obligations by sending a single document to two or more investors sharing the same address. The investors do not have to be related. The document may be addressed to the investors as a group (*e.g.,* ''Jane Doe and Household'' or ''The Smith Family'') or to each of the investors individually (*e.g.,* ''Jane Doe and John Smith''). The address may be a residential, commercial, or electronic address (*i.e.,* it may be a street address, post office box, fax number, or e-mail address).[6]

The broker-dealer must obtain the investors' written consent to the delivery of a single document on behalf of all such investors, or the broker-dealer may rely on ''implied consent'' if the following conditions are met: (1) The investor has the same last name as the other investors, or the broker-dealer reasonably believes that they are members of the same family; (2) the dealer sends each investor written notice at least 60 days before relying on this provision, and provides each investor with an opportunity to opt out of this method of delivery;[7] (3) the investor does not opt out during the 60-day notice period; and (4) the dealer delivers the documents to a residential street address or a post office box.[8]

For open-end management investment companies (i.e., mutual funds) and dealers that are required to deliver the disclosure documents of such companies, SEC Rule 154(c) requires, at least annually, that the dealer explain to investors who have provided written or implied consent how such consent can be revoked. This information may be provided through any means reasonably designed to reach the investor, such as a prospectus, shareholder report or newsletter. Unlike other issuers, mutual funds typically send investors updated disclosure materials annually, and the ongoing nature of this relationship dictates that investors be informed of their right to revoke consent and begin receiving individual copies of disclosure documents, if they so desire.

MSRB Rule G–32, on disclosures in connection with new issues, generally requires that any dealer selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. The MSRB believes that, with respect to this delivery requirement, if two or more customers share the same address, Rule G–32 should allow for the same ''householding'' process as that contained in SEC Rule 154. In addition, Rule G–32(a)(i)(A) provides that, if a customer participates in a periodic municipal fund security plan or a non-periodic municipal fund security program and has previously received an official statement in final form in connection with such a plan or program, the dealer may sell additional shares or units to that customer if the dealer sends a copy of any new, supplemented, amended or ''stickered'' official statement in final form, by first class mail or other equally prompt means.[9] Allowing for householding in the context of municipal fund securities would be particularly beneficial, especially where one family has accounts for multiple children (or each parent has separate accounts for the same child) and the dealer may be required to deliver disclosure documents on an ongoing basis (*e.g.,* the customer participates in a periodic plan or non-periodic program).

Thus, the MSRB has determined to amend Rule G–32(a) to reference SEC Rule 154 and state that a dealer may satisfy its official statement delivery obligations by complying with that Rule's requirements when sending disclosure documents to two or more customers sharing the same address. The amendment further provides that dealers that are required to send ongoing disclosure documents to customers who participate in a periodic municipal fund security plan or a non-periodic municipal fund security program are specifically required to comply with SEC Rule 154(c) by providing those customers with information, at least annually, on how to revoke their consent to the householding process and thereby receive individual copies of disclosure documents, if they so desire.

The proposed rule change also amends Rule G–8, on books and records, and Rule G–9, on preservation of records, to account for the changes to Rule G–32.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which authorizes the MSRB to adopt rules that shall:

> be designed to * * * promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The proposed rule change incorporates by reference SEC Rule 154, on delivery of prospectuses to investors at the same address, and is intended as an accommodation for those brokers, dealers and municipal securities dealers that, pursuant to MSRB Rule G–32, are required to deliver multiple copies of the same disclosure document to customers sharing the same address. The proposed rule change will reduce the number of duplicate disclosure documents delivered to certain customers, thereby resulting in greater convenience for such customers and cost savings for brokers, dealers and municipal securities dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply

[2, 3] The Commission has similar requirements under the Act and the Investment Company Act of 1940 with respect to shareholder reports.

[4] *See* SEC Release No. 33–7766 (November 4, 1999).

[5] *Id.*

[6] An e-mail address may be used if the dealer obtains the investors' written consent for electronic delivery and it is a shared e-mail address.

[7] The dealer must provide either a toll-free number or a pre-addressed, postage paid form.

[8] Rule 154 provides that a dealer can assume that an address is a residential address unless it has information that indicates it is a business address. If the dealer has reason to believe that the address is a multi-unit dwelling, the address must include the investor's unit number. *See* Rule 154(b)(4) and (d).

[9] If the dealer sends a supplement, amendment or sticker without including the remaining portions of the final official statement, the dealer must include a written statement describing which documents constitute the complete final official statement and stating that it is available upon request.

equally to all brokers, dealers and municipal securities dealers.

*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 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 submissions, 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 Board's offices. All submissions should refer to File No. SR–MSRB–2002–06 and should be submitted by July 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16688 Filed 7–2–02; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

## Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

**AGENCY:** Social Security Administration (SSA).

**ACTION:** New system of records and proposed routine uses.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11) we are issuing public notice of our intent to establish a system of records entitled the *SSA Mass Transportation Subsidy Program System,* together with routine uses applicable to this system of records. We are also issuing notice that we may disclose personally identifiable information to consumer reporting agencies in accordance with (5 U.S.C. 552a(b)(12)) and 31 U.S.C. 3711(e).

The proposed system of records will consist of information collected by SSA for use in administering the Mass Transportation Subsidy Program established pursuant to 5 U.S.C. 7905, 26 U.S.C. 132(f), and Executive Order 13150, dated April 21, 2000. The proposed system of records is entitled the *SSA Mass Transportation Subsidy Program System.* We invite public comment on this proposal.

**DATES:** We filed a report of the proposed system of records and routine uses with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 26, 2002.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela McLaughlin, Social Insurance Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–3677, e:mail: *pam.mclaughlin@ssa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System, 60–0305**

*A. General Background*

Pursuant to the authority provided under 5 U.S.C. 7905, SSA has established a mass transportation subsidy program to encourage its employees to use means other than single-occupancy motor vehicles to commute to and from work. This program involves the distribution of transit passes by SSA to qualified employees for use in commuting to and/or from work by means of mass transit facilities and/or commuter highway vehicles. SSA will purchase transit passes with Agency-provided funds. The value of the transit passes received by those employees participating in the program is excluded from their gross income as qualified transportation fringe benefits pursuant to 26 U.S.C. 132(f).

*B. Collection and Maintenance of the Data for the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System*

SSA must collect and maintain relevant information about SSA employees who are applicants for or participants in SSA's Mass Transportation Subsidy Program. This information will be maintained in the *SSA Mass Transportation Subsidy Program System* database and in manual files. The information maintained will include copies of applications and certifications; distribution lists; correspondence with applicants/participants; and administrative reports. The information maintained will also include identifying information of the participants/applicants such as: names, SSN, office addresses, office telephone numbers, bargaining unit status, transit providers and monthly transportation costs, and names, office addresses and office telephone numbers of supervisors. SSA will use the information in the proposed system to administer the SSA Mass Transportation Subsidy Program. Specifically, the information will assist SSA in managing and verifying the scheduling and distribution of transportation subsidies and the accounting of funds expended under the SSA Mass Transportation Subsidy Program. We will retrieve information from the proposed system of records by using the participants'/applicants' SSNs. This information constitutes a system of records under the Privacy Act.

**II. Proposed Routine Use Disclosures of Data Maintained in the Proposed System of Records, the SSA Mass Transportation Subsidy Program System**

*A. Proposed Routine Use Disclosures*

We are proposing to establish routine uses of information that will be maintained in the proposed new system as discussed below.

1. *To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.*

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to his or her participation in the SSA Mass Transportation Subsidy Program. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to his or her participation in the SSA Mass Transportation Subsidy Program. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. *To the Department of Transportation (DOT) so that it may correctly purchase and distribute transit passes to employees; verify employee eligibility and participation in the program, and account to SSA for funds expended in administering SSA's Mass Transportation Subsidy Program.*

We will disclose information under this routine use, as necessary, to enable the Department of Transportation to accurately purchase and distribute transit passes to eligible SSA employees.

4. *To a Federal agency for the purpose of responding to surveys and preparing reports on mass transportation subsidy programs, including compliance with applicable laws and executive orders relating to such programs.*

We will disclose information under this routine use, as necessary, to a Federal agency in response to a survey or a request for information required to prepare a report. For example, we will disclose information to the Department of Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget responsible under Executive Order 13150 for analysis of program effectiveness in reducing single occupancy vehicle travel and local area traffic congestion.

5. *To the Internal Revenue Service (IRS) and to State and local government tax agencies in response to inquiries regarding an employee's receipt of qualified transportation fringe benefits.*

We will disclose information under this routine use to the IRS and to State and local government tax agencies, as necessary, information regarding the value of the transit subsidy received by employees, the time frames in which transit subsidies were received and the type of transit subsidy issued, i.e., vouchers, passes, cash reimbursement or other fare media, as well as any other relevant and necessary information regarding an employee's receipt of qualified transportation fringe benefits.

6. *To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:*

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

We will disclose information under this routine use only as necessary to enable DOJ, a court, or other tribunal, to effectively defend SSA, its components or employees in litigation involving the proposed system of records.

7. *To other Federal agencies having the power to subpoena records, for example, the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.*

We will disclose information under this routine use, as necessary, when a Federal agency with subpoena power, such as the IRS or the Civil Rights Commission, exercises its right to subpoena records from this system as part of a case that involves the Agency's Mass Transportation Subsidy Program and the administration of qualified transportation fringe benefits to eligible employees.

8. *To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.*

We will disclose information to the EEOC to assist in investigations into alleged or possible discriminatory practices in the administration of the SSA Mass Transportation Subsidy Program.

9. *To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Impasses Panel.*

We will disclose information under this routine use, as necessary, to the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator in which all or part of the allegations involve the Agency's administration of the SSA Mass Transportation Subsidy Program.

10. *To student volunteers, individual's working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.*

We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned duties.

11. *Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records*

*Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.*

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. § 2904 with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

*B. Compatibility of Proposed Routine Uses*

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations at 20 CFR permits us to disclose information under a routine use where necessary to carry out SSA programs. Section 401.120 of SSA Regulations provides that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 10 above, will ensure efficient administration of the SSA Mass Transportation Subsidy Program; the disclosure that would be made under routine use number 11 is required by Federal law. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

## III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, et. Seq.) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

## IV. Records Storage Medium and Safeguards for the Proposed New System, the SSA Mass Transportation Subsidy Program System

We will maintain information about SSA's Mass Transportation Subsidy Program System in electronic and paper form. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records along with contractor personnel involved in the evaluation of SSA's Mass Transportation Subsidy Program System will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

## V. Effect of the Proposed New System of Records, the SSA Mass Transportation Subsidy Program System on the Rights of Individuals

The proposed new system of records will maintain only that information that is necessary for the efficient and effective administration and evaluation of SSA's Mass Transportation Subsidy Program. There are existing security standards that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: June 26, 2002.

**Jo Anne B. Barnhart,**

*Commissioner.*

**60–0305**

**SYSTEM NAME:**

SSA Mass Transportation Subsidy Program System/Social Security Administration/Office of Personnel.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Social Security Administration, Office of Human Resources, Office of Personnel, 6401 Security Boulevard, Baltimore, Maryland 21235, and SSA Regional Offices, Centers for Human Resources (SSA Headquarters).

Social Security Administration, Boston Regional Office, J.F.K. Federal Building, Room 1900, Boston, Massachusetts 02203.

Social Security Administration, New York Regional Office, Room 40–102, 26 Federal Plaza, New York, NY 10278.

Social Security Administration, Philadelphia Regional Office, 300 Spring Garden Street, Philadelphia, Pennsylvania 19123.

Social Security Administration, Atlanta Regional Office, 61 Forsyth Street, SW., Suite 22T64, Atlanta, Georgia 30303–8907.

Social Security Administration, Chicago Regional Office, Harold Washington Social Security Center, P.O. Box 8280, 10th Floor, Chicago, Illinois 60680–8280.

Social Security Administration, Dallas Regional Office, 1301 Young Street, Suite 500, Dallas, Texas 75202–5433.

Social Security Administration, Kansas City Regional Office, Richard Bolling Federal Building, Room 436, 601 East 12th Street, Kansas City, Missouri 64106.

Social Security Administration, Denver Regional Office, Federal Office Building, 1961 Stout Street, Room 325, Denver, Colorado 80294.

Social Security Administration, San Francisco Regional Office, Frank Hagel Federal Building, P.O. Box 4200, Richmond, California 94801.

Social Security Administration, Seattle Regional Office, 701 Fifth Avenue, Suite 2900, M/S 301, Seattle, Washington 98104–7075.

Social Security Administration, Office of Central Operations, Center for Management Support, 1500 Woodlawn Drive, Room 7030 Security West Tower, Baltimore, Maryland 21241–1500.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system covers SSA employees who are applicants for or participants in SSA's Mass Transportation Subsidy Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the system include any paper and electronic records required by SSA to administer the mass transportation subsidy program in accordance with legal requirements. Paper records may include: copies of applications and certifications; distribution lists; correspondence to applicants/participants; and administrative reports. Electronic records may include data from the employee applications and may contain information reflecting: the distribution of transit passes and authorized cash reimbursements to program participants; names, office addresses, telephone and fax numbers for Local Transit Coordinators; the frequency of transit benefit distributions; transit benefit amounts received by participants during distributions; and the form and method by which transit passes are issued to program participants. Paper and electronic records may include information related to program applicants/participants such as: names; Social Security numbers; office addresses; office telephone numbers; bargaining unit status; transit providers and monthly transportation costs; and names, office addresses and office telephone numbers of supervisors.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7905, 26 U.S.C. 132(f), and Executive Order 13150.

**PURPOSE(S):**

Information in the system will be used to administer the SSA Mass Transportation Subsidy Program. Specifically, the information will assist SSA in managing and verifying the scheduling and distribution of transportation subsidies, in accounting for funds expended under the SSA Mass Transportation Subsidy Program, and in ensuring the integrity of the program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosures may be made for routine uses as indicated below. However, disclosure of any information constituting ''return or return information'' within the scope of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed unless disclosure is authorized by that statute.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Transportation (DOT), so that it may correctly purchase and distribute transit passes to employees; verify employee eligibility and participation in the program, and account to SSA for funds expended in administering SSA's Mass Transportation Subsidy Program.

4. To a Federal agency for the purpose of responding to surveys and preparing reports on mass transportation subsidy programs, including compliance with applicable laws and executive orders relating to such programs.

5. To the Internal Revenue Service (IRS) and to State and local government tax agencies in response to inquiries regarding an employee's receipt of qualified transportation fringe benefits.

6. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

7. To other Federal agencies having the power to subpoena records, for example, the Internal Revenue Service (IRS) or the Civil Rights Commission, in response to a subpoena for information contained in this system of records.

8. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

9. To the Federal Labor Relations Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator when information is requested in connection with investigations of allegations of unfair practices, matters before an arbitrator or the Federal Service Impasses Panel.

10. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

11. Non-tax return information which is not restricted from disclosure by federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, et seq.) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's

identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in both electronic and paper form at the system locations identified above.

**RETRIEVABILITY:**

Records are retrieved by employee name and/or SSN.

**SAFEGUARDS:**

Only authorized personnel who have a need for the information in the performance of official duties will be permitted access to the information in this system of records.

**RETENTION AND DISPOSAL:**

Records in this system are retained for three years at which time they are destroyed. The means of disposal will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records).

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

For Paper Files—In Headquarters: Associate Commissioner, Office of Personnel, Office of Human Resources, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. In the Field: Center for Human Resources, Office of the Regional Commissioner (see systems location above for addresses). For Electronic Records: Associate Commissioner, Office of Personnel, Office of Human Resources, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235

**NOTIFICATION PROCEDURE(S):**

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

**RECORD ACCESS PROCEDURE(S):**

Same as ''Notification'' procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

**CONTESTING RECORD PROCEDURE(S):**

Same as ''Notification'' procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

**RECORD SOURCE CATEGORIES:**

Information in this system of records is: (1) Supplied directly by the individual; (2) supplied by the Department of Transportation; or (3) supplied by SSA officials.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 02–16685 Filed 7–2–02; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice 4061]**

### Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to Babbar Khalsa International and the International Sikh Youth Federation

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that Babbar Khalsa International and the International Sikh Youth Federation have committed, or pose a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

**Colin L. Powell,**

*Secretary of State, Department of State.*

[FR Doc. 02–16799 Filed 7–2–02; 8:45 am]

BILLING CODE 4710–10–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

**[USCG–1998–4734]**

### Exemptions of Manufacturers From Standards for Recreational Boats: Definitions of Watercraft

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In a notice published on October 19, 1999, the Coast Guard solicited comments so it could better respond to a petition for rulemaking submitted by the Personal Watercraft Industry Association (the PWIA). The petition asked the Coast Guard to authorize a new method of complying with laws on safety of recreational boating as they relate to personal watercraft (PWC). A comment from the

American Canoe Association (the ACA) received after the close of the comment period raised a new issue on definitions of watercraft. This notice seeks comments on the desirability of establishing definitions of water-jet-powered watercraft, particularly PWC.

**DATES:** Comments and related material must reach the Document Management Facility on or before December 30, 2002.

**ADDRESSES:** To make sure your comments and related material [referred to USCG 1998–4734] do not enter the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, at the address listed above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, contact Mr. Alston Colihan, Project Manager, Office of Boating Safety, Coast Guard, by telephone at 202–267–0981 or by e-mail at *acolihan@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

The Coast Guard published a request for comments on October 19, 1999 [64 FR 56287], so it could better respond to a petition for rulemaking submitted by the PWIA. The petition asked us to authorize a new method of complying with laws on safety of recreational boating as they relate to PWC. Because PWC are physically different from conventional boats, they cannot comply with current standards of the Coast Guard for safety. Therefore, manufacturers of PWC must apply for exemptions from these standards and demonstrate equivalent levels of safety. The petition suggested that we replace the exemption process with a requirement for manufacturers to comply with certain standards generated by the industry itself. The comment period closed on January 19, 2000.

The Coast Guard received 11 timely comments in response to that petition. But a comment from the ACA, received after the close of the comment period, raised a new issue on definitions of watercraft. While we haven't decided how or even whether to proceed with rulemaking, this request seeks public comments on the question of what to call PWC or how to define them.

## Discussion of Comments

We received 11 timely comments about the notice and a request from the ACA to re-open the comment period and deal with a new issue. Here follow summaries of the comments and the request, and an analysis of the definitions propounded by the request.

### *Comments From State Boating Officials*

A State Boating Law Administrator (SBLA) urges that we formally recognize a definition for *PWC* using the definitions from the International Standards Organization (ISO) and the Model Acts of the National Association of State Boating Law Administrators (NASBLA) and the PWIA as models to establish the definition. The SBLA states that we should refrain from referring to these vessels by a different name from *PWC,* because such a change would only create further confusion.

A second SBLA also favors adoption of an amended definition for *PWC* that addresses other forms of propulsion, combining the definitions from the Model Act of NASBLA for PWC and from ISO 13590. The comment states that our definition should not limit the number of persons that may be carried, but should limit the length of the vessel to 13 feet or preferably 16 feet. The comment favors use of the term *PWC* because of the public's familiarity with its usage. If we stopped using the term, the change would confuse nearly everyone, substantially impeding implementation of programs relative to these vessels.

A comment from NASBLA states that we should adopt an amended definition for *PWC* that addresses other forms of propulsion, combining the just-discussed definitions. The comment states that we should refrain from referring to these vessels by a different name from *PWC,* because everyone is familiar with the term and our changing it would be counter-productive. According to the comment, many States have passed statutes and instated rules on PWC and have adopted all or part of the Model Act of NASBLA for PWC, and any change in the terminology therefore would have a large effect on uniformity of boating laws throughout the country.

### *Comments From the PWIA*

A comment from the PWIA states that there is no need for us to recognize or adopt a formal Federal definition of *PWC* separate from the existing definitions of vessel, motor vessel, recreational vessel, boat, and motorboat in relevant Federal statutes and rules. According to the comment, the existing definitions reflect a principled approach to retain broad definitions that cover a wide range of types of vessels, rather than attempt to create separate definitions for each different or new type. The comment states that the existing definitions encompass all past and current models of PWC and will cover any future models, regardless of their size, mode of propulsion, cargo and towing capacities, or other features. The comment states that PWC have undergone substantial changes in design and production and that the continuing evolution of the features of the vessels makes having a separate definition for PWC impracticable and unnecessary, especially considering that we have not attempted to develop or adopt separate definitions for other types of motorboats, such as bass boats, airboats, or racing boats.

The comment further states that the standards recommended by the ISO and SAE include a definition of PWC, and that the purpose of the definition is to specify those vessels that are subject to those standards. While there are other boats that might fit under this definition, except that they are powered by outboard motors, the comment states, the standards of the ISO and SAE are thus not applicable to such vessels. The comment also notes that somewhat different definitions of PWC appear in the Model State legislation of the PWIA and NASBLA and that the purpose of those definitions is to specify those vessels that are subject to States' age restrictions, operational rules, and livery requirements for PWC. The comment states that many States have modified NASBLA's definition of PWC to account for particular States' circumstances and policies. As a result,

according to the comment, the States have shown that they do not want a uniform definition of PWC, and instead have used their discretion to develop definitions necessary to accomplish their interests in regulating the use of PWC within their jurisdictions.

With regard to the term *thrillcraft,* the comment states that, in addition to being pejorative, the term has no clearly understood meaning; similarly, the words *sport boat* would appear to encompass a wide variety of recreational vessels. According to the comment, use of the term *Jet Ski,* is also inappropriate, because the term is a registered trademark.

*Comments From the ACA*

Definitions Recommended by the ACA

The ACA asks that we phase out the use of the general term *PWC* for jet-pump-powered watercraft on which the operator and any passengers do not ride within the confines of a conventional hull, and that we replace it with a more specific term such as *Personal Water Jet* or *Personal Jet Craft.* The ACA recommends that we adopt the following definition or something close to it for the craft currently referred to as *PWC:*

*The term, _____, means any watercraft that uses an engine powering a water-jet pump, or other form of jet thrust, as its primary source of propulsion, and that is designed to be operated by a person or persons sitting or standing on or astride the craft, rather than within the confines of the hull. These craft are often designed specifically for high-speed use and performance, and are often capable of carrying multiple passengers and gear.*

The ACA also asks that we adopt specific terminology to describe water-jet-powered craft on which that the operator and passengers do ride within the confines of conventional hulls. The ACA recommends the use of a term such as *Jet Boat, Jet Craft,* or *Water Jet* to identify such watercraft. The ACA recommends that we adopt the following definition or something close to it for these craft:

*The term, _____, means any watercraft that uses an engine powering a water-jet pump, or other form of jet thrust, as its primary source of propulsion, and that is designed to be operated from within the confines of the hull or cockpit. These craft are often designed specifically for high-speed use and performance, and are often capable of carrying multiple passengers and gear.*

According to the ACA, the general term *PWC* is ambiguous and could just as easily describe any watercraft designed for operation by a single person—a canoe, kayak, catamaran, rowboat, or some other such craft. It states that the manufacturers of no particular type of craft should be able to simply lay claim to a general term. It notes that Webster's Dictionary defines the term *personal* to mean *of, related to, or affecting a person* and defines the term *watercraft* to mean *craft for water transport.* It states that these are real words with concrete meanings and thus that their usage together has a concrete meaning that is broad and not exclusively related to jet-pump-powered watercraft.

Confusion Concerning Watercraft Alleged by the ACA

The ACA believes that what it considers improper usage of this terminology creates the likelihood of confusion on the nation's waterways and throughout the regulatory process. According to the ACA, the confusion caused by the industry's use of the term *PWC* is already widespread. Across the nation, there are public *watercraft-launching* areas that do not allow the launching of so-called *PWC* of the jet-powered kind. In areas that intend to forbid the launching of jet-powered PWC, other boaters have misinterpreted signs and literature to forbid the launching of all privately owned watercraft. The same confusion often occurs when outfitters of canoes and kayaks advertise *PWC rentals:* People believe that they can rent jet-powered *Personal Watercraft.*

The ACA believes that this problem is almost certain to get worse as the generic term *watercraft* is increasingly used as a term referring to specific water-jet-powered craft, contrary to its true definition as a term that refers to all waterborne vessels.

Operational Issues and PWC From the Perspective of the ACA

The ACA states that there is ample evidence that craft powered by water-jet pumps, especially those currently referred to as *Personal Watercraft,* are very different from traditional types of boats and need to be regulated differently in order to ensure the safety of other waterway users—including canoeists and kayakers—as well as the safety of the operators of the PWC themselves.

The ACA states that the need for these official definitions for regulatory purposes is obvious. Watercraft powered by water-jet pumps have significantly different operational characteristics from craft with traditional inboard and outboard motors; they are used differently from craft with traditional inboard and outboard motors; they are designed specifically for high-speed use; and, because of their unique design, they have different impacts on the environment and on other users of waterways.

*Other Comments*

A comment from an association promoting the safety of PWC states that we should formally recognize a definition of PWC because there is a mandate for change in the design of PWC to include capabilities of off-throttle steering and braking. According to the comment, subcategories of PWC might include craft designed to carry more than one person. The comment offers the definition from the PWIA as a simple definition of *PWC.* According to the comment, other terms such as *jet skis, water scooters,* and *sport boats* are not adequate, because the industry itself has, for the most part, adopted PWC in self-description.

A comment from the NTSB notes that for industry standards to be consistently applied manufacturers will need a clear definition of *PWC.*

A comment from a private association engaged in advocacy for national parks states that we should formally recognize a definition for *PWC* that includes larger vessels and jet boats. It favors a definition addressing design characteristics and end use, rather than specific dimensions. It also favors inclusion of all vessels whose primary purpose is thrill-related. It states that PWC are distinct in design and in intended use from traditional recreational boats, and that they should be defined as thrillcraft as they are in the State of Hawaii. It also states that the definition from the PWIA is inadequate, because it doesn't encompass all types of PWC, for example, special-purpose vessels propelled by PWC, and jet boats. The comment states that the definition from the PWIA fails to recognize that PWC are designed and marketed as high-speed thrillcraft meant to be used aggressively.

A comment from an environmental association believes that the definition from the PWIA is seriously flawed. It mentions the special-purpose vessels propelled by PWC and states that merely adding appendages to a PWC should not disqualify it from being regulated as a PWC. The comment also states that the definition from the PWIA excludes vessels such as jet boats that are clearly PWC. According to the comment, jet boats share, besides technology, many of the performance characteristics of modern PWC, such as the ability to perform extreme maneuvers and turns, achieve remarkably high speeds, and reach

waters that conventional motorboats can't navigate.

**Call for Comments**

The Coast Guard encourages you to submit comments and related material responding to the suggestions of the ACA; others just discussed; the questions that follow; or other issues concerning definitions of watercraft. We also welcome any other comments in connection with this notice. Please include with your submission your name and address, identify the docket number for this rulemaking [USCG–1998–4734], indicate the specific questions in the next four paragraphs to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Your comments will help us to determine whether to initiate a rulemaking in accordance with the petitioner's request.

**Questions**

1. Are the difficulties associated with the use of water-jet-driven recreational vessels so severe that they require the Coast Guard to adopt fresh terms and definitions, so as to describe those vessels and distinguish them from conventional propeller-driven vessels?

2. Should the Coast Guard adopt fresh terms and definitions to identify the recreational vessels now generally referred to as *PWC* that lack conventional hulls? If so, what? Is the definition suggested by the ACA adequate for one? Should any terms and definitions depend upon a minimum of water-jet thrust? Should any of them cover similar propeller-driven recreational vessels? How many people should such vessels carry, and how large should they be allowed to get, before they fall outside the definitions?

3. Should the Coast Guard adopt fresh terms and definitions to identify other types of recreational vessels propelled by water-jet pumps that have conventional hulls? If so, what? Is the definition suggested by the ACA adequate for one? Should any terms and definitions depend upon a minimum of water-jet thrust?

4. Should the Coast Guard adopt fresh terms and definitions to identify other types of recreational vessels such as canoes, kayaks, houseboats, bowriders, bassboats, and jonboats? If so, why?

Dated: June 24, 2002.

**Kenneth T. Venuto,**

*Rear Admiral, Coast Guard, Director of Operations Policy.*

[FR Doc. 02–16755 Filed 7–2–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34212]**

### Central Railroad Company of Indianapolis—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR), pursuant to a written trackage rights agreement entered into between NSR and Central Railroad Company of Indianapolis (CERA) [1] has agreed to grant overhead and limited local trackage rights to CERA over a portion of NSR's track (1) from CERA's connection with NSR and the trackage of the West Marion Belt at Michael, IN, at milepost TS–157.44, to the connection between the West Marion Belt and the trackage of Winamac Southern Railroad Company adjacent to NSR-operated Goodman Yard at Marion, IN, and (2) from CERA's connection with NSR at milepost TS–157.44, through the switch serving Bell Fiber Corporation at milepost TS–155.6, to, and including, the switch serving Essex Wire, Incorporated, at milepost TS–154.65, a total distance of approximately 5 miles.

The transaction was scheduled to be consummated on or shortly after June 21, 2002, the effective date of the exemption (7 days after the notice was filed).

The trackage rights will allow CERA to enhance rail service for certain shippers and provide more efficient and economical routings and service for the shippers' traffic.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights-BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the 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 at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34212, 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 Louis E. Gitomer, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: June 27, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–16720 Filed 7–2–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 14, 2002, CERA concurrently filed a notice of exemption in STB Finance Docket No. 34221, *Central Railroad Company of Indianapolis—Acquisition and Control Exemption—Norfolk Southern Railway Company,* wherein CERA would acquire and continue to operate approximately 31.66 miles of railroad from NSR, which runs between (1) Kokomo, IN, milepost I–51.8 and near Kokomo, IN milepost I–57.2, and (2) near West Marion Belt, IN, milepost TS–157.44, and Kokomo, IN, milepost TS–183.7.

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 26, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 2, 2002 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0001.
*Form Number:* IRS Form CT–1.
*Type of Review:* Revision.
*Title:* Employer's Annual Railroad Retirement Tax Return.

*Description:* Railroad employers are required to file an annual return to report employer and employee Railroad Retirement Tax Act (RRTA). Form CT–1 is used for this purpose. IRS uses the information to insure that the employer has paid the correct tax.

*Respondents:* Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 2,387.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | CT–1 (Part 1) | CT–1 (Part II) |
|---|---|---|
| Recordkeeping | 9 hr., 34 min | 4 hr., 4 min. |
| Learning about the law or the form | 2 hr., 1 min | 0 min. |
| Preparing, copying, assembling, and sending the form to the IRS | 4 hr., 39 min | 4 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 46,206 hours.

*OMB Number:* 1545–0795.

*Form Number:* IRS Form 8233.

*Type of Review:* Extension.

*Title:* Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

*Description:* Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 480,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 5 min.

Learning about the law or the form—31 min.

Preparing and sending the form to the IRS—57 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 1,320,000 hours.

*Clearance Officer:* Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 02–16722 Filed 7–2–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Universal Federal Savings Bank, Chicago, IL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Universal Federal Savings Bank, Chicago, Illinois (OTS No. 03327), on June 27, 2002.

Dated: June 28, 2002.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 02–16728 Filed 7–2–02; 8:45 am]

BILLING CODE 6720–01–M

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0086]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 2, 2002.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0086.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0086'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for a Certificate of Eligibility for VA Home Loan Benefits, VA Form 26–1880.

*OMB Control Number:* 2900–0086.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–1880 is used by an applicant to establish eligibility for loan guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 15, 2002, at page 18305.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 110,625 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 442,500.

Dated: June 21, 2002.

By direction of the Secretary.

**Genie McCully,**

*Acting Director, Information Management Service.*

[FR Doc. 02–16704 Filed 7–2–02; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS.

**[OMB Control No. 2900–0594]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 2, 2002.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.gov*. Please refer to ''OMB Control No. 2900–0594.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0594'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election to Apply Selected Reserve Services to either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve—38 CFR 21.7042 and 21.7540.

*OMB Control Number:* 2900–0594.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* VA is authorized to pay educational benefits to veterans, persons on active duty, and reservists, and eligible persons pursuing approved programs of education. This information collection relates to elections between chapters 30 and 1606 education benefits. Reservists must make elections in writing. The election takes effect when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. The election is used to determine which benefit is payable based on the individual's Selected Reserve service.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 22, 2002, at page 19623.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 36 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 12.

Dated: June 21, 2002.

By direction of the Secretary.

**Genie McCully,**

*Acting Director, Information Management Service.*

[FR Doc. 02–16705 Filed 7–2–02; 8:45 am]

BILLING CODE 8301–01–P

# Corrections

Federal Register

Vol. 67, No. 128

Wednesday, July 3, 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 DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

*Correction*

In notice document 02–12502 beginning on page 35505 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, first column, under the heading **DATES**, second line, ''July 19, 2002'' should read ''June 19, 2002''.

[FR Doc. C2–12502 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

*Correction*

In notice document 02–12503 beginning on page 35506 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, second column, under the heading **DATES**, second line, ''July 19, 2002'' should read ''June 19, 2002''.

[FR Doc. C2–12503 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

*Correction*

In notice document 02–12504 beginning on page 35506 in the issue of Monday, May 20, 2002, make the following correction:

On page 35506, third column, under the heading **DATES**, second line, ''July 19, 2002'' should read ''June 19, 2002''.

[FR Doc. C2–12504 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

*Correction*

In notice document 02–12505 beginning on page 35507 in the issue of Monday, May 20, 2002, make the following correction:

On page 35507, first column, under the heading **DATES**, second line, ''July 19, 2002'' should read ''June 19, 2002''.

[FR Doc. C2–12505 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Western Area Colorado Missouri Control Area Energy Imbalance Service—Rate Order No. WAPA–97

*Correction*

In notice document 02–14609 beginning on page 39970 in the issue of June 11, 2002, make the following corrections:

On pages 39973 and 39974, Tables 1 and 2 should read as follows:

**Examples of Energy Imbalance Service Calculations**

TABLE 1

| Within the bandwidth | |
|---|---|
| Credits for over deliveries (based on weighted average real-time sale price) | Charges for under deliveries (based on weighted average real-time purchase price) |
| Scenario: WACM Aggregate Net Over Delivery | Scenario: WACM Aggregate Net Under Delivery. |
| Sale #1 25 MW @ $22 ($550) | Purchase #1 100 MW @ $35 ($3,500) |
| Sale #2 25 MW @ $20 ($500) | Purchase #2 50 MW @$32 ($1,600) |
| Sale #3 25 MW @ $17 ($425) | Purchase #3 100 MW @ $15 ($1,500) |
| Sale #4 25 MW @ $12 ($300) | Purchase #4 50 MW @ $10 ($ 500) |
| Calculation: | Calculation: |
| ($550+$500+$425+$300) = $1,775 | ($3,500+$1,600+$1,500+$500)=$7,100 |
| $1,775 / 100 MW = $17.75/MW | $7,100 / 300 MW = $23.67/MW. |
| Weighted Average Real-Time Sale Price Price = $17.75/MW | Weighted Average Real-Time Purchase Price = $23.67/MW. |
| Customer would be credited $17.75/MW | Customer would be charged $23.67/MW. |
| Pricing Defaults: If no hourly real-time sales, default is to daily real-time sales weighted average on/off-peak. If no daily real-time sales, default is to monthly real-time sales weighted averaged on-/off-peak. If no monthly real-time sales, default is to the prior month real-time sales weighted average on-/off-peak. | Pricing Defaults: If no hourly real-time purchase, default is to daily real-time purchase weighted averaged on-/off-peak. If no daily real-time purchase, default is to monthly real-time purchase weighted averaged on-/off-peak. If no monthly real-time purchase, default is to prior month real-time purchase weighted average on-/off-peak. |
| Applicable transmission cost deducted | Applicable transmission cost added. |

TABLE 2

| Outside the bandwidth | |
|---|---|
| Credits for over deliveries (based on weighted average real-time sale price) | Charges for under deliveries (based on weighted average real-time purchase price) |
| Scenario: Customer A Over Delivered | Scenario: Customer B Under Delivered. |
| Sale #1 25 MW @ $22 ($550) | Purchase #1 100 MW @ $35 ($3,500) |
| Sale #2 25 MW @ $20 ($500) | Purchase #2 50 MW @ $32 ($1,600) |
| Sale #3 25 MW @ $17 ($425) | Purchase #3 100 MW @ $15 ($1,500) |
| Sale #4 25 MW @ $12 ($300) | Purchase #4 50 MW @ $10 ($ 500) |
| Calculation: | Calculation: |
| ($550+$500+$425+$300) = $1,775 | ($3,500+$1,600+$1,500+$500)=$7,100 |
| $1,775 / 100 MW = $17.75/MW | $7,100 / 300 MW = $23.67/MW. |
| Weighted Average Real-Time Sale Price = $17.75/MW | Weighted Average Real-Time Price = $23.67/MW. |
| Customer credited 50% = $8.88/MW | Customer charged 150% = $35.50/MW. |
| Pricing Defaults: Same as shown in Table 1 | Pricing Defaults: Same as shown in Table 1. |
| Applicable transmission cost deducted | Applicable transmission cost added. |

* * * * *

[FR Doc. C2–14609 Filed 7–2–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 3, 2002

# Part II

# Environmental Protection Agency

## 40 CFR Part 63

## National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants; Proposed Rules

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–7236–6]**

**RIN 2060–AE85**

## National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for mercury cell chlor-alkali plants. The proposed standards would limit mercury air emissions from these plants. The proposed standards would implement section 112(d) of the Clean Air Act (CAA) which requires all categories and subcategories of major sources and area sources listed in section 112(c) to meet hazardous air pollutant emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed standards would reduce nationwide mercury emissions from these sources by about 4,100 kilograms per year (kg/yr) (9,100 pounds per year (lb/yr)) from the levels allowed by the existing mercury NESHAP.

Mercury is a neurotoxin that accumulates, primarily in the especially potent form of methylmercury, in aquatic food chains. The highest levels are reached in predator fish species. Mercury emitted to the air from various types of sources (usually in the elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. When mercury is deposited to surface waters, natural processes (bacterial) can transform some of the mercury into methylmercury that accumulates in fish. The health effect of greatest concern due to methylmercury is neurotoxicity, particularly with respect to fetuses and young children.

**DATES:** *Comments.* Submit comments on or before September 3, 2002.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by July 23, 2002, a public hearing will be held on August 2, 2002.

**ADDRESSES:** *Docket.* Docket No. A–2000–32 contains supporting information used in developing the proposed standards for the mercury cell chlor-alkali plant source category. 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:** Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: *rosario.iliam@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (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® format. All comments and data submitted in electronic form must note the docket number: Docket No. A–2000–32. 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: OAQPS Document Control Office (C404–02) Attention: Iliam Rosario, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711. 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 Cassie Posey, telephone number: (919) 541–0069. Persons interested in attending the public hearing must also call Cassie Posey 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 the proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in rule development. 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 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 this 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 Information.* In addition to being available in the docket, an electronic copy of today's proposed rule will also be available through EPA's World Wide Web site. Following signature, a copy of the rule will be posted on our policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

*Regulated entities.* Entities potentially affected by this action include plants engaged in the production of chlorine and caustic in mercury cells. Regulated categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description 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 facility, company, business, organization, etc., is regulated by this action, you should carefully examine § 63.8182 of the proposed rule. If you have 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. Background

### *A. What Is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA contains our authorities for reducing emissions of hazardous air pollutants (HAP). Section 112(d) requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to section 112(c). Section 112(d)(2) specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

Each national emission standard for hazardous air pollutants (NESHAP) established reflects the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

Section 112(c)(6) requires us to list source categories and subcategories assuring that sources accounting for not less than 90 percent of the aggregate emissions of each of seven specific pollutants (including mercury) are subject to standards under section 112(d) of the CAA.

Mercury cell chlor-alkali plants are among the sources listed to achieve the 90 percent goal for mercury.

### *B. What Criteria Are Used in the Development of NESHAP?*

Section 112(d)(2) specifies that NESHAP for new and existing sources must reflect the maximum degree of reduction in HAP emissions that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental benefits, and energy requirements. This level of control is commonly referred to as MACT.

Section 112(d)(3) defines the minimum level of control or floor allowed for NESHAP. In essence, the MACT floor ensures that the standard is set at a level that assures that all affected 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 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 non-air quality health and environmental impacts, and energy impacts.

### *C. What Is a Mercury Cell Chlor-alkali Plant?*

#### 1. Mercury Cell Chlor-Alkali Production Facilities

At a mercury cell chlor-alkali plant, mercury cell chlor-alkali production facilities are used to manufacture chlorine and caustic as co-products and hydrogen as a by-product through the electrolytic decomposition of brine in mercury cells. The central unit is the mercury cell which is a device comprised of an electrolyzer (electrolytic cell) and decomposer with one or more end boxes and other components linking them. While each mercury cell is an independent production unit, numerous cells are connected electrically in series to form a cell circuit. Cells are situated in a cell room and typically arranged in two rows separated by a center aisle. The cell room is generally a two-story structure in which mercury cells are housed on the upper floor. The lower floor houses various process and housekeeping functions. The number of mercury cells at a given plant ranges from 24 to 116 and averages 56. A mercury cell involves two distinct reactions which occur in separate vessels. The electrolyzer produces chlorine gas, and the decomposer produces hydrogen gas and caustic solution (sodium hydroxide or potassium hydroxide). The electrolyzer can be described as an elongated, shallow steel trough enclosed by side panels and a top cover. A typical electrolyzer measures about 15 meters (about 50 feet) in length and 1.5 meters (about 5 feet) in width and holds about 3,600 kilograms (around 8,000 pounds) of mercury. The decomposer is a 4-to-5 feet high cylindrical vessel located at the outlet end of the electrolyzer and is usually oriented vertically. The electrolyzer and the decomposer are typically linked by an inlet end box and an outlet end box.

A shallow stream of liquid mercury flows continuously between the

electrolyzer and the decomposer. The mercury enters the cell at the inlet end box and flows down a slight grade to the outlet end box, where it flows out of the cell into the decomposer. After being processed in the decomposer, the mercury is pumped back to the inlet end box of the cell.

Saturated brine (sodium chloride solution or potassium chloride solution) is fed to the electrolytic cell via the inlet end box and flows toward the outlet end box above the shallow layer of mercury. Both brine and mercury flow beneath dimensionally stable metal anodes, typically made of a titanium substrate with a metal catalyst that are suspended in the electrolyzer top. The flowing mercury serves as the cathode.

Electric current applied between the anodes and the mercury cathode causes a reaction that produces chlorine at the anode, while an alkali metal (sodium or potassium) binds with the mercury as an amalgam at the cathode. The chlorine gas is collected at the top of the cell and transported to an ancillary gas purification system followed in most cases by a liquefaction facility. The alkali metal/mercury amalgam exits via the outlet end box and enters the decomposer. The brine, whose salt content has been partially depleted in the reaction, also exits the cell via the outlet end box and is transferred to an ancillary brine preparation system.

The decomposer functions as a packed bed reactor in which the alkali metal/mercury amalgam contacts deionized water in the presence of a catalyst. The amalgam reacts with the water, liberating the mercury and yielding caustic soda (sodium hydroxide) or caustic potash (potassium hydroxide) and hydrogen. The caustic and mercury are separated in a trap at the end of the decomposer. The caustic and hydrogen are each transferred to ancillary treatment, and the mercury is pumped back to the inlet end of the cell.

As previously noted, end boxes serve as connections between the electrolyzer and decomposer in a mercury cell. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials out of the cell. An end-box ventilation system, which is present at most but not all plants, evacuates the vapor spaces of the end boxes. The end-box ventilation system also commonly evacuates the vapor space of other vessels and process equipment, such as pump seals, wash water tanks, and caustic tanks and headers. In most cases, mercury contained in this equipment is covered with a layer of water or other aqueous liquid so the air being pulled into the end-box ventilation system is not in direct contact with mercury. However, due to the elevated temperatures in this equipment, particularly end boxes, mercury diffuses through the liquid and is present in the vapor spaces. The concentration of mercury in end-box ventilation systems before any steps are taken to remove mercury varies greatly depending on the vacated equipment. The collected gases are usually cooled and then treated in a mist eliminator and other control equipment prior to being discharged to the atmosphere. It is the mercury remaining in the treated stream that causes the end-box ventilation system vent to be a point source of mercury air emissions for plants that have these systems.

Important ancillary operations at a mercury cell chlor-alkali plant include chlorine purification and liquefaction, brine preparation, caustic purification, by-product hydrogen cleaning, and wastewater treatment.

Chlorine gas is collected under vacuum from each mercury cell and fed into a header system leading out of the cell room. The chlorine then undergoes cooling, mist elimination, and drying. Only trace amounts of mercury remain in the product chlorine gas, typically less than 0.03 parts per million (ppm). Thus, limited mercury emissions are associated with the chlorine purification operation, as this level is achieved without any steps for mercury removal and is consistent with final mercury concentrations for well-controlled gaseous by-product hydrogen streams. In most instances, further cooling, compression, and liquefaction are conducted to obtain liquid chlorine.

Brine flows in a continuous loop through the mercury cells and the brine preparation system which provides clean saturated brine for electrolysis. An important function of the brine system is the removal of impurities naturally associated with salt such as calcium, iron, and aluminum. The presence of these elements can adversely affect cell efficiency. These impurities are removed by the addition of caustic and sodium carbonate which react to form metal precipitates that are removed by filtration. Subsequently, the brine is acidified to remove excess caustic, subjected to heat exchange for temperature adjustment, and returned to the mercury cells as clean saturated brine. Mercury exists in the brine system in the form of dissolved mercuric chloride and on the order of 3 to 25 ppm. The low vapor pressure of mercuric chloride, which is approximately 30 times lower than that of elemental mercury at 35°C, limits the potential for emissions of mercury from the brine system.

Because the caustic solution produced directly from the decomposer is commercial grade, the only additional treatment needed is mercury removal. The concentration of mercury in the caustic stream leaving the decomposer ranges from about 3 to 15 ppm. Mercury is removed by cooling and filtration. Residual mercury contained in the caustic product is typically around 0.06 ppm.

Hydrogen gas exiting a decomposer contains mercury vapor. A mercury-saturated hydrogen gas stream typically leaves a decomposer at a temperature over 200°F. The mercury concentration of this stream can be as high as 3,500 milligrams per cubic meter ($mg/m^3$). Accordingly, in most situations, each decomposer is equipped with an adjacent cooler through which the hydrogen gas stream is routed to condense mercury and return it to the mercury cell. After initial cooling, the hydrogen gas from each decomposer is collected into a common header. The combined gas is then treated for mercury with additional cooling and adsorption (or absorption) control equipment. The cleaned hydrogen gas is then either burned as fuel in a boiler, transferred to another process as a raw material, or vented directly to the atmosphere. Due to the mercury remaining in the treated stream, the by-product hydrogen stream is a point source of mercury air emissions.

Mercury cell chlor-alkali plants generate a variety of aqueous waste streams that contain mercury and are treated in a wastewater treatment system. These wastewaters originate from a variety of sources, ranging from wastewaters produced from cell room washdowns and cleanup activities to liquids or slurries produced from purged brine from the brine system and backwash water from the filtration equipment used for caustic purification.

Wastewater treatment applied at most mercury cell chlor-alkali plants entails three basic steps. First, sodium hydrosulfide is added to the wastewater (which contains both elemental mercury and mercury compounded as mercuric chloride) to form mercuric sulfide. This compound has a very low vapor pressure which practically eliminates the potential for mercury air emissions from wastewater treatment. Next, the mercuric sulfide is removed through precipitation and filtration which results in a liquid fraction and a mercuric sulfide filter cake. Any dissolved mercury contained in the liquid is removed by treatment in a carbon adsorber prior to being

discharged in accordance with a plant's discharge permit. The wastewater treatment sludges produced, which consist mainly of the mercuric sulfide filter cake, are classified as hazardous under Resource Conservation and Recovery Act (RCRA) regulations (40 CFR part 261, subpart D). This waste, designated as K106, must be treated for mercury removal prior to disposal or landfilling which generally means high temperature treatment.

2. Mercury Recovery Facilities

Nine mercury cell chlor-alkali plants have mercury recovery facilities on-site to recover elemental mercury from mercury-containing wastes. The wastes treated include those considered K106 wastes, as cited above, and debris and nondebris D009 wastes. The D009 wastes, as classified under RCRA regulations (40 CFR part 261, subpart D), are nonspecific mercury-containing wastes. Debris wastes include any contaminated material or item greater than 2½ inches in any one dimension, such as hardware, protective gear, piping, and equipment. Nondebris wastes include graphite from decomposers, cell room sump sludges, spent carbon media from carbon adsorption control devices, and other small solids.

The most commonly used process is thermal recovery (retorting), where mercury-containing wastes are heated to volatilize the mercury which is then condensed and recovered. Six plants each operate a mercury thermal recovery unit. In such a unit, mercury in wastes is driven to the vapor phase at temperatures over 1,000°F inside one or more retorts. The retort off-gas, which is rich in mercury vapor, is routed through cooling equipment to condense the mercury for recovery. However, because it is not possible to condense all of the mercury, the off-gas is typically routed through polishing control equipment to further reduce mercury before the stream is discharged to the atmosphere. This causes the mercury thermal recovery unit vent to be a point source of mercury air emissions. Mercury that never vaporizes and subsequently is neither condensed nor emitted remains in the retort ash, whose mercury content is limited by RCRA land disposal restrictions (40 CFR part 268, subpart E).

Mercury thermal recovery units can be classified, based on the type of retort used, as oven type units and non-oven type units. Three plants have batch oven retorts, and three plants have non-oven retorts (rotary kiln or single hearth). There are differences between the two types related to operating temperature and residence time. Oven retorts have lower operating temperatures (around 1,000°F) and substantially longer residence times (24 to 54 hours) than do kilns which operate at around 1,375°F with residence times approaching 3 hours.

Noteworthy among all six thermal recovery units is the relatively small volume of exhaust gas generated. Volumetric flow rates range from around 50 standard cubic feet per minute (scfm) on one oven type unit to 1,200 scfm on one non-oven type unit. Non-oven type units have higher volumetric flow rates with an average flow rate of 1,000 scfm and a median of 1,075 scfm than oven type units with an average of 130 scfm and a median of 100 scfm.

Two of the nine plants use a chemical process in which mercuric sulfide and elemental mercury in wastes are chemically transformed to mercuric chloride from which elemental mercury is then precipitated. This process differs from mercury thermal recovery in that it is an entirely liquid-phase operation. Moreover, owing to the low vapor pressure of mercuric chloride, the potential for mercury air emissions from this process is limited. Mercury that is not converted and recovered remains in the processed waste materials whose mercury content is limited by RCRA land disposal restrictions for nonthermal mercury recovery processes (40 CFR part 268, subpart E).

The ninth plant uses a batch purification still for recovering elemental mercury only from end-box residues which are high in mercury content. The system involves heating small batches of end-box residues to volatilize the mercury contained followed by a condenser for mercury recovery. This contrasts with thermal recovery units that treat large volumes of low mercury content wastes. The still is operated under vacuum such that the gas stream after the condenser is routed through two carbon adsorption beds in series to limit mercury air emissions. The system is used only a few times per year for 1 to 2 days at a time. Due to the small volumetric flow rate and mercury concentration of the vented stream and limited operation of the still, mercury air emissions are very low from recovery in the batch purification still.

Fugitive mercury emissions can occur due to leaking equipment, liquid mercury spills, or accumulations in many locations throughout mercury cell chlor-alkali production facilities and mercury recovery facilities, including areas of maintenance activities, liquid mercury collection and handling, and storage for mercury-containing wastes. Most of these sources are associated with cell rooms. Liquid mercury exposed to the atmosphere evaporates at a rate depending on temperature, air flow, and other variables. Methods of controlling fugitive mercury emissions include the containment of liquid mercury leaks, clean up of liquid mercury spills and accumulations, repair of equipment leaking liquid mercury, and containment of mercury-containing wastes under an aqueous liquid or in closed containers. Since liquid mercury can be visually identified, routine visual inspections are an effective method to detect these problems. Mercury vapor leaks, by comparison, are much more difficult to detect and typically result in higher emissions. Vapor leaks occur mostly at the decomposer and in the hydrogen system.

*D. What are the Health Effects Associated With Mercury?*

Mercury is highly toxic, persistent, and bioaccumulates in the food chain. Most people have some exposure to mercury as a result of normal daily activities. People may be exposed to mercury through inhalation of ambient air; consumption of contaminated food, water, or soil; and/or dermal exposure to substances containing mercury. Also, exposures occur as the result of dental amalgams and from various other sources.

Mercury is a naturally occurring element that is found in air, water, and soil in various inorganic and organic forms. The three primary forms of interest are elemental mercury, inorganic mercury, and methylmercury. As mercury moves through environmental media, it undergoes complex transformations.

Mercury emitted to the air from various types of sources (usually in elemental or inorganic forms) transports through the atmosphere and eventually deposits onto land or water bodies. Once deposited, natural processes can transform some of the mercury into methylmercury which is a highly toxic, more bioavailable form that biomagnifies in the aquatic food chain (such as in fish). Generally, fish consumption dominates the pathway for human and wildlife exposure to mercury.

Inhalation is the primary direct exposure route of concern for elemental mercury because this form strongly partitions to air. Absorption of elemental mercury vapor occurs rapidly through the lungs. Once absorbed, elemental mercury is readily distributed throughout the body; it crosses both placental and blood-brain barriers. The

elemental mercury is oxidized to divalent mercury in most body tissues. Once elemental mercury crosses these barriers and is oxidized to divalent mercury, return to the general circulation is impeded, and mercury can be retained in brain tissue. Effects on the nervous system appear to be the most sensitive toxicological endpoint following exposure to elemental mercury. Exposures above the threshold level can result in tremors, nervousness, insomnia, neuromuscular changes (such as weakness, muscle atrophy, and muscle twitching), headaches, polyneuropathy, and memory loss.

Inhalation and ingestion exposure routes are of interest for inorganic mercury because this form is found in air and other media such as soils and water. There is some limited information suggesting that about 40 percent of the inhaled inorganic mercury is absorbed. Absorption of inorganic mercury through the gastrointestinal tract varies with the particular mercuric salt involved. The portion that is absorbed remains in the body for a considerable length of time. The reported half-life of inorganic mercury in blood is about 20 to 66 days. There is no evidence that inorganic mercury is methylated to form methylmercury in the human body. The inorganic mercury has a limited capacity for penetrating the blood-brain or placental barriers. Limited data suggest that inorganic mercury is a possible human carcinogen. The most sensitive general systemic adverse effect due to exposure to inorganic mercury is the formation of autoimmune glomerulonephritis (that is, inflammation of the kidney).

Ingestion is the primary exposure route of interest for methylmercury. Dietary methylmercury is almost completely absorbed into the blood and distributed to all tissues, including the brain. It also readily passes through the placenta to the fetus and fetal brain. Methylmercury has a relatively long half-life in the human body (about 70 to 80 days). Neurotoxicity is the health effect of greatest concern with methylmercury exposure. The developing fetus is considered most sensitive to the effects from methylmercury. Therefore, women of child-bearing age are the population of greatest concern. During several poisoning incidents in Minamata, Japan, in the 1950's and Iraq in the 1970's, children born of women who were exposed to high doses of methylmercury during pregnancy through ingestion of contaminated fish or grain suffered neurological harms. These harms included death, cerebral palsy, or delayed onset of walking and talking. Also, lower *in utero* exposures have resulted in delays and deficits in learning abilities.

*E. How Does This Action Relate to the Part 61 Mercury NESHAP?*

We promulgated the National Emission Standard for Mercury on April 6, 1973 (40 CFR part 61, subpart E).[1] Those standards (hereafter referred to as the Mercury NESHAP) limit mercury emissions from mercury cell chlor-alkali plants as well as mercury ore processing facilities and sludge incineration and drying plants. Specifically, the Mercury NESHAP limits mercury emissions from mercury cell chlor-alkali plants to 2,300 grams per day and requires that mercury emissions be measured (in a one-time test) from hydrogen streams, end-box ventilation systems, and the cell room ventilation system. As an alternative to measuring ventilation emissions from the cell room to demonstrate compliance, the Mercury NESHAP allows an owner or operator to assume a ventilation emission value of 1,300 grams per day of mercury providing the owner/operator adheres to a suite of approved design, maintenance and housekeeping practices. Every mercury cell chlor-alkali plant currently in operation in the United States complies with the cell room ventilation provisions by carrying out these practices rather than by measuring mercury emissions discharged from the cell room. Since every plant uses the 1,300 grams per day assumed value for its cell room ventilation emissions, subtracting the 1,300 grams per day cell room value from the 2,300 grams per day plantwide standard effectively creates an emission limit for the combined emissions from hydrogen streams and end-box ventilation systems of 1,000 grams per day.

The requirements in today's proposed standards are more stringent than the requirements in the Mercury NESHAP. Using the 1,000 grams per day value as the baseline, we estimate that the mercury emissions would be reduced to less than 60 grams per day (on average) by the proposed rule. This represents about 94 percent reduction from the Mercury NESHAP baseline for vents. In addition, the work practice standards in today's proposal represent the most explicit compilation of practices currently employed by the industry, along with detailed recordkeeping and reporting requirements and requirements that supplement existing RCRA provisions for the storage of mercury-containing wastes. While we cannot quantify the mercury emissions reductions that would be achieved by the proposed work practice standards, we are confident that their implementation would result in additional reductions in mercury emissions beyond that currently achieved by the existing Mercury NESHAP.

We believe that every aspect of the Mercury NESHAP that applies to mercury cell chlor-alkali plants is addressed in today's proposed 40 CFR part 63, subpart IIIII. In fact, as discussed above, the proposed requirements are more stringent than the respective requirements in the Mercury NESHAP. Consequently, we believe that when mercury cell chlor-alkali plants are required to comply with the proposed rule as the promulgated, the requirements of the Mercury NESHAP that apply to them will no longer be relevant or applicable. Therefore, upon the proposed compliance date as indicated in § 63.8186 of the proposed rule, mercury cell chlor-alkali plants will no longer have any obligation to comply with the Mercury NESHAP, nor will they be allowed to comply with the Mercury NESHAP instead of the applicable provisions in the proposed 40 CFR part 63, subpart IIIII. Specifically, we are proposing that affected sources subject to the proposed rule would no longer be subject to §§ 61.52(a), 61.53(b) and (c), and 61.55(b), (c) and (d) of 40 CFR part 61, subpart E, after the compliance date which is proposed to be 2 years following the promulgation of the final rule.

## II. Summary of the Proposed Standards

*A. What Is the Source Category?*

The source category is Chlorine Production. However, this proposal only applies to one type of chlorine production process—the mercury cell chlor-alkali process. Today's proposal applies to all plants engaged in the manufacture of chlorine and caustic in mercury cells. Other chlor-alkali cell types used to produce chlorine and caustic, such as diaphragm cell and membrane cell technologies, would not be covered by this proposed rule because they do not emit mercury. Emissions of chlorine and HCL from all chlorine production facilities are addressed in a separate action elsewhere in today's **Federal Register**.

[1] This regulatory program was originally set forth at 38 FR 8826, April 6, 1973; and amended at 40 FR 48302, October 14, 1975; 47 FR 24704, June 8, 1982; 49 FR 35770, September 12, 1984; 50 FR 46294, November 7, 1985; 52 FR 8726, March 19, 1987; and 53 FR 36972, September 23, 1988.

*B. What Are the Affected Sources and Emission Points To Be Regulated?*

The proposed rule defines two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. The former includes all cell rooms and ancillary operations used in the manufacture of chlorine, caustic, and by-product hydrogen at a plant site. The latter includes all processes and associated operations needed for mercury recovery from wastes.

Emission points addressed within mercury cell chlor-alkali production facilities include each mercury cell by-product hydrogen stream, each mercury cell end-box ventilation system vent, and fugitive emission sources throughout each cell room and various areas. Emission points addressed within mercury recovery facilities include each mercury thermal recovery unit vent and fugitive emission sources associated with storage areas for mercury-containing wastes.

*C. What Are the Emission Limitations?*

For new or reconstructed mercury cell chlor-alkali production facilities, the proposed rule would prohibit mercury emissions.

For existing mercury cell chlor-alkali production facilities with end-box ventilation systems, we are proposing that aggregate mercury emissions from all by-product hydrogen streams and end-box ventilation system vents not exceed 0.067 grams of total mercury emitted per megagram of chlorine produced (grams Hg/Mg $Cl_2$), or 1.3 x $10^{-4}$ pounds of total mercury per ton of chlorine produced (lb Hg/ton $Cl_2$). For existing mercury cell chlor-alkali production facilities without end-box ventilation systems, we are proposing that mercury emissions from all by-product hydrogen streams not exceed 0.033 grams Hg/Mg $Cl_2$, or $0.66 \times 10^{-4}$ lb Hg/ton $Cl_2$. In addition, we are proposing that separate mercury concentration operating limits be established for each affected by-product hydrogen stream and each affected end-box ventilation system vent. The mercury concentration operating limits would be based only on elemental mercury, and each vent stream outlet would be continuously monitored for elemental mercury to show relative changes in mercury levels.

For new, reconstructed, or existing mercury recovery facilities with oven type mercury thermal recovery units, we are proposing that total mercury emissions not exceed 23 milligrams per dry standard cubic meter (mg/dscm) from each oven type unit vent. For new, reconstructed, or existing mercury recovery facilities with non-oven type mercury thermal recovery units, the proposed limit is 4 mg/dscm. Additionally, we are proposing that a mercury concentration operating limit (based on elemental mercury) be established concurrent with the initial performance test for each mercury thermal recovery unit vent.

*D. What Are the Work Practice Standards?*

We are proposing a set of work practice standards to address and mitigate fugitive mercury releases at mercury cell chlor-alkali plants. These provisions include specific equipment standards such as the requirement that end boxes either be closed (that is, equipped with fixed covers), or that end-box headspaces be routed to a ventilation system. Other examples include requirements that piping in liquid mercury service have smooth interiors, that cell room floors be free of cracks and spalling and coated with a material that resists mercury absorption, and that containers used to store liquid mercury have tight-fitting lids. The proposed work practice standards also include operational requirements. Examples of these include requirements to allow electrolyzers and decomposers to cool before opening, to keep liquid mercury in end boxes and mercury pumps covered by an aqueous liquid at a temperature below its boiling point at all times, to maintain end-box access port stoppers in good sealing condition, and to rinse all parts removed from the decomposer for maintenance prior to transport to another work area.

A cornerstone of the proposed work practice standards is the inspection program for equipment problems, leaking equipment, liquid mercury accumulations and spills, and cracks or spalling in floors and pillars and beams. Specifically, the proposed rule would require that visual inspections for equipment problems, such as end-box access port stoppers not securely in place, liquid mercury in open containers not covered by an aqueous liquid, or leaking vent hoses, be conducted twice each day (once every 12 hours). If a problem is found during an inspection, the owner or operator would need to take immediate action to correct the problem. Monthly inspections for cracking or spalling in cell room floors would also be required as well as semiannual inspections for cracks and spalling on pillars and beams. Any cracks or spalling found would need to be corrected within 1 month.

Visual inspections for liquid mercury spills or accumulations would be required twice per day. If a liquid mercury spill or accumulation is identified during an inspection, the owner or operator would need to initiate cleanup of the liquid mercury within 1 hour of its detection. Acceptable cleanup methods would include wet vacuum cleaning, washing to a trench or canal with an aqueous liquid cover, or a suitable alternative method approved upon petition.

In addition to cleanup, the proposed rule would require that an inspection of equipment in the area of the spill or accumulation be conducted to identify the source of the liquid mercury. If the source is found, the owner or operator would be required to repair the leaking equipment as discussed below. If the source is not found, the owner or operator would be required to reinspect the area every 6 hours until the source is identified or until no additional liquid mercury is found at that location.

Inspections of specific equipment for liquid mercury leaks would be required once per day. If leaking equipment is identified, the proposed rule would require that any dripping mercury be contained and covered by an aqueous liquid, and that a first attempt to repair leaking equipment be made within 1 hour of the time it is identified. The proposed rule would require that leaking equipment be repaired within 4 hours of the time it is identified, although there are provisions for delaying repair of leaking equipment for up to 48 hours.

Inspections for hydrogen gas leaks would be required twice per day (once each 12 hours). For a hydrogen leak at any location upstream of a hydrogen header, a first attempt at repair would be required within 1 hour of detection of the leaking equipment, and the leaking equipment would need to be repaired within 4 hours (with provisions for delay of repair if the leaking equipment is isolated). For a hydrogen leak downstream of the hydrogen header but upstream of final control, a first attempt at repair would be required within 4 hours, and complete repair would be required within 24 hours (with delay provisions if the header is isolated).

As a complement to the inspection program, the proposed rule also includes a requirement to institute a cell room monitoring program whereby owners and operators would continuously monitor mercury concentration in the upper portion of each cell room and take corrective actions as soon as practicable when elevated mercury vapor levels are

detected. The proposed rule does not include detailed requirements for this program. However, we do plan to develop specific criteria for such a program which would be issued either as guidance outside of the final rule or as an amendment to the final rule.

The program would not be a continuous monitoring system inasmuch as the results would be used only to determine relative changes in mercury vapor levels rather than compliance with a cell room emission or operating limit. Generally, the owner or operator would need to establish an action level for each cell room which would be based on preliminary monitoring to determine normal baseline conditions. The action level, or levels if appropriate, would then be established as a yet to be determined multiple of the baseline values. Once the action level(s) is established, continuous monitoring would need to be conducted. If an action level is exceeded, actions to correct the situation would need to be initiated as soon as possible. If the elevated mercury vapor level is due to a maintenance activity, the owner or operator would need to ensure that all work practices related to that maintenance activity are followed. If a maintenance activity is not the cause, inspections and other actions would be needed to identify and correct the cause of the elevated mercury vapor level.

For fugitive mercury emissions associated with storage areas for mercury-containing waste, the proposed rule would require that carbon media from decomposers and cell room sludges either be stored in closed containers or be stored in open containers under a layer of aqueous liquid that is replenished at least once per week. For all other mercury-containing wastes, the proposed rule would require that the wastes either be washed or chemically decontaminated to remove visible mercury or be stored in closed containers.

Finally, the proposed rule would establish the duty for owners and operators to routinely wash surfaces throughout the plant where liquid mercury could accumulate. Owners and operators would be required to prepare and follow a written washdown plan detailing how and how often specific areas specified in the proposed rule would be washed down to remove any accumulations of liquid mercury.

*E. What Are the Operation and Maintenance Requirements?*

We are proposing that each owner and operator would always operate and maintain affected source(s), including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices at least to the levels required by the proposed rule, as required under § 63.6(e)(1)(i) of the NESHAP General Provisions. The proposed rule would require each owner and operator to prepare and implement a written startup, shutdown, and malfunction plan according to the operation and maintenance requirements in § 63.6(e)(3) of the NESHAP General Provisions.

*F. How Are Initial and Continuous Compliance With the Emission Limitations To Be Demonstrated?*

The proposed rule would require compliance with emission limitations within 2 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

To demonstrate initial compliance with the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, we are proposing that each owner and operator would conduct performance tests and perform specified calculations. A test would be needed for each by-product hydrogen stream using 40 CFR part 61, appendix A, Method 102. A test would also be required for each end-box ventilation system vent using 40 CFR part 61, appendix A, Method 101 or 101A. Each performance test would be conducted in accordance with a site-specific test plan prepared pursuant to the performance test quality assurance program requirements in § 63.7(c)(2) of the NESHAP General Provisions. Each performance test would be comprised of at least three runs, each lasting 2 hours at a minimum. Concurrent with each test run, the quantity of chlorine produced would need to be determined according to an equation contained in the proposed rule that calculates chlorine production based on cell line electric current load. Then, the mass of mercury emitted per unit mass of chlorine produced would be calculated for each test run, and the runs would be averaged for each tested vent. Initial compliance would be achieved if the sum of the average mass of mercury emitted per mass of chlorine produced of all by-product hydrogen streams and all end-box ventilation system vents is less than 0.067 gm Hg/Mg $Cl_2$ for plants with end-box ventilation systems, or if the sum of the average mass of mercury emitted per mass of chlorine produced of all by-product hydrogen streams is less than 0.033 gm Hg/Mg $Cl_2$ for plants without end-box ventilation systems.

To demonstrate initial compliance with the mercury thermal recovery unit emission limits, we are proposing that a performance test be conducted for each vent using Method 101 or 101A. Once again, the performance test would need to follow a site-specific test plan developed by the owner and operator according to § 63.7(c)(2) of the NESHAP General Provisions. The proposed rule would require that during the test, the type of waste resulting in the highest mercury concentration in the mercury thermal recovery unit vent be processed. Documentation of the mercury content of this type of waste and an explanation of why it results in the highest mercury concentration would be required as part of the site-specific test plan. Three test runs would need to be conducted at a point after the last control device for each vent. Initial compliance would be achieved if the average vent mercury concentration is less than 23 mg/dscm for each oven type vent or 4 mg/dscm for each non-oven type vent.

To continuously comply with the emission limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit, we are proposing that each owner and operator would continuously monitor outlet elemental mercury concentration and compare the daily average results with a mercury concentration operating limit for the vent. This operating limit would be established during the required performance tests, as explained later in this section. Continuous compliance would be demonstrated by collecting outlet elemental mercury concentration data using a continuous mercury vapor monitor, calculating daily averages, and documenting that the calculated daily average values are no higher than established operating limits. Each daily average vent elemental mercury concentration greater than the established operating limit would be considered a deviation.

The proposed rule would require that each continuous mercury vapor monitor be installed, operated, and maintained in accordance with a site-specific monitoring plan. For each monitor, this plan would need to address installation and siting, monitor performance specifications, performance evaluation procedures and calibration criteria, ongoing operation and maintenance procedures, ongoing data assurance procedures, and ongoing recordkeeping and reporting procedures.

Owners or operators would establish a mercury concentration operating limit for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent as part of the initial compliance demonstration. During each

performance test, the proposed rule would require that a continuous mercury vapor monitor be used to measure elemental mercury concentration in the vent stream at least once every 15 minutes for the entire duration of each performance test run. The average elemental mercury concentration measured during any valid test run conducted during the performance test in which mercury emissions did not exceed the applicable emission limit would then be established as the mercury concentration operating limit.

*G. How Are Initial and Continuous Compliance With the Work Practice Standards To Be Demonstrated?*

The proposed rule would require compliance with the work practice standards within 2 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The proposed work practice standards would primarily be requirements for ongoing operational activities. For these activities, there is no specific action called for to demonstrate initial compliance, other than a commitment by the owner or operator that the work practices standards will be met. Therefore, the major component of the initial compliance demonstration for the work practice standards would be a certification by the owner or operator that the work practice standards will be met. In addition, there are a few requirements that could cause an owner or operator to install new equipment or upgrade existing equipment. Documentation of any such actions would also be required in the initial compliance demonstration.

The proposed rule contains specific recordkeeping requirements related to the work practice standards. These include records of when inspections were conducted, problems identified, and actions taken to correct problems. Continuous compliance with work practice standards would be demonstrated by maintaining these required records.

Initial compliance with the washdown plan would be demonstrated by submission of the plan by the owner or operator and certification that they operate according to, or will operate according to, the plan. Continuous compliance with the plan would be demonstrated by maintaining related records. Records would also be required to demonstrate compliance with the cell room monitoring program.

*H. What Are the Notification and Reporting Requirements?*

The proposed rule would require that owners or operators submit the following notifications and reports:

- Initial Notification
- Notification of Intent to conduct a performance test
- Notification of Compliance Status (NOCS)
- Compliance reports.

For the Initial Notification, we are proposing that each owner or operator notify us that their plant is subject to the NESHAP for mercury cell chlor-alkali plants, and that they provide other basic information about the plant. For existing sources, this notification would need to be submitted no later than [DATE 120 CALENDAR DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

For the Notification of Intent report, we are proposing that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

The Notification of Compliance Status for the work practice standards would be due [DATE 30 DAYS AFTER THE PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] for existing sources. In this notification, the owner or operator would need to certify that the work practice standards are being or will be met. Furthermore, we are proposing that the washdown plan be submitted as part of this notification, and that the owner or operator certify that they operate or will operate according to the plan.

For the emission limits where a performance test is required to demonstrate initial compliance (that is, the emission limits for by-product hydrogen streams and end-box ventilation system vents and the mercury thermal recovery unit vent limits), the tests would have to be conducted within 180 days after the compliance date, and the Notification of Compliance Status would be due 60 days after the completion of the performance test. We are proposing that the site-specific plan addressing the use of continuous mercury vapor monitors for vents be submitted as part of this notification.

Reporting on continuous compliance would be required semiannually, with the first report due within the first 6 months after initial compliance.

*I. What Are the Recordkeeping Requirements?*

Records required by the proposed rule related to by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents include the following: performance test results, records showing the establishment of the applicable mercury concentration operating limits (including records of the mercury concentration monitoring conducted during the performance tests), records of the continuous mercury concentration monitoring data, records of the daily average elemental mercury concentration values, and records associated with site-specific monitoring plans.

With regard to the work practice standards, the proposed rule would require that records be maintained to document when each required inspection was conducted and the results of each inspection. Records noting equipment problems (such as end-box cover stoppers not securely in place or mercury in an open container not covered by an aqueous liquid) identified during a required inspection and the corrective action taken would also be required. If equipment that is leaking mercury liquid or hydrogen/mercury vapor is identified during a required inspection or at any other time, the proposed rule would require records of when the leak was identified and when it was repaired. Similarly, if a mercury spill or accumulation is identified at any time, the proposed rule would require records of when the spill or accumulation was found and when it was cleaned up.

A copy of the current version of the washdown plan would need to be kept on-site and be available for inspection. Records of when washdowns were conducted would be required.

The proposed rule would require that copies of each notification and report that is submitted to comply with this subpart be kept and maintained for 5 years, the first 2 of which must be on-site.

## III. Rationale for Selecting the Proposed Standards

*A. How Did We Select the Source Category?*

The mercury cell chlor-alkali production portion of the chlorine production source category was among the categories and subcategories of major and area sources listed for regulation under section 112(c)(6) of the CAA (63 FR 17838, April 10, 1998) to assure that sources accounting for not less than 90 percent of the aggregate mercury emissions nationwide are subject to standards under section 112(d). We estimate that mercury cell chlor-alkali production accounts for

over 5 percent of all stationary source emissions of mercury and over 25 percent of the emissions from stationary noncombustion sources. The Chlorine Production source category is comprised of 43 facilities engaged in the manufacture of chlorine and caustic in electrolytic cells. Cell types employed include the diaphragm cell, membrane cell, and mercury cell. Of these, only the mercury cell process has the potential to emit mercury. For the 1997 base year of the MACT analysis, twelve facilities employed mercury cells. We are aware that one of the twelve facilities ceased operations permanently in September 2000. Nonetheless, we considered it to be part of the source category for the development of MACT since it was in operation in 1997.

*B. How Did We Select the Affected Sources and Emission Points To Be Regulated?*

For the purposes of implementing NESHAP, an affected source is defined to mean the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by relevant standards or other requirements established under section 112 of the CAA. An affected source specifies the group of unit operations, equipment, and emission points that are subject to the standards. We can define an affected source as narrowly as a single piece of equipment or as broadly as all equipment at a plant site.

We decided to separate the unit operations and emission points related to the production of chlorine and caustic from the unit operations and emissions points related to mercury recovery. Mercury cell chlor-alkali production facilities include a number of integrated operations dedicated to the production, storage, and transfer of product chlorine, product caustic, and by-product hydrogen. In contrast, mercury recovery facilities are operations dedicated to the recovery of mercury from mercury-containing wastes. These operations are independent of the chlor-alkali process and are thus not integral to production. As a result, the proposed rule addresses emissions from two separate affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities.

Unit operations and emission points grouped within the mercury cell chlor-alkali production facilities affected source are by-product hydrogen streams, end-box ventilation system vents, and fugitive mercury emissions associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes. As described previously, each is a potentially significant source of mercury emissions. Chlorine purification, brine preparation, and wastewater treatment operations are believed to have low mercury emissions to the air. Accordingly, today's proposal contains no requirements for these operations.

Unit operations and emission points grouped within the mercury recovery facilities affected source include all mercury thermal recovery unit vents and fugitive mercury emissions associated with mercury-containing waste storage areas. Chemical mercury recovery and recovery in a batch purification still are believed to have low mercury emissions to the air. Accordingly, today's proposal contains no requirements for these operations.

*C. How Did We Select the Form of the Standards?*

Section 112 of the CAA requires that standards be specified as numerical emission standards, whenever possible. However, if it is determined that it is not feasible to prescribe or enforce a numerical emission standard, section 112(h) indicates that a design, equipment, work practice, or operational standard may be specified.

With the exception of standards for fugitive emission sources, we are proposing numerical emission limits for all other mercury emission sources. Specifically, the proposed standards include numerical emission limits for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents.

Cell rooms bring together mercury, a large electrical load, and hot production equipment. Accordingly, most fugitive mercury emission sources at mercury cell chlor-alkali plants are associated with cell rooms. Reliable quantification of these cell room fugitive emissions would be costly, owing to the need to measure both mercury vapor concentration and air flow rate at ceiling apertures with sophisticated equipment. Some plants have many separate ceiling apertures, and plants in warm climates tend to be little enclosed on the sides. Moreover, levels of fugitive mercury vary with cell room operations, precluding the setting of a numerical limit.

Mercury cell chlor-alkali plant fugitive mercury emission sources are also associated with storage areas for mercury-containing wastes. The measurement of mercury emissions from mercury-containing waste storage areas is also impracticable as these are usually located in several places throughout a plant, many of which are open areas.

Not unexpectedly, emissions data on cell room and waste storage emissions are very limited as in the case of cell rooms, or nonexistent as in the case of waste storage areas. As such, we believe that it is not feasible to either prescribe or enforce numerical emission limit(s) for fugitive mercury emissions from cell rooms and waste storage areas. Consequently, today's proposed standards address fugitive emission sources at mercury cell chlor-alkali plants through the establishment of work practice standards.

*D. How Did We Determine the Basis and Level of the Proposed Standards for Existing Sources?*

Section 112 of the CAA establishes a minimum baseline or ''floor'' for MACT standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The standards for existing sources may 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 for categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best-performing five sources for categories or subcategories with fewer than 30 sources for which the Administrator has emissions information.

After the floor has been determined for a category or subcategory, the Administrator must set MACT standards that are technically achievable and no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate emission limits may be established for new and existing sources.

The EPA generally determines the MACT floor and then considers beyond-the-floor control options. Here, EPA considers the achievable reductions in emissions of HAP (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other non-air environmental impacts. The objective is to achieve the maximum degree of HAP emission reduction without incurring unreasonable cost or other impacts.

1. By-Product Hydrogen Streams and End-Box Ventilation System Vents

The fundamental unit in the mercury cell chlor-alkali process is a mercury cell. The by-product hydrogen stream and the end-box ventilation system vent represent the mercury emission point sources that originate from a mercury cell. As discussed earlier, hydrogen gas is incidentally produced as a result of the catalyzed reaction of sodium/mercury amalgam and deionized water to produce caustic in a decomposer. The end-box ventilation stream is a collection of vapors from head spaces of end boxes and possibly other vessels, including pump tanks and seal legs, wash water tanks, and caustic tanks and headers. The mercury content of the by-product hydrogen stream and the end-box ventilation stream, prior to control, is a direct function of the design of the mercury cell. Ten different mercury cell models are used by the twelve mercury cell chlor-alkali plants. Given these differences in cell design and their effect on potential vent mercury emissions, we opted to develop a cell-wide standard for mercury emissions from both points.

Given the large variation among the plants in terms of production capacity (the largest plant is capable of producing over five times as much chlorine as the smallest) and mercury emissions potential, we concluded that any equitable assessment of MACT should account for this disparity. We selected the actual amount of chlorine produced by weight as the uniform parameter for our analysis for the following reasons: Chlorine is the primary product generated; chlorine production can be accurately determined; and chlorine and hydrogen are generated in the same stoichiometric quantities, that is one molecule of hydrogen is produced for each molecule of chlorine produced.

We then considered the fact that two plants do not have end-box ventilation systems. Both plants operate cells with closed end boxes. Consequently, there is no need for end-box ventilation and, therefore, no end-box ventilation system emission point. Next, we examined whether the mercury cells at the ten plants equipped with end-box ventilation systems could be reconfigured with closed end boxes. We concluded that the use of an end-box ventilation system is an inherent feature of the original design of a cell, and that it is not technically feasible to eliminate end-box ventilation systems at these plants. We have, therefore, decided to distinguish plants with end-box ventilation systems and plants without these systems for purposes of establishing MACT.

Accordingly, we are proposing, for plants with end-box ventilation systems, a single emission limit for mercury emissions from all by-product hydrogen streams and mercury emissions from all end-box ventilation system vents in units of mass of mercury emissions per mass of chlorine produced. For plants without end-box ventilation systems, we are proposing an emission limit for mercury emissions from all by-product hydrogen streams in units of mass of mercury emissions per mass of chlorine produced.

• Emission Limit for Plants With End-Box Ventilation Systems

In order to establish MACT for the combined mercury emissions from by-product hydrogen streams and end-box ventilation system vents, we relied on estimates of annual mercury emissions for each vent and information on annual chlorine production provided by the ten plants with end-box ventilation systems. A total of twenty mercury emission estimates were provided, one emission estimate for all by-product hydrogen streams and one emission estimate for all end-box ventilation system vents at each of the ten plants. Background information on these emission estimates is available in the docket to this rulemaking (No. A–2000–32).

Of the twenty emission estimates, fourteen (six for by-product hydrogen streams and eight for end-box ventilation system vents) are based on stack tests performed in accordance with established EPA reference methods specific to chlor-alkali plants. These include Method 101 for the determination of particulate and gaseous mercury from air streams (i.e., end-box ventilation system vents) and Method 102 for the determination of mercury in hydrogen streams. We obtained and reviewed copies of all available test reports and determined that the tests were conducted correctly. Six emission estimates (four for by-product hydrogen streams and two for end-box ventilation system vents) are based on periodic measurements of mercury concentration in the vent streams. The methods used for these periodic measurements are largely modifications of EPA reference test methods. As such, we believe that they provide reasonably accurate results consistent with what would otherwise be obtained with the EPA reference test methods. Our conclusion is that these data represent the best information available on mercury emissions from these vents, and that they are appropriate for use in establishing MACT.

The MACT floor was calculated as follows. For each plant, we divided the sum of the reported annual mercury emissions from all by-product hydrogen streams and end-box ventilation system vents by the annual chlorine production. The chlorine production values used are largely representative of actual annual chlorine production levels. We then ranked the plants from lowest to highest emitters for combined normalized mercury emissions. The normalized mercury emission values range from 0.067 grams Hg/Mg $Cl_2$ to 3.41 grams Hg/Mg $Cl_2$. We should note that the lowest value, 0.067 grams Hg/Mg $Cl_2$, is from the plant that closed permanently in September 2000. Nonetheless, we believe that it is appropriate to retain it in the pool of existing sources used to determine existing source MACT. Prior to closure, this plant was the lowest-emitting and best-performing source. The average (mean) of the best (lowest) five normalized values results in a floor value for existing sources of 0.14 grams Hg/Mg $Cl_2$.

Of the ten plants with by-product hydrogen streams and end-box ventilation systems, we project that seven would need to install additional controls or upgrade existing controls to meet the 0.14 grams Hg/Mg $Cl_2$ floor level. We assume the following plant-specific actions: Two plants would need to install new carbon adsorbers on their by-product hydrogen streams (one plant would be replacing an existing adsorber with a new, larger adsorber); one plant would need to install a new packed scrubber on its end-box ventilation system vent; three plants would need to install new controls on both their by-product hydrogen streams and end-box ventilation system vents; and one plant would need to both upgrade carbon adsorber control on its by-product hydrogen stream by switching to impregnated carbon and replacing carbon more frequently as well as install a new packed scrubber on its end-box ventilation system vent.

We estimate that the total aggregate installed capital control costs needed to meet the existing source MACT floor for the seven affected plants to be about $660,000. We estimate total aggregate annual control costs, including costs for labor, materials, electricity, capital recovery, taxes, insurance, and administrative charges (excluding costs for monitoring, reporting, and recordkeeping) for the seven affected plants to be about $570,000 per year. Mercury emission reductions against actual emissions would total 556 kg/yr (1,225 lbs/yr) for the seven affected plants. Mercury emission reductions

against the potential-to-emit baseline, as represented by the allowable emissions under the Mercury NESHAP, would total over 3,400 kg/yr (over 7,500 lbs/yr) for the seven affected plants. The associated annual cost per unit of mercury emission reduction values would be approximately $465 per pound (actuals baseline) and under $80 per pound (potential-to-emit baseline), respectively.

Water pollution impacts due to the increased use of packed bed scrubbers involving aqueous hypochlorite scrubbing solution on end-box ventilation systems are estimated to total 1.2 million liters (320 thousand gallons) of additional wastewater. Impacts on solid waste due to increased use of carbon adsorption for by-product hydrogen streams are estimated to total 17 megagrams per year (Mg/yr), 19 tons per year (tpy), of mercury-containing spent carbon. Energy requirements are estimated to total an additional 878 thousand kilowatt-hours per year (kW-hr/yr). Estimated secondary air pollution impacts due to heightened energy consumption total 282 Mg/yr (311 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We then examined beyond-the-floor MACT options. We selected the lowest normalized value among the ten plants, namely 0.067 grams Hg/Mg $Cl_2$, as a beyond-the-floor option. As noted above, this 0.067 grams Hg/Mg $Cl_2$ value is from a plant that is now closed. Nonetheless, as stated previously, we believe it is appropriate to retain it in the pool of existing sources and to include it in the beyond-the-floor assessment.

The 0.067 grams Hg/Mg $Cl_2$ value corresponds to 0.05 grams Hg/Mg $Cl_2$ from the by-product hydrogen stream controlled by a condenser coupled with a molecular sieve adsorber, and 0.017 grams Hg/Mg $Cl_2$ from the end-box ventilation system vent, also controlled by a condenser coupled with a molecular sieve adsorber. It is our understanding that molecular sieve technology for mercury vapor emission control is no longer commercially available. We, thus, acknowledge some uncertainty associated with the achievability of this level of control. However, for the reasons set forth below, we believe that other technologies and operating practices exist that can achieve this level of emissions control.

Due to the very low volumetric flow rates associated with both by-product hydrogen streams and end-box ventilation system vents (typically less than 5,000 scfm and 4,500 scfm, respectively), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. We project that the nine plants with baseline emissions greater than 0.067 grams Hg/Mg $Cl_2$ would meet the 0.067 grams Hg/Mg $Cl_2$ beyond-the-floor option through the installation of new controls or the upgrading of existing controls. We assume the following plant-specific actions: two plants would need to install new carbon adsorbers on their by-product hydrogen streams (one plant would be replacing an existing adsorber with a new, larger adsorber); three plants would need to install a new packed scrubber on their end-box ventilation system vents; three plants would need to install new controls on both their by-product hydrogen streams and end-box ventilation system vents; and one plant would need to both upgrade existing carbon adsorber control on its by-product hydrogen stream by switching to impregnated carbon and replacing carbon more frequently as well as install a new packed scrubber on its end-box ventilation system vent. We project that the five new carbon adsorbers would need to accommodate a 25 percent higher carbon charge than assumed to meet the floor option. Upgrades to existing carbon adsorber control would involve more frequent carbon replacement than that assumed to meet the floor option. Five of the seven new packed scrubbers on end-box ventilation systems would need to be operated more efficiently than assumed to meet the floor option.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reductions, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 76 kg/yr (168 lb/yr) of total mercury emission reductions for the nine affected plants (a 48 percent incremental reduction from the floor option). For the nine affected plants, the incremental installed capital costs are estimated to total around $210,000, and the incremental annual costs are estimated to total around $150,000 per year. The incremental cost per unit of incremental mercury emission reduction is $900 per pound.

The incremental water pollution impacts are estimated to total 550 thousand liters (145 thousand gallons) of additional wastewater. The incremental solid waste impacts are estimated as 5.1 Mg/yr (5.6 tpy) of mercury-containing spent carbon in total. The incremental energy impacts are estimated as 110 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 35 Mg/yr (39 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions, as well as incremental non-air environmental impacts and energy requirements, are reasonable for mercury. Therefore, we selected the 0.067 grams Hg/Mg $Cl_2$ beyond-the-floor option as MACT for plants with end-box ventilation systems.

If comments are received on this proposal that lead us to conclude that this level of control is unachievable, we retain the option of setting the standard at the next lowest normalized emission value. Accordingly, we have evaluated the impacts of an alternative 0.076 grams Hg/Mg $Cl_2$ mercury emission limit for plants with end-box ventilation systems.

We project that the eight plants with baseline emissions greater than 0.076 grams Hg/Mg $Cl_2$ would need to install new controls or upgrade existing controls to meet this level. This would result in an additional 65 kg/yr (143 lb/yr) of total mercury emission reductions for the eight affected plants (a 41 percent incremental reduction) from the floor option. We assume the same plant-specific actions as those assumed to meet the 0.067 grams Hg/Mg $Cl_2$ value, given the small difference in emission reductions at the two levels. For the eight affected plants, the incremental installed capital costs are estimated to total around $197,000, and the incremental annual costs are estimated to total around $125,000 per year. The incremental cost per unit of incremental mercury emission reduction is $875 per pound.

The incremental water pollution impacts are estimated to total 317 thousand liters (84 thousand gallons) of additional wastewater. The incremental solid waste impacts are estimated as 5.1 Mg/yr (5.6 tpy) of mercury-containing spent carbon in total. The incremental energy impacts are estimated as 105 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 34 Mg/yr (37 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

• Emission Limit for Plants Without End-Box Ventilation Systems

In order to establish MACT for mercury emissions from by-product hydrogen streams for the two plants without end-box ventilation systems, we used estimates of annual mercury

emissions from by-product hydrogen streams and information on actual chlorine production provided by the two plants for 1997. Both emission estimates are based on periodic measurements of mercury concentration in the vent streams obtained using methods that are largely modifications of EPA reference test methods. Background information on these emission estimates is available in the docket to this rulemaking (No. A–2000–32).

For each plant, we divided the reported annual mercury emissions from by-product hydrogen streams by the annual chlorine production. The normalized values are 0.033 grams Hg/Mg $Cl_2$ and 0.17 grams Hg/Mg $Cl_2$. Although there are fewer than five sources from which to constitute a MACT floor, we opted to take the average (mean) of the two normalized values, resulting in 0.10 grams Hg/Mg $Cl_2$ as the floor value for existing sources. We project that the higher emitting plant would need to upgrade existing controls to meet the 0.10 grams Hg/Mg $Cl_2$ floor level. Specifically, the carbon in its existing carbon adsorbers would need to be replaced more frequently. There would be no capital costs as more frequent carbon media replacement is only a recurring annual cost estimated at $13,000 per year. Mercury emission reductions against actual emissions would total 6 kg/yr (14 lbs/yr). Mercury emission reductions against the potential-to-emit baseline, as represented by the allowable emissions under the Mercury NESHAP, would total over 600 kg/yr (over 1,300 lbs/yr). The associated annual cost per unit of mercury emission reduction values would be approximately $940 per pound and less than $10 per pound, respectively. There are no associated secondary air pollution, water pollution, or energy impacts. Estimated solid waste impacts due to increased use of carbon adsorption total 1.0 Mg/yr (1.1 tpy).

We then examined beyond-the-floor MACT options. We selected the lowest normalized value among the two plants, namely 0.033 grams Hg/Mg $Cl_2$, as a beyond-the-floor option. Controls applied to achieve this value include a condenser coupled with a carbon adsorber. For purposes of estimating impacts, we assumed that the higher-emitting plant would replace its existing carbon adsorber with a new, larger adsorber to meet the 0.033 grams Hg/Mg $Cl_2$ level.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 6 kg/yr (14 lb/yr) of total mercury emission reductions (a 47 percent incremental reduction from the floor option). The incremental installed capital costs are estimated to total around $182,000. The incremental annual costs are estimated to total around $126,000 per year. The incremental cost per unit of incremental mercury emission reduction is approximately $9,000 per pound. There are no associated incremental water pollution impacts. The estimated incremental solid waste impacts total an additional 5.3 Mg/yr (5.8 tpy) of mercury-containing spent carbon. The incremental energy impacts are estimated as 252 thousand kW-hr/yr in total. The incremental secondary air pollution impacts are estimated to total 81 Mg/yr (89 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions as well as incremental non-air environmental impacts and energy requirements are reasonable for mercury. Therefore, we selected the 0.033 grams Hg/Mg $Cl_2$ level as MACT for plants without end-box ventilation systems, which is approximately half the level selected for plants with end-box ventilation systems.

2. Sources of Fugitive Mercury Emissions

As explained above, we have determined that work practice standards provide the most appropriate approach for addressing fugitive mercury emissions at mercury cell chlor-alkali plants. Every mercury cell chlor-alkali plant is currently subject to the Mercury NESHAP and implements the design, maintenance, and housekeeping practices referenced in the NESHAP to control fugitive cell room emissions. We believe that these existing requirements represent the MACT floor for existing mercury fugitive emission sources. Since these floor requirements are currently observed at each existing plant, a standard based on this floor level of control would not be expected to reduce mercury emissions from current levels or produce any associated cost, non-air environmental or energy impacts.

We then examined beyond-the-floor options. We noted that many of the existing work practice requirements are general in nature and nonspecific relative to the frequency and scope of inspections, as well as recordkeeping and reporting. We decided that clarification and elaboration on these general practices was warranted to make them more explicit and to improve assurance of compliance. Accordingly, we initiated a thorough examination of specific measures employed across the industry to limit fugitive mercury emissions.

In the summer of 1998, we conducted site visits to five mercury cell chlor-alkali plants to observe and document their design, operational, maintenance, housekeeping, and recordkeeping practices. The five plants were selected to provide a broad representation of ownership (the five plants are owned by five different companies) and different mercury cell models (mercury cells made by all three manufacturers and of varying sizes are represented). We also selected plants in different areas of the United States (U.S.) to account for geographical variations such as climate. In addition to the site visits, we obtained current standard operating procedures for mitigating sources of fugitive mercury emissions from all twelve plants. We used this knowledge and information to develop a detailed compilation of practices currently used across the industry to control fugitive mercury emissions.

We used this compilation to identify explicit practices for each individual plant area, equipment type, and inspection procedure and assembled them as beyond-the-floor work practice requirements. We feel that the resulting work practice standards represent the most stringent practices applied in the industry.

The types of enhancements from the MACT floor level requirements that are included in the beyond-the-floor option may be generally classified in three categories. First, the beyond-the-floor requirements add considerable specificity. The equipment and areas to be inspected are identified along with the required frequency of the inspections and the conditions that trigger corrective action. Response time intervals for when the corrective actions must occur are also included. Second, some types of inspections are required at more frequent intervals than required by the Mercury NESHAP (e.g., inspecting decomposers for hydrogen leaks once each 12 hours rather than once each day). Third, the beyond-the-floor option includes additional requirements not included in the floor level. The two most obvious examples are the detailed recordkeeping procedures and reporting provisions which are more fully developed than

those in the Mercury NESHAP and the requirements for storage of mercury-containing wastes.

Also included in the beyond-the-floor option is a requirement for owners and operators to develop and implement a plan for the routine washdown of accessible surfaces in the cell room and other areas. All plants currently wash down cell room surfaces regularly. However, due to plant-specific considerations, we are uncomfortable with issuing a specific set of requirements for washdowns that would apply at all plants. As a result, the beyond-the-floor option establishes the duty for owners or operators to prepare and implement a written plan for washdowns and identifies elements to be addressed in the plan. Although washdowns are an ongoing practice at all plants, we believe that including such a requirement in the beyond-the-floor option will elevate the importance of washdowns as part of an overall approach to reducing cell room fugitive emissions.

As a final element of the beyond-the-floor option, we considered the extent to which measurement of ambient mercury levels in the cell room air should be incorporated. Currently, all mercury cell chlor-alkali plants periodically monitor mercury vapor levels at the cell room floor plane, in keeping with Occupational Safety and Health Administration (OSHA) standards for worker exposure to mercury. Typically, on a daily basis, a plant operator measures and records the mercury vapor level in the cell room. Some plants use technologies that measure the mercury vapor level at a single point, such as portable mercury vapor analyzers based on ultraviolet light absorption or gold film amalgamation detection. Plant operators using these technologies take readings at specified locations in the cell room. Other plants utilize procedures that provide an aggregate reading, such as chemical absorption into potassium permanganate solution followed by separate cold vapor atomic absorption analysis in a laboratory setting. This composite sample is most often obtained by a plant operator walking through the cell room with a small sampling pump.

When a mercury vapor level above the OSHA personal exposure limit is measured, plant operators require the use of respirators in the area. They also take action to determine and eliminate the cause of the elevated mercury level.

Given the fact that all plants conduct cell room mercury vapor measurements, we determined that it was appropriate to include requirements to conduct cell room monitoring as a means to identify and correct situations resulting in elevated mercury levels (and obviously, increased mercury emissions) as part of the beyond-the-floor option for fugitive mercury emission sources. We considered basing such a program on periodic measurement, which would correspond to the programs currently in place at mercury cell chlor-alkali plants. We also considered basing such a program on the continuous measurement of mercury vapor levels in the upper portions of the cell room. We are aware of technologies, including extractive, cold vapor spectroscopy systems and open-path, differential optical absorption spectroscopy systems, designed for such continuous monitoring applications. In August of 2000, we studied cell room mercury vapor levels at a U.S. mercury cell chlor-alkali plant using both extractive and open-path technologies. In addition, we are aware of extractive systems currently in use in Europe for this purpose.

Upon consideration of the benefits of periodic versus continuous monitoring of the cell room mercury vapor levels, we selected continuous monitoring as part of the proposed cell room monitoring program for the following reasons. First, we believe that continuous monitoring would identify hydrogen leaks or other situations that result in elevated mercury levels in the cell room much more promptly than periodic monitoring. If periodic monitoring was conducted on a daily basis, hours could pass before such a leak was detected. We also believe that the continuous monitoring of mercury vapor levels during maintenance activities would provide information to help plant operators refine and improve such maintenance activities to reduce mercury emissions.

Finally, we believe that the monitoring on the cell room floor plane could fail to detect hydrogen leaks or other situations resulting in mercury vapor leaks that may occur at higher elevations. Continuous monitoring in the upper portion of the cell room would provide a representation of all areas of the cell room at all levels.

Therefore, we have included a program involving the continuous monitoring of mercury vapor levels in the cell room as part of the beyond-the-floor option. We envision the basic elements for this program to be as follows. Each owner or operator would be required to install a mercury monitoring system in each cell room and continuously monitor the elemental mercury concentration in the upper portion of the cell room. The type of technology, whether an extractive, cold vapor spectroscopy system or an open-path, differential optical absorption spectroscopy system, would be at the discretion of the owner or operator, provided that performance criteria, such as a minimum detection limit, were met. A sampling configuration would be specified to acquire a composite measurement representative of the entire cell room air. For example, the sampling configuration may involve sampling at least three points along the center aisle of the cell room and above the mercury cells at a height sufficient to ensure representative readings.

For each cell room, the owner or operator would need to establish an action level which would be based on preliminary monitoring to determine normal baseline conditions. The onset and duration of this preliminary monitoring would be specified as well as guidelines for setting the action level. Continuous monitoring would commence after a specified time period following establishment of the action level and its documentation in a notification to us. A minimum data acquisition requirement would be established, such as a requirement to collect and record data for at least a certain percent of the time in any 6-month period.

Actions to correct the situation as soon as possible would be required when measurements above the action level were obtained over a defined duration, such as a certain number of consecutive measurements or an average over a certain time period above the action level. If the elevated mercury vapor level was due to a maintenance activity, the owner or operator would need to keep records describing the activity and verifying that all work practices related to that maintenance activity are followed. If a maintenance activity was not the cause, then inspections and other actions would need to be conducted within specific time periods to identify and correct the cause of the elevated mercury vapor level.

In evaluating whether to establish the beyond-the-floor option as MACT, we looked at the incremental impacts on emissions, cost, energy, and other non-air effects. Relative to emissions, we firmly believe that although we are unable to actually quantify the reductions expected with the implementation of the beyond-the-floor option, substantial reductions would nonetheless occur. We know from experience and inference that the added scrutiny inherent in the suite of beyond-the-floor practices will of necessity result in fewer fugitive emissions. In considering the cost impacts of the

beyond-the-floor option, we attempted to estimate the cost associated with the equipment needed to carry out cell room monitoring as well as increased demand for labor and overhead needed to fully implement the proposed monitoring, inspection, recordkeeping, and reporting activities. We estimate the total installed capital costs needed to meet the beyond-the-floor option for fugitive mercury emissions to be around $663,000. We estimate the total annual costs to be around $840,000 per year, consisting of about $94,000 for annualized capital expenditure on mercury monitoring systems; about $736,000 per year for labor for monitoring, inspections, and recordkeeping, about $2,100 per year for mercury monitoring system utilities, and about $7,500 per year for mercury monitoring system replacement parts. We are unable to estimate increases in wastewater associated with washdown and cleanup activities for liquid mercury spills and accumulations as well as increases in solid waste since these would be highly plant-specific. Energy requirements for mercury monitoring systems are estimated to total an additional 53 thousand kW-hr/yr. Estimated secondary air pollution impacts due to heightened energy consumption total 17 Mg/yr (19 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted and that the estimated incremental costs to meet this level are reasonable. Therefore, we are selecting the beyond-the-floor work practice standards as MACT for fugitive mercury emission sources.

With regard to the cell room monitoring program, we acknowledge that there are uncertainties associated with the use of mercury monitoring systems for continuous monitoring that can only be addressed through actual field validation. We are specifically requesting comment on the feasibility of using such systems for continuous monitoring to prompt corrective actions for elevated mercury vapor levels in the cell room. We are also requesting comment on the detailed elements of the cell room monitoring program which we are unable to delineate in its entirety at this time.

Following proposal, we will involve the public in defining this program. Specifically, we will enter into a joint effort with industry, monitoring instrument suppliers, and other interested parties, to detail the elements and requirements of this program. We will take additional appropriate rulemaking steps as necessary to fully implement this program, including assuring opportunity for industry and the public to comment.

3. Mercury Thermal Recovery Unit Vents

As previously discussed, nine of the twelve mercury cell chlor-alkali plants have mercury recovery processes. Six of the nine plants operate a thermal recovery unit in which mercury-containing wastes are heated and the resulting mercury-laden off-gas is cooled and treated for mercury removal prior to being discharged to the atmosphere. Two plants recover mercury with a chemical process and one plant recovers mercury in a purification still; in both cases, mercury air emissions are believed to be low.

In establishing MACT for mercury thermal recovery units, we obtained information from all six plants with these units. Each plant provided descriptions of its thermal recovery operation, including the types of wastes processed and the control devices applied. Where available, plants also provided results of performance testing or periodic sampling and an estimate of their mercury emissions.

Each of the six plants operates one or more retorts (as part of its mercury thermal recovery unit) in which mercury-containing wastes are heated to a temperature sufficient to volatilize the mercury. The off-gas containing mercury vapor is then cooled in the mercury recovery/control system, causing the mercury to condense to liquid. The liquid mercury condensate is then collected from recovery devices for reuse in the mercury cells. The primary emission source is the mercury thermal recovery unit vent where off-gas that has passed through the recovery/control system is discharged to the atmosphere. Retorts used include three basic designs: batch oven (three plants), rotary kiln (two plants), and single hearth (one plant).

The batch ovens are D-tube retorts which are so named because each resembles an uppercase letter ''D'' on its side. Pans are filled with waste, typically around 10 cubic feet, and then placed into an oven. After inserting three or four pans, the oven door is closed and the retort is indirectly heated to about 1,000°F. The residence time varies from about 24 to 48 hours, depending on the type of waste being processed. While heating, the oven is kept under a vacuum and the mercury vapors are pulled into the mercury recovery/control system. After the cycle is completed, the unit is allowed to cool and the pans are then removed.

The rotary kilns are long, refractory-lined rotating steel cylinders in which the waste charge to be treated flows counter current to hot combustion gases used for heating. Wastes to be treated are conveyed into a ram feeder which inserts a waste charge into the kiln at regular intervals, typically about every 5 minutes. Each is directly fired with natural gas and is heated to over 1,300°F. The rotation of the kiln provides for mixing and transfer of the waste to the discharge end. The residence time is about 3 hours. The gas stream leaving the kiln passes through an afterburner where the temperature is increased to around 2,000°F to complete combustion reactions involving sulfur and carbon and then to a mercury recovery/control system.

The single hearth retort is comprised of a vertically mounted, refractory lined vessel with a single hearth and a rotating rabble. Waste is charged onto the hearth through a charge door by way of a conveyor. Once charged, the conveyor is withdrawn, the charge door is closed, and the heating or treatment cycle begins. The waste is stirred by the rabble rake, which turns continuously, and is heated to around 1,350°F. The residence time, which ranges according to waste type, is typically much longer than for rotary kilns. Similar to rotary kilns, the gas stream leaving the hearth retort passes through an afterburner where the temperature is increased to around 2,000°F to complete combustion reactions involving sulfur and carbon and then to a mercury recovery/control system.

As noted above, there are several important differences between the oven retorts and the non-oven (rotary kiln and single hearth) retorts related to operating temperature and residence time. There are also significant differences in the volumetric flow rates produced by the oven and the non-oven retorts. Oven retorts typically have volumetric flow rates around 100 scfm, which is an order of magnitude lower than flow rates for non-oven retorts which are around 1,000 scfm. Together, these differences can have a material impact on mercury concentration, mass flow rate of mercury, and other factors that influence mercury loadings to the recovery/control system. After evaluation of these technical and operational differences between oven retorts and non-oven retorts and their potential effect on emissions characteristics and control device applicability, we are proposing to distinguish between retort types for the purpose of establishing MACT.

With the exception of the plant with a single hearth retort that is controlled

with a scrubber as the final control device, the recovery/control system at each plant consists of condensation and carbon adsorption for final mercury control. The amount and type of carbon adsorbent used in the fixed bed, nonregenerative carbon adsorbers varies among the five plants. One plant uses activated carbon, one uses iodine-impregnated carbon, and three use sulfur-impregnated carbon. We believe that each type is effective in removing mercury provided the adsorbent is replaced at a frequency appropriate to prevent breakthrough.

In contrast, the plant with the single hearth retort utilizes a chlorinated brine packed-tower scrubber for final mercury control. In this scrubber, elemental mercury vapor is removed by chemically reacting with the chlorinated brine solution to form mercuric chloride, a nonvolatile mercury salt which is readily soluble in aqueous solutions. The resulting scrubber effluent is returned to the brine system causing the absorbed mercury to be recycled back to the mercury cells. Performance data for this brine scrubber system shows that the effectiveness is comparable to that of the condenser/carbon adsorber systems used at the other five plants.

While examining the performance capabilities of the condenser/carbon adsorber systems, we identified several factors that influence performance. We believe that a primary factor affecting mercury recovery and control is the temperature to which retort off-gas is cooled prior to entering the final control device. Because of the volatile nature of elemental mercury, temperature has a direct effect on the concentration of mercury vapor that can exist in a gas stream. For example, the concentration of mercury vapor that could exist in a gas stream at 50°F is 5 mg/m$^3$, while the predicted concentration at 85°F is 30 mg/m$^3$, a six-fold increase. At 100°F, the concentration could potentially be over 50 mg/m$^3$.

A key factor relative to the performance of carbon adsorbers is contact time. As noted previously, we believe that generally each of the carbon adsorbents presently used in the industry can effectively collect mercury vapor. However, it is essential for optimum performance that the contact time between the gas stream to be treated and the carbon adsorbent be long enough to allow for maximum adsorption. Consequently, design and operational factors such as carbon bed depth, sorbent particle size, and gas velocity have an appreciable impact on collection efficiency. Another key consideration is the frequency at which the adsorbent is replaced since the adsorbing capacity of any sorbent decreases as saturation and breakthrough are approached.

In assessing potential formats for a numerical emission limit, we considered a limit on emissions in a specified time period, a limit normalized on the amount of wastes processed, and an outlet mercury concentration limit. The amounts and types of wastes processed at each plant and among plants vary considerably. We believe, generally, that mercury emissions from the thermal recovery unit vent are proportional to the amount of mercury-containing wastes processed and the amount of mercury contained in these wastes. Therefore, we concluded that limiting emissions over a specified time period would unfairly impact plants that process larger amounts of wastes and/or wastes that contain more mercury. A mercury emission limit normalized on the amount of wastes processed would eliminate this inequity. However, given the wide variation in the mercury content of different types of wastes and the varying mix of waste types processed at different plants, we concluded that setting and enforcing such an emissions limit is impractical.

Several factors influence the concentration of mercury in the thermal recovery unit vent exhaust. The most significant include the mercury content of the wastes being processed and the volumetric flow rate through the system. Volumetric flow rate is dependent on process rate, fuel usage, and the volume of combustion gas generated. The mercury concentration may also vary depending on the stage of the heating cycle. The mercury content of the exhaust stream leaving the condenser(s) or other type of cooling unit should remain relatively constant, provided that the outlet temperature is constant and the residence time is sufficient. Depending on the effectiveness of the carbon adsorber or brine scrubber, the mercury concentration would be further reduced. As a result, we conclude that concentration at the outlet of the final control device is the most meaningful and practical measure of the combined performance of each element of the mercury recovery/control system. Therefore, we have selected concentration for the format of the MACT standard for mercury thermal recovery units.

Finally, we evaluated how, or if, the proposed standards should address different waste types; that is, should different emission limits be set for different waste types or should one limit be set for the waste type shown to be the highest emitting. We analyzed all the available data but were unable to ascertain any relationship between the type of waste (K106, D009 debris, or D009 nondebris) being treated during testing or sampling and the outlet mercury concentration measured across all plants. As a result, we are proposing an outlet mercury concentration limit that is neutral to the type of waste being processed. The analysis also influenced our decision on the proposed requirements for performance testing. We are proposing that testing be conducted during conditions representative of the most extreme, relative to potential mercury concentration, expected to occur under normal operation. While we would have preferred that the proposed rule specify the type of waste to be processed during testing, our inability to discern a relationship between waste type and outlet mercury concentration across plants prevented us from doing so. Therefore, the proposed rule would obligate owners and operators to process mercury-containing wastes that result in the highest vent mercury concentration during performance testing.

In summary, our review and analysis of all the available information on mercury thermal recovery units leads us to the following conclusions:

- Separate MACT emission limits should be developed for oven type and non-oven (rotary kiln and single hearth) type mercury thermal recovery units.
- These emission limits should not distinguish among waste types processed.
- Concentration is the appropriate format for the numerical emission limits.

The following describes how we selected the proposed emission limits for oven type and non-oven type mercury thermal recovery units.

There are three plants that use oven retorts. All are owned and operated by the same company. One plant operates five ovens, another operates three ovens, and the third operates two ovens. Thermal recovery at all three plants is conducted between 6,000 to 7,000 hours per year. The amounts of waste processed and the amounts of mercury recovered range from 90 to almost 300 tpy and from 3 to 20 tpy, respectively. At all three plants, the mercury-laden off-gas leaving the retort is cooled and treated for particulates and acid gases in a wet scrubber with caustic solution, followed by further cooling in a condenser. The cooled gas is then routed through one or more fixed-bed, nonregenerative carbon adsorbers before being discharged to the atmosphere. We conducted an evaluation of the mercury

recovery/control systems at all three plants, considering the condenser outlet temperature and the amount of carbon in the beds.

The plant that ranked highest in this evaluation, which we consider to be the best-controlled plant, provided mercury emissions data (periodic sampling results) over 3 years. The other two plants were unable to provide emissions data. Therefore, data from this best-controlled plant were used to establish MACT. Since an emission limit based on the best-controlled plant would obviously be more stringent than the floor level, the selection of a level associated with the best-performing recovery/control system for this retort type clearly meets our statutory requirement regarding the minimum level allowed for NESHAP.

This best-controlled plant has five ovens and two separate but identical mercury recovery/control systems. One treats the exhaust gas from three ovens while the other services two ovens. Each system is comprised of a wet scrubber and condenser, which cool the exhaust gases to around 70°F, followed by a carbon adsorber with about 700 pounds of activated carbon. Available test data for this plant consist of bimonthly measurements for 1997, 1998, and 1999 on each stack. We reviewed the sampling method used to obtain these data which are largely based on EPA reference methods for mercury emissions from mercury cell chlor-alkali plants and concluded that it is capable of producing measurements of reasonable accuracy that are suitable for use as the basis for MACT. We removed six data points that we determined were statistical outliers and combined the data for both control systems into one data set comprised of 134 individual measurements.

We then evaluated options for how these data should be used to establish a numerical emission limit to represent MACT. While this limit must represent the performance of the controls in place at this best-controlled plant, it also must account for variability in outlet mercury concentration due to processing different mercury-containing waste types and normal variation in recovery/control equipment performance. As noted previously, we are proposing that performance tests for mercury thermal recovery units be conducted under the most challenging conditions, which we are defining as the processing of wastes that result in the highest recurring mercury concentration in the vent exhaust. Each performance test would consist of at least three runs, and the average concentration measured would be compared with the emission limit to determine compliance. Given our inability to establish a discernible correlation between waste type processed and emissions, our obligation to set standards that are achievable under the full range of normal acceptable operating conditions and the fact that initial performance is based on at least three separate test runs, we chose to set the standard based on the average of the three highest measured values in the data set of 134 measurements for the best-controlled plant. The three measured values are 20.4, 22.1, and 26.4 mg/m$^3$. The average of the three is 23 mg/dscm, which we are proposing as the mercury concentration emission limit for oven type units.

Due to the very low volumetric flow rates associated with oven type mercury thermal recovery unit exhaust streams (typically less than 300 scfm), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. For purposes of estimating the impacts of the proposed emission limit, we assumed that the two plants with lower-performing control systems would need to install new, larger carbon adsorbers to meet the 23 mg/dscm level. The total installed capital control costs are estimated to be around $217,000 for all three plants, and the total annual control costs are estimated to be around $163,000 per year for all three plants. Estimated mercury emission reductions against actual baseline emissions would total 33 kg/yr (74 lbs/yr) for all three plants. The associated annual cost per unit of mercury emission reduction would be approximately $2,200 per pound.

Impacts on solid waste due to increased use of carbon adsorption are estimated total 5.2 Mg/yr (5.7 tpy) of mercury-containing spent carbon. Energy requirements are estimated to be an additional 473 thousand kW-hr/yr. Estimated secondary air pollution impacts due to heightened energy consumption are 152 Mg/yr (168 tpy), with carbon dioxide emissions comprising 99 percent of the estimate.

As noted previously, three plants operate retorts other than oven-type retorts. Thermal recovery at these three plants is conducted between 1,500 and 5,000 hours per year. The amounts of waste processed and the amounts of mercury recovered range from 50 to 500 tpy and from 3 to 12 tpy, respectively. The mercury recovery/control systems operated at the two plants with rotary kiln retorts consist of direct contact cooling, particulate and acid gas scrubbing, condensation, and carbon adsorption. The retort off-gas at both plants is cooled to a temperature of 55° F on average before being routed through two fixed-bed, nonregenerative adsorbers containing sulfur-impregnated carbon media. The mercury recovery/control system at the plant with a single hearth retort employs a direct contact water quench tower, a venturi scrubber, and a caustic packed-tower scrubber, which lower the retort off-gas temperature to an average of 80° F, and a chlorinated brine packed-tower scrubber as the final control device. The following summarizes the emissions data available and our approach to determining MACT for non-oven type units.

At one of the plants with a rotary kiln, the mercury concentration is determined daily at the outlet of the last carbon adsorber bed using a company-developed procedure derived from an OSHA method for determining worker exposures in the workplace. When submitting data obtained using this method, the company cautioned that although the routine sampling with the modified OSHA procedure produces credible information on relative changes in performance, it does not produce accurate information on actual mercury releases. Specifically, we believe the data obtained using this method are biased low. The average measured mercury concentration for this plant is an order of magnitude lower than averages for the other two plants (discussed below), and the minimum measured value is two orders of magnitude lower. It is our conclusion that data from this plant are unsuitable for standard setting, as they greatly understate emissions and thus overstate the performance of the mercury recovery/control system.

At the other plant with a rotary kiln, concentration measurements are made monthly using a method that is a modification of EPA Method 101 for determining mercury emissions from mercury cell chlor-alkali plants. Data were provided for each month in 1998. The measured mercury concentrations range from 1.4 mg/m$^3$ to 6.0 mg/m$^3$, with a mean of 2.8 mg/m$^3$.

Personnel at the plant with the single hearth retort conduct monthly measurements of the mercury concentration in the brine scrubber exhaust gas. The measurement method used is based on an EPA reference method and is very similar to the method used at the second rotary kiln plant discussed above. Data were provided for 1997, 1998, and 1999. The measured mercury concentrations range from 0.2 mg/m$^3$ to 10.8 mg/m$^3$, with a mean and median value of 1.6 and 2.2 mg/m$^3$, respectively.

In establishing the MACT floor and subsequently MACT, we focused on the two plants for which we have credible emissions data. We removed two points determined to be statistical outliers from the 3-year data set at the plant with the single hearth retort and determined there were no statistical outliers in the 1998 data set for the second plant with a rotary kiln. These data were used in the MACT determination for non-oven thermal recovery unit vents.

Although there are fewer than five sources from which to constitute a MACT floor, we opted to take the mean of the data from these two plants as the MACT floor option for existing sources. We averaged the three highest concentration data points for each plant and took the mean of the two plant averages (3.9 mg/dscm and 5.4 mg/dscm) rounded to one significant figure, 5 mg/dscm, as the floor value.

Of the three plants with non-oven type mercury thermal recovery unit vents, we project that only one plant would need to upgrade existing controls to meet the 5 mg/dscm floor level, and that this could be accomplished by replacing the carbon in its existing carbon adsorbers more frequently than current practice. There would be no capital costs as more frequent carbon media replacement is only a recurring annual cost estimated at $1,200 per year. Mercury emission reductions against actual baseline emissions would total about 2 kg/yr (5 lbs/yr) for the three plants. The associated annual cost per unit of mercury emission reduction would be approximately $240 per pound. With the assumption of more frequent carbon media replacement, there are no associated secondary air pollution, water pollution, or energy impacts. Estimated solid waste impacts due to increased use of carbon adsorption total 0.09 Mg/yr (0.1 tpy).

We then examined beyond-the-floor MACT options. A direct comparison of the data for the two plants providing credible data indicates that the emission levels recorded at one plant (with mean and median values of 1.2 and 0.7 mg/m$^3$, respectively) are about half that recorded at the other plant (with mean and median values of 2.8 and 1.9 mg/m$^3$, respectively). Further, the highest monthly values recorded were 4.3 mg/m$^3$ and 5.9 mg/m$^3$, respectively. We used the data from the lower-emitting plant to establish a beyond-the-floor option. We averaged the three highest values for this plant (not including the values determined to be outliers) for a beyond-the-floor value of 4 mg/dscm.

Due to the very low volumetric flow rates associated with non-oven type mercury thermal recovery unit exhaust streams (typically less than about 2,000 scfm), we believe that the retrofit of control equipment to reduce mercury emissions is both practical and reasonable. For purposes of estimating impacts, we assumed that one plant would need to upgrade its controls, and that it would do this by further increasing its carbon replacement frequency to meet the 4 mg/dscm level. We assume that the remaining plant would not need to upgrade its existing controls to meet the beyond-the-floor level.

In evaluating regulatory options that are more stringent than the floor, we must consider the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements. The beyond-the-floor option would result in an additional 6 kg/yr (13 lbs/yr) of total mercury emission reductions for the three plants (a 10 percent incremental reduction from the floor option). The incremental annual costs are estimated to total around $5,800 per year. The incremental cost per unit of incremental mercury emission reduction is approximately $450 per pound. With the assumption of more frequent carbon media replacement, there are no associated incremental secondary air pollution, water pollution, or energy impacts. The estimated solid waste impacts total an additional 0.4 Mg/yr (0.5 tpy) of mercury-containing spent carbon.

We believe the additional emission reductions that would be achieved by the beyond-the-floor option are warranted. Further, we believe that the incremental costs of achieving such emission reductions, as well as incremental non-air environmental impacts and energy requirements, are reasonable for mercury. Therefore, we selected 4 mg/dscm as MACT for non-oven type mercury thermal recovery unit vents.

In summary, the proposed emission limits are 23 mg/dscm and 4 mg/dscm for oven type mercury thermal recovery unit vents and non-oven type mercury thermal recovery unit vents, respectively. We believe that both proposed limits are representative of the best-performing systems for each retort type based on available data and as such, each limit clearly meets our statutory safeguard regarding the minimum level of control allowed under the statute.

*E. How did We Determine the Basis and Level of the Proposed Standards for New Sources?*

Section 112(d)(3) of the CAA specifies that standards for new sources cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator.

In the case of mercury cell chlor-alkali production facilities, of the 43 chlor-alkali production facilities in operation in the U.S. at the time of this analysis, 32 use cell technologies other than mercury (23 use diaphragm cells and 9 use membrane cells). As explained further below, we consider these chlor-alkali facilities using non-mercury cell technology to be ''similar sources,'' and, as such, a suitable basis for the standard for new source MACT. Such a standard would effectively eliminate mercury emissions from new source chlor-alkali production facilities.

The impact of such a standard would be negligible given that in terms of cost, economic and air and non-air environmental impacts, we don't believe that a new mercury cell chlor-alkali plant would otherwise ever be constructed. No new mercury cell chlor-alkali plant has been constructed in the U.S. in over 30 years, and we have no indication of any plans for future construction. In addition, we believe that any future demand for new or replacement chlor-alkali production capacity would be met easily through the construction of new production facilities that do not use or emit mercury. Consequently, we believe it is appropriate to consider non-mercury cell facilities as similar sources and the prohibition of new mercury cell chlor-alkali production facilities achievable. Accordingly, we are proposing a complete prohibition on mercury emissions for new source MACT for mercury cell chlor-alkali production facilities. We are not proposing any initial and continuous compliance requirements related to this emission limit as we believe they are unnecessary since the emissions prohibition effectively precludes the new construction or reconstruction of a mercury cell chlor-alkali production facility.

As highlighted in the previous discussion on the selection of standards for existing sources, the emission levels achieved by the best-controlled sources were selected as the proposed existing source MACT levels for mercury recovery facilities. These best levels of control for point sources are 23 mg/dscm of exhaust from an oven type mercury thermal recovery unit vent, and 4 mg/dscm of exhaust from a non-oven type mercury thermal recovery unit vent. For fugitive emission sources, the best level of control identified is the work practice standard represented in

the beyond-the-floor option selected for proposal for existing sources.

In the case of mercury recovery facilities, we know of three plants that employ low emitting mercury recovery processes. These processes include chemical mercury recovery used at two plants and recovery in a batch purification still used at a third plant. Unlike thermal recovery units which are capable of treating a variety of waste types, the chemical recovery and the purification still processes have limited application. Both are suitable to treating only certain waste types, K106 wastes for the former and end-box residues for the latter. Plants using these nonthermal recovery processes transfer their remaining wastes off-site for treatment, which typically involves thermal recovery. Given this limitation, we do not believe that these nonthermal recovery processes qualify as a suitable basis for new source MACT. Consequently, for new source MACT for mercury recovery facilities, we are proposing numerical mercury emission limits consistent with that achieved by the best similar sources, 23 mg/dscm for oven type thermal recovery unit vent and 4 mg/dscm for non-oven type thermal recovery units.

*F. How did We Select the Testing and Initial Compliance Requirements?*

We selected the proposed testing and initial and continuous compliance requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). These requirements were adopted for mercury cell chlor-alkali plants to be consistent with other part 63 NESHAP. These requirements were chosen to ensure that we obtain or have access to sufficient information to determine whether an affected source is complying with the standards specified in the proposed rule.

The proposed rule would require initial and periodic compliance tests for determining compliance with the emission limits for by-product hydrogen streams and end-box ventilation system vents, and the emission limits for oven type and non-oven type mercury thermal recovery unit vents. The proposed rule would require the use of published EPA methods for measuring total mercury. Specifically, the proposed rule would allow the use of Method 101 or 101A (of appendix A of 40 CFR part 61) for end-box ventilation system vents and mercury thermal recovery unit vents and Method 102 for by-product hydrogen streams. Methods 101 and 102 were developed in the 1970's specifically for use at mercury cell chlor-alkali plants. Although Method 101A was developed to measure mercury emissions from sewage sludge incinerators, it is appropriate for use for end-box ventilation system vents and mercury thermal recovery unit vents.

The NESHAP General Provisions specify at § 63.7(e)(3) that each test consist of three separate test runs. The proposed rule would adopt this requirement. Further, the proposed rule would require that each test run be at least 2 hours long. This is the duration specified in Method 101 and referenced in Methods 101A and 102.

In the stack test data that were provided to us, there were numerous incidents where the results were reported as ''less than'' a certain level. We believe that this is primarily related to the sensitivity of the analytical instrument (that is, the absorption spectrophotometer) used to measure the amount of mercury in the collected sample. Method 101 states that the absorption spectrometer must be the ''Perkin Elmer 303, or equivalent, containing a hollow-cathode mercury lamp and the optical cell * * * .'' It is our understanding that this particular model is no longer commercially available, and that newer, more sensitive absorption spectrophotometers are available. We considered whether it was necessary to specify, either in the proposed rule or through a modification to the test method, that Perkin Elmer 303 did not have to be used. We concluded that the ''or equivalent'' language contained in Method 101 allows for the use of newer, more sensitive instruments and as a result, adding rule language or amending Method 101 was unnecessary.

Even with the 2-hour minimum test run period and the clarification that newer, more sensitive absorption spectrophotometers are allowed to be used, we remain concerned that quantifiable results of mercury emissions may not be obtained during performance tests. As a result, the proposed rule includes a requirement that the amount of mercury collected during each test run be at least 2 times the limit of detection for the analytical method used. This will assure that a reliably quantifiable amount of mercury is collected for each test run.

The emission limits for by-product hydrogen streams and end-box ventilation system vents are in the form of mass of mercury emissions per mass of chlorine produced. Therefore, criteria for the measurement of chlorine production during performance testing are also necessary. It is our understanding that instrumentation used to measure actual chlorine production, as well as the location and frequency of measurement, varies from plant to plant. Types of instruments used include rail car weigh scales, weigh cells on liquid storage tanks, and gas flow meters. Calibration procedures for these instruments are plant-specific and dependent on the involvement of third parties concerned with quantifying actual chlorine production for billing and other purposes. Moreover, at a given plant, an accurate value for actual chlorine production based on these measurements is generally obtained at the end of an operating month when mass balance calculations are performed to verify measurements.

For a compliance test run on the order of several hours, we, therefore, needed to rely on some other reasonable indicator of chlorine production. All mercury cell chlor-alkali plants measure the electric current through on-line mercury cells, also known as the cell line load or cell line current load, with a digital monitor that provides readings continuously. This cell line current load measurement can be used in conjunction with a theoretical chlorine production rate factor to obtain the instantaneous chlorine production rate. The theoretical factor is based on a statement of Faraday's Law that 96,487 Coulombs (Faraday's constant, where a Coulomb is a fundamental unit of electrical charge) are required to produce one gram equivalent weight of the electrochemical reaction product (chlorine). It is our understanding that chlorine production calculated in this manner would differ from the actual quantity produced at the plant by about 3 to 7 percent due to electrical conversion efficiency and reaction efficiency determined by equipment characteristics and operating conditions. We consider this degree of variability acceptable.

We, therefore, stipulate in the proposed rule that the cell line current load be continuously measured during a performance test run and that measurements be recorded at least every 15 minutes over the duration of the test run. We further specify equations for computing the average cell line current load and for calculating the quantity of chlorine produced over the test run.

In addition to the requirement to conduct performance tests to demonstrate compliance with the emission limits, owners or operators would be required to establish a mercury concentration operating limit for each vent as part of the initial compliance demonstration. Then, at least twice a permit term (at mid-term and renewal), they would conduct subsequent compliance demonstrations and at the same time reestablish

operating limit values. The proposed rule would require that these mercury concentration operating limits be determined directly from the concentration monitoring data collected concurrent with the initial performance test.

For the work practice standards, initial compliance is demonstrated by documenting and certifying that the standards are being met or will be met by submitting a washdown plan and by certifying that the plan is being followed or will be followed. This approach assures initial compliance by requiring the owner or operator to submit a certified statement in the Notification of Compliance Status report.

*G. How Did We Select the Continuous Compliance Requirements?*

For each of the proposed emission limits, which consist of the limits on mercury emissions from hydrogen streams, end-box ventilation systems, and thermal recovery units, we considered the feasibility and suitability of continuous emission monitors (CEM) as the means of demonstrating continuous compliance. While we were unable to identify any mercury cell chlor-alkali plant currently using a mercury CEM on any vent, we did determine that there are mercury CEM commercially available that may be suitable for use at mercury cell chlor-alkali plants. To date, most of the development work on mercury CEM has focused on the development of monitors for the continuous measurement of mercury air emissions from either coal-fired utility boilers or hazardous waste incinerators. Most mercury CEM are extractive monitors which extract a continuous or nearly continuous sample of gas, then transfer the gas to an instrument for spectroscopic analysis by way of either cold vapor atomic absorption or cold vapor atomic fluorescence.

These cold vapor techniques have similar limitations. Both detect mercury vapor only in its elemental form. To measure other forms of mercury vapor (*e.g.,* oxidized/inorganic/divalent mercury, such as mercuric chloride), the sampled gases must first pass through a converter which reduces any nonelemental mercury vapor present to the elemental form prior to analysis. None of the available monitors based on the cold vapor techniques are capable of measuring particulate or nonvapor phase mercury since the sample gas must be filtered to remove any particulate matter present prior to conversion and analysis. This would include elemental mercury condensed on particulate matter and any mercury compounds in particulate form. Monitors that are capable of measuring total vapor phase mercury range in price from $50,000 to $80,000. Simpler monitors that measure only elemental mercury vapor average about $10,000.

For the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, which are expressed in grams of mercury per megagram of chlorine produced, we evaluated two options: continuous compliance against the proposed gram per megagram standards, and continuous compliance against plant and vent specific operating limits expressed in terms of concentration. In addition to monitoring mercury concentration, the first option would require continuous monitoring of volumetric flow rate and a continuous, or at least periodic, measurement of chlorine production. The operating limits for the second option would be set at the time that initial compliance with the emission limit is demonstrated.

Since the predominant form of liquid mercury in mercury cells and other production facilities is elemental, we assumed that the mercury contained in the vent gas from either by-product hydrogen streams or end-box ventilation system vents is similarly largely in the elemental vapor form. Thus, the simpler, less expensive monitors for measuring elemental mercury vapor only should be suitable.

We concluded that monitoring only elemental mercury concentration provides a simpler, less expensive, and more reliable alternative to demonstrating continuous compliance than monitoring against the gram per megagram standards. As a result, we are proposing that continuous compliance for by-product hydrogen streams and end-box ventilation system vents be demonstrated through the continuous monitoring of elemental mercury concentration in the vent exhaust.

To the best of our knowledge, mercury contained in the exhaust gas of thermal recovery units, both oven and non-oven types, should exist as both vapor (elemental or nonelemental) and fine particulate matter. As highlighted above, none of the currently available monitors are capable of measuring particulate mercury. Consequently, continuous monitoring to demonstrate continuous compliance with the total mercury concentration limit would not be possible.

Similar to the by-product hydrogen streams and end-box ventilation system vents, we also considered the feasibility and usefulness of monitoring vapor phase mercury, specifically the elemental form. We concluded that the continuous monitoring of elemental mercury vapor as a surrogate to the total mercury emission limit using the simpler of the available monitors provides an acceptable and cost-effective means of tracking relative changes in emissions and control device performance. Therefore, as proposed for by-product hydrogen streams and end-box ventilation system vents, we are proposing for oven type and non-oven type mercury thermal recovery units that continuous compliance be demonstrated through continuous monitoring of elemental mercury concentration against an applicable concentration operating limit established as part of the initial compliance demonstration.

Another important aspect of continuous compliance is the time period over which continuous compliance is determined. One option would be an instantaneous period, where any measurement outside of the established range (that is, above the established concentration limit) would constitute a deviation. More commonly, the average of the monitoring data over a specified time period, for example an hour, is compared to the established limit.

While mercury cell chlor-alkali production facilities are generally operated continuously, there are process fluctuations that impact emissions. Mercury recovery facilities are operated intermittently, depending on the amount of mercury-containing waste to be treated and other factors. We believe that an emissions averaging period is necessary for both situations. We considered a daily averaging period and concluded that daily averaging would accommodate process variations while precluding avoidable periods of high emissions. Therefore, we are proposing a daily averaging period for demonstrating continuous compliance.

We also considered how to address monitoring data collected during startups, shutdowns, and malfunctions. We believe that it is important to continue to monitor the outlet mercury concentration during startups, shutdowns, and malfunctions to minimize emissions and to demonstrate that the plant's startup, shutdown, and malfunction plan is being followed. However, as provided for in the NESHAP General Provisions (40 CFR part 63, subpart A), we do not believe that the data collected during these periods should be used in calculating the daily average values. The emission limits were developed based on normal operation, and the performance tests will be conducted during representative operating conditions. Therefore, the

inclusion of monitoring data collected during startups, shutdowns, and malfunctions into the daily averages would be inconsistent with the data used to develop the emission limits and, subsequently, the mercury concentration operating limits.

While we did not identify situations in the mercury cell chlor-alkali industry where elemental mercury concentration is being continuously monitored, we believe that continuous elemental mercury concentration monitoring devices are available for use at mercury cell chlor-alkali plants. We recognize that the transfer of this monitoring technology to applications at mercury cell chlor-alkali plants will introduce uncertainties that can only be addressed through actual field demonstration. We are specifically requesting comment on the technical feasibility of using continuous elemental mercury concentration monitors for indicating relative changes in control system performance. We are also requesting comment on the proposed specifications for these devices.

Continuous compliance with the proposed work practice standards for the fugitive emission sources would be demonstrated by maintaining the required records documenting conformance with the standards and by maintaining the required records showing that the washdown plan was followed.

*H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?*

We selected the proposed notification, recordkeeping, and reporting requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). As with the proposed initial and continuous compliance requirements, these requirements were adapted for mercury cell chlor-alkali plants to be consistent with other part 63 national emission standards.

## IV. Summary of Environmental, Energy, Cost, and Economic Impacts

*A. What Are the Air Emission Impacts?*

As discussed previously, the level of mercury emissions allowed by the Mercury NESHAP is 2,300 grams per day. If one assumes that all twelve plants in the source category emit mercury at this level and that each operates 365 days a year, total annual potential-to-emit baseline emissions would be 10,074 kg/yr (22,200 lb/yr). Annual potential-to-emit baseline emissions for fugitive emission sources would be 5,694 kg/yr (12,544 lb/yr), based on 1,300 grams per day assumed for each plant's cell room ventilation system when the eighteen design, maintenance, and housekeeping practices referenced in the Mercury NESHAP are followed. Annual potential-to-emit baseline emissions for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents would be 4,380 kg/yr (9,656 lb/yr), based on the remaining 1,000 grams per day allowed. We estimate that the proposed rule would reduce industrywide mercury emissions for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents from this annual potential-to-emit baseline to around 245 kg/yr (545 lb/yr), which is equivalent to about 94 percent reduction.

While the level of mercury emissions allowed by the Mercury NESHAP defines the potential-to-emit baseline, the sum of annual mercury emissions releases from by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery vents, as estimated by mercury cell chlor-alkali plants, defines an annual actual baseline for vents of about 935 kg/yr (2,060 lb/yr). We estimate that the proposed rule would reduce industrywide mercury emissions for vents from this annual actual baseline to around 245 kg/yr (545 lb/yr), which is equivalent to about 74 percent reduction.

We estimate that secondary air pollution emissions would result from the production of electricity required to operate new control devices and new monitoring equipment assumed for plant vents. Assuming electricity production as based entirely on coal combustion for a worst-case scenario, we estimated plant-specific impacts for carbon dioxide, sulfur dioxide, nitrogen oxides, particulate matter, and carbon monoxide emissions. The total estimated secondary air impacts of the proposed requirements for point sources at the twelve mercury cell chlor-alkali plants is around 554 Mg/yr (611 tpy) for all pollutants combined, with carbon dioxide emissions comprising 99 percent of the estimate.

We are unable to quantify the primary air emission impacts associated with the proposed work practice standards, so no mercury emission reduction is assumed for fugitive emission sources. However, we believe strongly that the new and more explicit requirements contained in the proposed standards will in fact result in mercury emission reductions beyond baseline levels. Relative to secondary impacts, we expect that secondary air pollution emissions, principally carbon dioxide, would result from the production of electricity required to operate new monitoring equipment assumed for plant cell rooms. We estimate the secondary air impacts of the proposed rule for fugitive sources to be 17 Mg/yr (19 tpy).

*B. What Are the Non-Air Health, Environmental, and Energy Impacts?*

We do not expect that there will be any significant adverse non-air health impacts associated with the proposed standards for mercury-cell chlor-alkali plants.

We estimate that an increase in the amount of mercury-containing waters would result from the heightened use of packed tower scrubbing assumed for several plant vents. The total estimated water pollution impact of the proposed rule for point sources is about 1.8 million liters (466 thousand gallons) of additional wastewater per year. We estimate that an increase in the amount of mercury-containing solid wastes would result with the heightened use of carbon adsorption assumed for several plant vents. The total estimated solid waste impact of the proposed rule for point sources is about 34 Mg/yr (38 tpy) of additional mercury-containing spent carbon.

We are unable to quantify non-air environmental impacts associated with the proposed work practice standards, so no wastewater and solid waste impacts are assumed for fugitive emission sources.

We estimate that the proposed requirements for point sources would result in increased energy consumption, specifically additional fan power in conveying gas streams through new carbon adsorbers and new packed scrubbers assumed for certain plant vents and additional power consumed by new vent monitoring equipment. The total estimated energy impacts of the proposed requirements for point sources is about 1,724 thousand kW-hr/yr.

We estimate that the proposed requirements for fugitive sources would result in increased energy consumption required to operate new monitoring equipment assumed for plant cell rooms. The total estimated energy impacts of the proposed requirements for fugitive sources is about 53 thousand kW-hr/yr.

*C. What Are the Cost and Economic Impacts?*

For projecting cost impacts of the proposed rule on the mercury cell chlor-alkali industry, we estimate that all twelve plants would incur costs to meet the proposed work practice standards and the proposed monitoring,

recordkeeping, and reporting requirements. We estimate that ten plants would incur costs to meet the proposed emission limits for by-product hydrogen streams and end-box ventilation system vents, and three plants would incur costs to meet the proposed emission limits for mercury thermal recovery units. The total estimated capital cost of the proposed rule for the twelve mercury cell chlor-alkali plants is around $2.5 million, and the total estimated annual cost is about $2.2 million per year. Plant-specific annual costs in our estimate range from about $91,000 for the least-impacted plant to about $375,000 for the worst-impacted plant.

The purpose of the economic impact analysis is to estimate the market response of chlor-alkali production facilities to the proposed standards and to determine the economic effects that may result due to the proposed NESHAP. Chlor-alkali production jointly creates both chlorine and caustic, usually sodium hydroxide, in fixed proportions. Being joint commodities, the economic analysis considers the impacts of the proposed NESHAP on both the chlorine and sodium hydroxide markets.

The chlorine production source category contains 43 facilities, but only twelve facilities using mercury cells are directly affected by the proposed standards. These twelve facilities are located at twelve plants that are owned by eight companies. Although one of these twelve plants permanently closed due to reasons unrelated to this rulemaking, the following impacts are based on the twelve plants in operation at the time the analysis was conducted.

Chlor-alkali production in mercury cells leads to potential mercury emissions from hydrogen streams, end-box ventilation system vents, mercury thermal recovery units, and fugitive emission sources. The compliance costs for the proposed standards, therefore, relate to the purchase, installation, operation, and maintenance of pollution control equipment at the point sources, as well as the labor costs and overheads associated with observing work practices addressing fugitive emissions. The estimated total annual costs for the proposed NESHAP are $1.8 million. This cost estimate represents about 0.38 percent of the 1997 chlorine sales revenue for the twelve mercury cell chlor-alkali production facilities. Furthermore, the total annual costs represent only 0.01 percent of the revenues of owning the directly affected mercury cell chlor-alkali plants.

The economic analysis predicts minimal changes in industry outputs and the market prices of chlorine and sodium hydroxide as a result of the estimated control costs. The new market equilibrium quantities of chlorine and sodium hydroxide decrease by less than 0.1 percent. Equilibrium prices of chlorine and sodium hydroxide both rise by less than 0.1 percent due to the proposed standards. Based on these estimates, we conclude that the proposed standards are not likely to have a significant economic impact on the chlorine production industry as a whole or on secondary markets such as the labor market and foreign trade.

We perform an economic analysis to determine facility- and company-specific impacts. These economic impacts are measured by calculating the ratio of the estimated annualized compliance costs of emissions control for each entity to its revenues (*i.e.*, cost-to-sales ratio). After the cost-to-sales ratio is calculated for each entity, it is then multiplied by 100 to convert the ratio into percentages. Actual revenues at the facility level are not available, therefore, estimated facility revenues received from the sale of chlorine are used. Some of these facilities also produce caustic as potassium hydroxide, but the revenues from the sale of this product are not estimated. The twelve mercury cell chlor-alkali plants have positive cost-to-sales ratios. The ratio of costs to estimated chlorine sales revenue for these facilities range from a low of 0.16 percent to a high of 1.00 percent. The average cost-to-sales ratio for the twelve mercury process chlorine production facilities is 0.46 percent. More detailed economic analysis predicted minimal changes in chlorine production at each facility. Thus, overall, the economic impact of the proposed standards is minimal for the facilities producing chlorine.

The share of compliance costs to company sales are calculated to determine company level impacts. Since eight companies own the twelve affected facilities, all eight firms face positive compliance costs from the proposed NESHAP. The ratio of costs to estimated revenues range from a low of less than 0.01 percent to a high of 0.22 percent, and the average ratio of costs to company revenues is 0.06 percent. Again, more detailed economic analysis at the company level predicts little change in company output or revenues. So, at the company level, the proposed standards are not anticipated to have a significant economic impact on companies that own and operate the chlorine production facilities.

No facility or company is expected to close as a result of the proposed standards, and the economic impacts to consumers are anticipated to be minimal. The generally small scale of the impacts suggests that there will also be no significant impacts on markets for the products made using chlorine or sodium hydroxide. For more information, consult the economic impact analysis report entitled ''Economic Impact Analysis for the Proposed Mercury Cell Chlor-Alkali Production NESHAP,'' which is available in the docket to this rulemaking.

## V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of the proposed standards from all interested parties. You need to submit appropriate supporting data and analyses with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2000–32 (see **ADDRESSES**).

## VI. Administrative Requirements

### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to 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 OMB determines 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 this 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 the 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 rules that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under section 6 of Executive Order 13132, the EPA may not issue a rule 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 the EPA consults with State and local officials early in the process of developing the rule. The EPA also may not issue a rule that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the rule.

If the EPA complies by consulting, Executive Order 13132 requires the 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 the EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the rule, and a statement of the extent to which the concerns of State and local officials have been met. Also, when the EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from the Agency's Federalism Official stating that the EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule is mandated by statute and does not impose requirements on States; however, States will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. States will collect permit fees that will be used to offset the resource burden of implementing the rule. 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, the EPA did consult with State and local officials in developing the proposed rule.

*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 the 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 does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. 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*

The Executive Order 13045 applies to any rule (1) that OMB determines is ''economically significant,'' as defined under Executive Order 12866, and (2) the EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects relevant to children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

As with most rulemakings developed under section 112(d) of the CAA, today's proposal is based on MACT. Risks to public health and impacts on the environment are not typically considered in the development of emissions standards under section 112(d). Rather, these risks and impacts are considered later (within 8 years after promulgation of the MACT rule) under the residual risk program as required by section 112(f) of the CAA. While we do not believe the proposed rule to be ''economically significant,'' as defined under Executive Order 12866, we do believe that it addresses environmental health or safety risks that may have a disproportionate effect on children.

Mercury has been identified as a priority pollutant under EPA's National Agenda to Protect Children's Health from Environmental Threats and by the Federal Children's Health Protection Advisory Committee (CHPAC). The CHPAC was formed to advise, consult with, and make recommendations to the EPA on issues associated with the development of regulations to address the prevention of adverse health effects to children. One of the CHPAC's primary missions was to identify five existing EPA regulations, which if reevaluated, could lead to better protection for children. The CHPAC recommended the Mercury NESHAP for chlor-alkali plants as one of the regulations to be reevaluated considering impacts on children. We adopted the CHPAC recommendation. Therefore, we have considered the impacts on children in the development of the proposed rule. A qualitative assessment of the potential impacts on children's health due to mercury emissions from chlor-alkali plants is presented here.

1. What Is Mercury and How Is It Transported in the Environment?

Mercury is a naturally occurring element found in air, water and soil. Mercury is found in various inorganic and organic forms in the environment. The three primary forms of interest for this assessment are: elemental mercury, inorganic or divalent mercury, and methylmercury. Based on available information, it appears that most of the mercury emitted from chlor-alkali plants is in the elemental form, and a small percentage is in the divalent form. The air transport and deposition patterns of mercury emissions depend on various factors including the chemical form of mercury emitted, stack height, characteristics of the area surrounding the site, topography, and

meteorology. As it moves through environmental media (e.g., air, sediments, water), mercury undergoes complex transformations.

Mercury is highly toxic, persistent, and bioaccumulates in the food chain. The mercury emitted to the air from various types of sources (usually in elemental or divalent forms) transports through the atmosphere and eventually deposits onto land or water bodies. The deposition can occur locally near the source or at long distances (e.g., hundreds or thousands of miles away). Once deposited, the chemical form of mercury can change (through a methylation process) into methylmercury (MeHg), which biomagnifies in the aquatic food chain. As reported in the 1997 EPA Mercury Study, nearly all of the mercury that accumulates in fish is MeHg. Generally, fish consumption dominates the pathway for human and wildlife exposure to mercury. As of July 2000, 40 States have issued fish advisories for mercury. Thirteen of these States have issued advisories for all water bodies in their State, and the other 27 States have issued advisories for over 1,900 specific water bodies.

2. What Are the Health Effects of the Various Mercury Compounds?

The health effects of the various mercury compounds were discussed earlier. Methylmercury is discussed further in this section because it is the primary form for which the general U.S. population is exposed.

Neurotoxicity is the health effect of greatest concern with MeHg exposure. The developing fetus is considered most sensitive to the effects from MeHg. Therefore, women of child-bearing age are the population of greatest concern. Some offspring born of women exposed to relatively high doses of MeHg during pregnancy exhibited a variety of developmental neurological abnormalities, including delayed onset of walking and talking, cerebral palsy, and reduced neurological test scores. Far lower *in utero* exposures have resulted in delays and deficits in learning abilities. It is also possible that children exposed after birth are also potentially more sensitive to the toxic effects of MeHg than adults because their nervous systems are still developing.

Extrapolating from high-dose exposure incidents, we derived a reference dose (RfD) for MeHg of 0.1 microgram per kilogram body weight per day (0.1 ug/kg/day) based on developmental neurological effects observed in children born to mothers who were exposed to MeHg during pregnancy. The RfD is an estimated daily ingestion level anticipated to be without adverse effect to persons, including sensitive subpopulations, over a lifetime. At the RfD or below, exposures are expected to be safe. The risks following exposures above the RfD are uncertain, but the potential for adverse health effects increases as exposures to MeHg increase. The National Academy of Sciences (NAS), in its July 2000 report ''Toxicological Effects of Methylmercury'' (NAS, 2000), affirmed our assessment of MeHg toxicity and the level of our RfD.

3. What Are the Human Exposures to MeHg and the Potential Health Impacts?

The results of dietary surveys indicate that most of the U.S. population consumes fish and is exposed to some MeHg as a result. The typical fish consumer (who eats moderate amounts of fish from restaurants and grocery stores) in the U.S. is not likely to be at risk of consuming harmful levels of MeHg; however, people who eat more fish than is typical or eat fish that are more contaminated than typical fish may be at risk. Furthermore, certain groups, such as pregnant women and their fetuses, young children, and subsistence fish-eating populations may be at particular risk.

Based on an exposure assessment presented in the 1997 EPA Mercury Study, we estimate that about 7 percent of women of childbearing age (i.e., between the ages of 15 and 44 years) in the U.S. are exposed to MeHg at levels exceeding the RfD, and about 1 percent of women have MeHg exposures 3 to 4 times this level. Moreover, the NAS estimated in their recent report that over 60,000 children born each year in the U.S. are at risk for adverse neurological effects due to *in utero* exposure to MeHg (NAS, 2000). These exposure estimates are also supported by a recent study by the U.S. Center's for Disease Control and Prevention (CDC) on mercury levels in women of childbearing age as measured in hair and blood. The results of that study (which were published in the CDC's Morbidity and Mortality Weekly Report on March 2, 2001) show that about 10 percent of women of childbearing age in the U.S. are exposed to mercury at levels above the EPA's RfD.

Methylmercury exposure rates on a per body weight basis among children are predicted to be higher than for adults. The EPA estimates that about 25 percent of children are exposed to MeHg through consumption of fish at levels exceeding the RfD, and 5 percent of children have MeHg exposures 2 to 3 times this level (EPA, 1997).

Most of the mercury currently entering U.S. water bodies and contaminating fish is the result of air emissions which, following atmospheric transport, deposit onto watersheds or directly to water bodies. We have concluded that there is a plausible link between emissions of mercury from anthropogenic sources (including chlor-alkali plants) and MeHg in fish. Waste water discharges also contribute to environmental loadings, but to a much lesser degree than air emissions. Based on modeling conducted for the 1997 EPA Mercury Study, we estimate that roughly 60 percent of the total mercury deposited in the U.S. comes from U.S. anthropogenic air emission sources; this percentage is estimated to be even higher in certain regions (e.g., Northeast U.S.). The remainder of the deposited mercury comes from natural emission sources, re-emissions of historic global anthropogenic mercury releases, and from current anthropogenic sources outside the U.S.

We predict that increased mercury deposition will lead to increased levels of MeHg in fish, and that increased levels in fish will lead to toxicity in fish-eating birds and mammals, including humans. The NAS, in its July 2000 report, stated that ''because of the beneficial effects of fish consumption, the long-term goal needs to be a reduction in the concentrations of methylmercury in fish.'' We agree with this goal and believe that reducing emissions of mercury from various anthropogenic sources is an important step toward achieving this goal.

4. What Is the Effect of Mercury Emissions From Chlor-Alkali Plants?

The majority of the mercury emitted from chlor-alkali plants is in the elemental form, with a much smaller percent in the divalent form. As stated above, fish consumption generally dominates the pathway for human and wildlife exposure to mercury. However, for people living close to chlor-alkali plants, other exposure pathways may be significant. Appreciable exposures to elemental mercury and divalent mercury may occur through inhalation. Likewise, exposures to divalent mercury and MeHg may occur through ingestion of contaminated soils or plants. Based on modeling conducted for the 1997 EPA Mercury Study, we estimate that mercury levels in multiple environmental media (air, soil, water, plants, and fish) near a typical chlor-alkali plant could be elevated above background levels. We also estimate that exposures for people living near these facilities could be higher than for people living further away. The extent of

exposures for people living near these plants will depend on various factors, including local terrain and meteorology, personal life style, activity patterns, and consumption patterns.

We admit there are uncertainties regarding the extent of the risks due to mercury emissions from specific anthropogenic cources. For example, there is no quantification of how much of the MeHg in fish consumed by the U.S. population is due to emissions from chlor-alkali plants relative to other mercury sources *e.g.,* natural and other anthropogenic sources__. Nonetheless, chlor-alkali plants re significant sources of mercury emissions which contribute to the environmental loadings and to the exposures for humans.

5. What Are the Effects of Aggregate Exposures?

People living lcose to chlor-alkali plants could be exposed to elemental or divalent at elevated levels through inhalation f contaminated air and exposed to some divalent mercury and MeHg through ingestion of home grown plants. If these same people consumed fish from local ponds, they would be exposed to additional quantities of MeHg. These exposure pathways could be additional to those exposures more commonly experienced in the general U.S. populations such as through the consumption of various commercial fish (*e.g.,* tuna, pollack, swordfish) and from dental fillings containing mercury amalgams. These exposures are also, because of mercury's half-life in the human body, additional to some portion of a person's previous mercury exposures. For people living close to chlor-alkali plants, this combination f sources may lead to elevated mercury exposures and body burdens. The degree or extent to which this occurs will largely depend on lifestyles, consumption patterns and other characteristics of this population.

6. What are the Exposures and Risks For Children?

Exposures for children could be greater than exposures for adults because children consume more food and breathe more air per body weight than adults. Children are also potentially more sensitive to the toxic effects of mercury than adults because their nervous systems are still developing. In addition, exposures to MdHg for women who are pregnant, or who may become pregnant, are of particular concern because of potential effects on the developing fetus.

7. How Do Chlor-Alkali Plant Emissions Contribute to Global Mercury levels?

Mercury is a globa pollutant. Emissions, expecially those in the elemental form, can transport very long distances and become part of the global pool. In addition to their potential contributions to mercury exposures locally, chlor-alkali plants are one of the many sources contributing to the global pool and to overall mercury levels in the environment.

8. How Did the EPA Consider Impacts on Children's Health in the Development of Today's Proposed Rule?

Partly due to our concerns for children's health protection, we have strived to develop the proposed rule such that it will result in the greatest emissions reductions that are, consistent with section 112(d) of the CAA, currently technically and economically feasible. Today's proposed rule is based on the best available control technologies and stringent management practices. The emissions reductions achieved through the proposed rule will help reduce the mercury exposures to humans, including children.

*E. 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, the 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 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 the 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 the 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 as to why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that 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 of the proposed rule for any year has been estimated to be less than about $2.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the 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.

Because the proposed rule does not include a Federal mandate and is estimated to result in expenditures less than $100 million in any 1 year by State, local, and Tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments will not be significantly or uniquely affected by the proposed rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

*F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

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

small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business with less than 1,000 employees, (according to the Small Business Administration definition of a small business in SIC 2812); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses within the chlorine manufacturing industry. Based on definition of a small entity explained above, we identified three of the eight companies that own mercury cell chlor-alkali plants as small. Although small businesses represent 30 percent of the companies within the source category, they are expected to incur only 18 percent of the total industry annual compliance costs. There are no companies with compliance costs equal to or greater than 1 percent of their sales. No firms are expected to close rather than incur the costs of compliance with the proposed rule. Furthermore, firms are not projected to shut down their facilities due to the proposed rule.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligation under the CAA.

In summary, this analysis supports today's certification under the RFA because no firms experience a significant impact due to the proposed rule. For more information, consult the docket for the proposed rule.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA for mercury cell chlor-alkali plants (ICR No. 2046.01), and a copy may be obtained from Sandy Farmer by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded 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 the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule contains monitoring, inspection, recordkeeping, and reporting requirements. The monitoring requirements are associated with the use of control devices to observe operating limits for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents. The inspection requirements are associated with the observation of work practice standards for cell rooms, hydrogen systems, caustic systems, and the storage of mercury-containing wastes. The recordkeeping and reporting requirements are the means of complying with emission limitations and work practice standards in the proposed rule.

The respondent universe consists of twelve existing mercury cell chlor-alkali plants in the U.S. which would need to comply with requirements within 2 years of the effective date of the subpart. The annual respondent monitoring, inspection, recordkeeping, and reporting burden for this collection of information (averaged over the first 3 years after the effective date of the subpart) is estimated to total about 14,000 labor hours at a total annual cost of about $630,000. This estimate includes rule review and planning; initial notification (one-time) to the EPA; one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports if procedures in the plan were followed or immediate reporting if they were not followed; one-time preparation of a site-specific monitoring plan addressing performance and equipment specifications as well as procedures for performance evaluation, ongoing operation and maintenance, ongoing data quality assurance, and ongoing recordkeeping and reporting for continuous mercury vapor monitors for vents; acquisition and installation of vent monitors; performance testing for each vent (one time in the 3 year period), including notification of intent to conduct testing and establishment of vent mercury concentration operating limits; reporting of test results, including one-time preparation of notification of compliance status for vents; one-time preparation of a washdown plan; one-time preparation of notification of compliance status for work practice standards; continuous monitoring of vent outlet elemental mercury concentration and recording of data; recording of information related to the washdown plan; inspections and keeping records related to equipment problems, deficiencies in floors, pillars, and beams, caustic leaks, liquid mercury spills and accumulations, liquid mercury leaks, and hydrogen/mercury vapor leaks; keeping records related to liquid mercury collection; keeping records related to storage of mercury-containing wastes; and preparation of semiannual compliance reports.

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 our rules 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 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 (2822), U.S. EPA (2136), 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 Office for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after July 3, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 2, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposed rule.

*H. 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 the 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 rule involve technical standards. The EPA proposes in the proposed rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 3A, 3B, 4, 5, 101, 101A, and 102. Consistent with the NTTAA, the 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, and 102. The search and review results have been documented and are placed in the docket (No. A–2000–32) for the proposed rule.

This search for emissions monitoring procedures identified 14 voluntary consensus standards and 5 draft standards. The EPA determined that the 14 standards were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not propose to adopt these 14 voluntary consensus standards in the proposed rule. The detailed EPA review comments for these 14 standards are in the docket for the proposed rule (Please see docket No. A–2000–32).

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, ''Part 10 Flue and Exhaust Gas Analyses,'' for EPA Method 3; ASME PTC–38–80 R85 or C00049, ''Determination of the Concentration of Particulate Matter in Gas Streams,'' for EPA Method 5; ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D3464–96, ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' for EPA Method 2; ASTM D3685/D3685M–98, ''Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,'' for EPA Method 5; ASTM D3796–90 (1998), ''Standard Practice for Calibration of Type S Pitot Tubes,'' for EPA Method 2; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' for EPA Methods 3A; ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4; CAN/CSA Z223.1-M1977, ''Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams,'' for EPA Method 5; CAN/CSA Z223.2-M86 (1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Methods 3A; CAN/CSA Z223.26-M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method,'' for EPA Methods 101 and 101A; ISO 9096:1992 (in review 2000), ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A; ISO 10780:1994, ''Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' for EPA Method 2.

Five of the standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; PREN 13211 (1998), ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' for EPA Methods 101, 101A (and mercury portion of EPA Method 29); and ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury'' is a potential alternative for portions of EPA Methods 101A and Method 29 (mercury portion only).

We are not proposing to include these five draft voluntary consensus standards in the proposed rule. The EPA, however, will review the standards when they are final. The review comments for these five standards are in the same docket entry as cited above.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A was used).

Section 63.8232 of the proposed standards lists the EPA testing methods included in the proposed rule. Under § 63.8 of the NESHAP General Provisions, a source may apply to the EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

*I. 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.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air emissions control, Hazardous air pollutants, Reporting and recordkeeping requirements.

Dated: June 17, 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 amended by adding Subpart IIIII to read as follows:

## Subpart IIIII—National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants

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## Subpart IIIII—National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants

### What This Subpart Covers

#### § 63.8180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for sources of mercury emissions at mercury cell chlor-alkali plants. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and work practice standards in this subpart.

#### § 63.8182 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a mercury cell chlor-alkali plant.

(b) You are required to obtain a title V permit for each source subject to this subpart, whether your source is (or is part of) a major source of hazardous air pollutant (HAP) emissions or an area source of HAP emissions. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year. An area source of HAP is a plant site that has the potential to emit HAP but is not a major source.

(c) Beginning on [DATE 2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the provisions of subpart E of 40 CFR part 61 that apply to mercury chlor-alkali plants, which are listed in paragraphs (c)(1) through (3) of this section, are no longer applicable.

(1) 40 CFR 61.52(a).

(2) 40 CFR 61.53 (b) and (c).

(3) 40 CFR 61.55 (b), (c) and (d).

#### § 63.8184 What parts of my plant does this subpart cover?

(a) This subpart applies to each affected source at a plant site where chlorine and caustic are produced in mercury cells. This subpart applies to two types of affected sources: the mercury cell chlor-alkali production facility, as defined in paragraph (a)(1) of this section; and the mercury recovery facility, as defined in paragraph (a)(2) of this section.

(1) The mercury cell chlor-alkali production facility designates an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a plant site. This subpart covers mercury emissions from by-product hydrogen streams, end-box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes.

(2) The mercury recovery facility designates an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a plant site. This subpart covers mercury emissions from mercury thermal recovery unit vents and fugitive emission sources associated with storage areas for mercury-containing wastes.

(b) An affected source at your mercury cell chlor-alkali plant is existing if you commenced construction of the affected source before July 3, 2002.

(c) A mercury recovery facility is a new affected source if you commence construction or reconstruction of the affected source after July 3, 2002. An affected source is reconstructed if it

meets the definition of ''reconstruction'' in § 63.2.

### § 63.8186 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you no later than [DATE 2 YEARS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new or reconstructed mercury recovery facility and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) If you have a new or reconstructed mercury recovery facility and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must comply with each emission limitation, work practice standard, and recordkeeping and reporting requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.8252. Several of these notifications must be submitted before the compliance date for your affected source(s).

## Emission Limitations and Work Practice Standards

### § 63.8190 What emission limitations must I meet?

(a) Emission limits. You must meet each emission limit in paragraphs (a)(1) through (3) of this section that applies to you.

(1) New or reconstructed mercury cell chlor-alkali production facility. Emissions of mercury are prohibited from a new or reconstructed mercury cell chlor-alkali production facility.

(2) Existing mercury cell chlor-alkali production facility. You must not discharge to the atmosphere aggregate mercury emissions in excess of the applicable limit in paragraph (a)(2)(i) or (ii) of this section.

(i) 0.067 grams of mercury per megagram of chlorine produced ($1.3 \times 10^{-4}$ pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams and all end-box ventilation system vents when both types of emission points are present.

(ii) 0.033 grams of mercury per megagram of chlorine produced ($6.59 \times 10^{-5}$ pounds of mercury per ton of chlorine produced) from all by-product hydrogen streams when there are no end-box ventilation systems.

(3) New, reconstructed, or existing mercury recovery facility. You must not discharge to the atmosphere mercury emissions in excess of the applicable limit in paragraph (a)(3)(i) or (ii) of this section.

(i) 23 milligrams per dry standard cubic meter from each oven type mercury thermal recovery unit vent.

(ii) 4 milligrams per dry standard cubic meter from each non-oven type mercury thermal recovery unit vent.

(b) Operating limits. You must meet each operating limit in paragraphs (b)(1) and (2) of this section that applies to you.

(1) Existing mercury cell chlor-alkali production facility. You must maintain the daily average mercury concentration in each by-product hydrogen stream no higher than the level established during the initial performance test. You must maintain the daily average mercury concentration in each end-box ventilation system vent exhaust no higher than the level established during the initial performance test.

(2) New, reconstructed, or existing mercury recovery facility. You must maintain the daily average mercury concentration in each oven type mercury thermal recovery unit vent exhaust no higher than the level established during the initial performance test. You must maintain the daily average mercury concentration in each non-oven type mercury thermal recovery unit vent exhaust no higher than the level established during the initial performance test.

### § 63.8192 What work practice standards must I meet?

(a) You must meet the work practice standards in Tables 1 through 5 to this subpart.

(b) You must adhere to the response intervals specified in Tables 1 through 5 to this subpart at all times. Nonadherence to the intervals in Tables 1 through 5 to this subpart constitutes a deviation and must be documented and reported in the compliance report, as required by § 63.8254(c), with the date and time of the deviation, cause of the deviation, a description of the conditions, and time actual compliance was achieved.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in Tables 1 through 5 to this subpart.

(d) You must prepare, submit, and operate according to a written washdown plan designed to minimize fugitive mercury emissions through routine washing of surfaces where liquid mercury could accumulate. The written plan must address the elements contained in Table to this subpart.

(e) You must institute a cell room monitoring program to continuously monitor the elemental mercury vapor concentration in the upper portion of each cell room against a predetermined site-specific action level(s). When a mercury concentration is detected that exceeds the established action level(s), you must identify the cause of the elevated concentration and take corrective action as quickly as possible. At a minimum, these follow-up activities should include the relevant work practices in Tables 1 through 5 to this subpart. You must also keep records related to the inspections and corrective actions performed.

## Operation and Maintenance Requirements

### § 63.8222 What are my operation and maintenance requirements?

As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source(s), including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

## General Compliance Requirements

### § 63.8226 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) for by-product hydrogen streams, end-box ventilation system vents, and mercury thermal recovery unit vents in § 63.8190 at all times, except during periods of startup, shutdown, and malfunction. You must be in compliance with the applicable work practice standards in § 63.8192 at all times, except during periods of startup, shutdown, and malfunction.

(b) During the period between the compliance date specified for your affected source in § 63.8186 and the date upon which mercury concentration continuous monitoring systems (CMS) have been installed and certified and any applicable operating limits have been set, 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).

## Initial Compliance Requirements

### § 63.8230 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.8186 for your affected source to demonstrate initial compliance with the emission limits in § 63.8190(a)(2) for by-product hydrogen streams and end-box ventilation system vents and the emission limits in § 63.8190(a)(3) for mercury thermal recovery unit vents.

(b) For each work practice standard in § 63.8192 where initial compliance is not demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.8186.

(c) If you commenced construction or reconstruction of a mercury recovery facility between July 3, 2002 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction of a mercury recovery facility between July 3, 2002 and [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 3 YEARS AND 180 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

### § 63.8231 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with the emission limits in § 63.8190(a)(2) for by-product hydrogen streams and end-box ventilation system vents and the emission limits in § 63.8190(a)(3) for mercury thermal recovery unit vents no less frequently than twice (at mid-term and renewal) during each term of each title V permit.

### § 63.8232 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits?

You must conduct a performance test for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (a) through (f) of this section.

(a) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(b) For each performance test, you must develop a site-specific test plan in accordance with § 63.7(c)(2).

(c) You must conduct at least three valid test runs in order to comprise a performance test, as specified in § 63.7(e)(3). To be considered a valid test run, the sampling time must be at least 2 hours and the mercury concentration in the field sample must be at least 2 times the limit of detection for the analytical method.

(d) You must use the test methods specified in paragraphs (d)(1) through (4) of this section and the applicable test methods in paragraphs (d)(5) through (7) of this section.

(1) Method 1 or 1A in appendix A of 40 CFR part 60 to determine the sampling port locations and the location and required number of sampling traverse points.

(2) Method 2, 2A, 2C, or 2D in appendix A of 40 CFR part 60 to determine the stack gas velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B in appendix A of 40 CFR part 60 to determine the stack gas molecular weight.

(4) Method 4 in appendix A of 40 CFR part 60 to determine the stack gas moisture content.

(5) For each by-product hydrogen stream, Method 102 in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(6) For each end-box ventilation system vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(7) For each mercury thermal recovery unit vent, Method 101 or 101A in appendix A of 40 CFR part 61 to measure the mercury emission rate after the last control device.

(e) During each test run for a by-product hydrogen stream and each test run for an end-box ventilation system vent, you must continuously measure the electric current through the operating mercury cells and record a measurement at least once every 15 minutes.

(f) During each test run for a mercury thermal recovery unit vent, the mercury-containing waste processed in the retort must be the type of waste that results in the highest mercury concentration in the mercury thermal recovery unit vent. You must document the mercury content of this type of waste and an explanation of why it results in the highest mercury concentration in the site-specific test plan required in § 63.8232(b).

### § 63.8234 What equations and procedures must I use?

(a) To determine the grams of mercury discharged per megagram (grams Hg/Mg $Cl_2$) of chlorine produced from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at a mercury cell chlor-alkali production facility, you must follow the procedures in paragraphs (a)(1) through (6) of this section.

(1) Determine the mercury emission rate for each test run, $R_{run}$, in grams per day for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, from Method 101, 101A, or 102 (40 CFR part 61).

(2) Calculate the average measured electric current through the operating mercury cells during each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 1 of this section as follows:

$$CL_{avg,run} = \frac{\sum_{i=1}^{n} CL_{i,run}}{n} \qquad \text{(Eq. 1)}$$

Where:

$CL_{avg,run}$ = Average measured cell line current load during the test run, amperes;

$CL_{i,run}$ = Individual cell line current load measurement (i.e., 15 minute reading) during the test run, amperes; and

n = Number of cell line current load measurements taken over the duration of the test run.

(3) Calculate the amount of chlorine produced during each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 2 of this section as follows:

$$P_{Cl_2,run} = \left(1.3\times10^{-6}\right)\left(CL_{avg,run}\right)\left(n_{cells,run}\right)\left(t_{run}\right) \qquad \text{(Eq. 2)}$$

Where:

$P_{Cl2,\ run}$ = Amount of chlorine produced during the test run, megagrams chlorine (Mg $Cl_2$) ;

$1.3\times10^{-6}$ = Theoretical chlorine production rate factor, Mg $Cl_2$ per hour per ampere per cell;

$CL_{avg,\ run}$ = Average measured cell line current load during test run, amperes, calculated using Equation 1 of this section;

$n_{cell,\ run}$ = Number of cells on-line during the test run; and

$t_{run}$ = Duration of test run, hours.

(4) Calculate the mercury emission rate in grams of mercury per megagram of chlorine produced for each test run for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 3 of this section as follows:

$$E_{Hg,run} = \left[\frac{\left(R_{run}\right)\left(t_{run}\right)}{(24)\left(P_{Cl_2,run}\right)}\right] \qquad \text{(Eq. 3)}$$

Where:

$E_{Hg,\ run}$ = Mercury emission rate for the test run, grams Hg/Mg $Cl_2$;

$R_{run}$ = Measured mercury emission rate for the test run from paragraph (a)(1) of this section, grams Hg per day;

$t_{run}$ = Duration of test run, hours;

24 = Conversion factor, hours per day; and

$P_{Cl2,\ run}$ = Amount of chlorine produced during the test run, calculated using Equation 2 of this section, Mg $Cl_2$.

(5) Calculate the average mercury emission rate for each by-product hydrogen stream and for each end-box ventilation system vent, if applicable, using Equation 4 of this section as follows:

$$E_{HG,avg} = \frac{\sum_{i=1}^{n} E_{Hg,run}}{n} \qquad \text{(Eq. 4)}$$

Where:

$E_{Hg,avg}$ = Average mercury emission rate for the by-product hydrogen stream or the end-box ventilation system vent, if applicable, grams HMg $Cl_2$;

$E_{Hg,run}$ = Mercury emission rate for each test run for the by-product hydrogen stream or the end-box ventilation system vent, if applicable, grams Hg/Mg $Cl_2$, calculated using Equation 3 of this section; and

n = Number of test runs conducted for the by-product hydrogen stream or the end-box ventilation system vent, if applicable.

(6) Calculate the total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the mercury cell chlor-alkali production facility using Equation 5 of this section as follows:

$$E_{Hg,H_2EB} = \sum_{i=1}^{n} E_{Hg,avg} \qquad \text{(Eq. 5)}$$

Where:

$E_{Hg,H2EB}$ = Total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the affected source, grams Hg/Mg $Cl_2$;

$E_{Hg,avg}$ = Average mercury emission rate for each by-product hydrogen stream and each end-box ventilation system vent, if applicable, grams Hg/Mg $Cl_2$, determined using Equation 4 of this section; and

n = total number of by-product hydrogen streams and end-box ventilation system vents at the affected source.

(b) To determine the milligrams of mercury per dry standard cubic meter exhaust discharged from mercury thermal recovery unit vents, you must follow the procedures in paragraphs (b)(1) and (2) of this section.

(1) Calculate the concentration of mercury in milligrams of mercury per dry standard cubic meter of exhaust for each test run for each mercury thermal recovery unit vent using Equation 6 of this section as follows:

$$C_{Hg,run} = \left[\frac{\left(m_{Hg}\right)\left(10^{-3}\right)}{\left(V_{m(std)}\right)}\right] \qquad \text{(Eq. 6)}$$

Where:

$C_{Hg,\ run}$ = Mercury concentration for the test run, milligrams of mercury per dry standard cubic meter of exhaust;

$m_{Hg}$ = Mass of mercury in test run sample, from Method 101, 101A, or 102, micrograms;

$10^{-3}$ = Conversion factor, milligrams per microgram; and

$V_{m(std)}$ = Dry gas sample volume at standard conditions, from Method 101, 101A, or 102, dry standard cubic meters.

(2) Calculate the average concentration of mercury in each mercury thermal recovery unit vent exhaust using Equation 7 of this section as follows:

$$C_{Hg,avg} = \frac{\sum_{i=1}^{n} C_{Hg,run}}{n} \qquad \text{(Eq. 7)}$$

Where:

$C_{Hg,avg}$ = Average mercury concentration for the mercury thermal recovery unit vent, milligrams of mercury per dry standard cubic meter exhaust;

$C_{Hg,run}$ = Mercury concentration for each test run, milligrams of mercury per dry standard cubic meter of exhaust, calculated using Equation 6 of this section; and

n = Number of test runs conducted for the mercury thermal recovery unit vent.

(c) For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must establish a site-specific mercury concentration operating limit according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Using a mercury concentration CMS required in § 63.8240, measure and record the elemental mercury concentration after the last control device at least once every 15 minutes for the entire duration of each performance test run.

(2) Calculate the mercury concentration operating limit based on the mercury concentration monitoring data obtained during each valid test run of the performance test during which the mercury emissions did not exceed the applicable mercury emission limit in § 63.8190(a)(2) through (3) using Equation 8 of this section as follows:

$$OL_{Hgconc} = \frac{\left(\sum_{i=1}^{n} C_{Hg,i}\right)}{n} \qquad \text{(Eq. 8)}$$

Where:

$OL_{Hgconc}$ = Mercury concentration operating limit, ppmv or concentration units selected by the owner/operator;

$C_{Hg,i}$ = Concentration of elemental mercury measured at the interval i (i.e., 15 minute reading) during each valid test run of the performance test during which the mercury emissions did not exceed the applicable mercury emission

limit in § 63.8190(a)(2) through (3) using a mercury concentration CMS, ppmv or concentration units selected by the owner/operator; and

n = Number of concentration measurements taken during all test runs of the performance test.

(d) You may change a mercury concentration operating limit by following the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your intent to conduct a new performance test to revise the mercury concentration operating limit at least 60 calendar days before the test is scheduled to begin.

(2) Conduct a performance test and demonstrate compliance with the applicable emission limit.

(3) Establish a revised mercury concentration operating limit according to the procedures in paragraph (c) of this section.

(e) You must calculate the daily average elemental mercury concentration using Equation 9 of this section as follows:

$$C_{Hg,dailyavg} = \frac{\left(\sum_{i=1}^{n} C_{Hg,i}\right)}{n} \qquad \text{(Eq. 9)}$$

Where:

$C_{Hg,dailyavg}$ = Average elemental mercury concentration for the operating day, ppmv or concentration units selected by the owner/operator;

$C_{Hg,i}$ = Concentration of elemental mercury measured at the interval i (i.e., 15 minute reading) using a mercury concentration CMS, ppmv or concentration units selected by the owner/operator; and

n = Number of concentration measurements taken during the operating day.

### § 63.8236 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) For each mercury cell chlor-alkali production facility, you have demonstrated initial compliance with the emission limits for by-product hydrogen streams and end-box ventilation system vents in § 63.8190(a)(2) if:

(1) Total mercury emission rate from all by-product hydrogen streams and all end-box ventilation system vents, if applicable, at the affected source, determined in accordance with §§ 63.8232 and 63.8234(a), did not exceed the applicable emission limit in § 63.8190(a)(2)(i) or (ii); and

(2) You have established a mercury concentration operating limit for each by-product hydrogen stream and each end-box ventilation system vent, if applicable, in accordance with § 63.8234(c), and have a record of all mercury concentration monitoring data used to establish the limit.

(b) For each mercury recovery facility, you have demonstrated initial compliance with the emission limits for mercury thermal recovery unit vents in § 63.8190(a)(3) if:

(1) Mercury concentration in each mercury thermal recovery unit vent exhaust, determined in accordance with §§ 63.8232 and 63.8234(b), did not exceed the applicable emission limit in § 63.8190(a)(3)(i) or (ii); and

(2) You have established a mercury concentration operating limit for each mercury thermal recovery unit vent in accordance with § 63.8234(c) and have a record of all mercury concentration monitoring data used to establish the limit.

(c) For each affected source, you have demonstrated initial compliance with the work practice standards in § 63.8192 if you certify in your Notification of Compliance Status that you meet or will meet each of the work practice standards, if you prepare the washdown plan and mercury vapor measurement plan and submit them as part of your Notification of Compliance Status, and if you certify in the notification that you operate according to or will operate according to the plan.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8252(e).

## Continuous Compliance Requirements

### § 63.8240 What are my monitoring requirements?

For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must continuously monitor the elemental mercury concentration using a mercury concentration CMS monitor according to the requirements in § 63.8242.

### § 63.8242 What are the installation, operation, and maintenance requirements for my mercury concentration continuous monitoring systems?

You must install, operate, and maintain each mercury concentration CMS according to paragraphs (a) through (e) of this section.

(a) Each mercury concentration CMS must sample, analyze, and record the concentration of elemental mercury at least once every 15 minutes.

(b) Each mercury concentration CMS analyzer must have a detector with the capability to detect an elemental mercury concentration at or below 0.5 times the mercury concentration operating limit established in § 63.8234(c).

(c) In lieu of a promulgated performance specification as required in § 63.8(a)(2), you must develop a site-specific monitoring plan that addresses the elements in paragraphs (c)(1) through (6) of this section.

(1) Installation and measurement location downstream of the last control device for each by-product hydrogen stream, end-box ventilation system vent, and mercury thermal recovery unit vent.

(2) Performance and equipment specifications for the sample interface, the pollutant concentration analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (i.e., calibrations).

(4) Ongoing operation and maintenance procedures in accordance with the requirements of § 63.8(c)(1), (3), and (4)(ii).

(5) Ongoing data quality assurance procedures in accordance with the requirements of § 63.8(d).

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(d) You must conduct a performance evaluation of each mercury concentration CMS in accordance with your site-specific monitoring plan.

(e) You must operate and maintain each mercury concentration CMS in continuous operation according to the site-specific monitoring plan.

### § 63.8244 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor elemental mercury concentration continuously (or collect data at all required intervals) at all times that the affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably

preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

### § 63.8246 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) For each by-product hydrogen stream, each end-box ventilation system vent, and each mercury thermal recovery unit vent, you must demonstrate continuous compliance with each mercury concentration operating limit by:

(1) Collecting mercury concentration data according to § 63.8244(a), representing at least 90 percent of the 15 minute periods in the operating day (with data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities not counting toward the 90 percent requirement);

(2) Reducing the mercury concentration data to daily averages using Equation 9 of § 63.8234(e), not including data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities;

(3) Maintaining the daily average elemental mercury concentration no higher than the mercury concentration operating limit established in § 63.8234(c); and

(4) Maintaining records of mercury concentration monitoring and daily average values, as required in § 63.8256(b)(3) and (4).

(b) You must demonstrate continuous compliance with the work practice standards in § 63.8192 by maintaining records in accordance with § 63.8256(c).

### § 63.8248 What other requirements must I meet to demonstrate continuous compliance?

(a) Deviations. You must report each instance in which you did not meet each emission limitation in § 63.8190 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each work practice standard in § 63.8192 that applies to you. These instances are deviations from the emission limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.8254.

(b) Startups, shutdowns, and malfunctions. During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan required in § 63.8226(c).

(1) 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 in accordance with the startup, shutdown, and malfunction plan.

(2) 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).

## Notification, Reports, and Records

### § 63.8252 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f) and 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification not later than [DATE 120 DAYS AFTER THE 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 mercury recovery facility on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification not later than 120 days after you become subject to this subpart.

(d) For each performance test that you are required to conduct for by-product hydrogen streams and end-box ventilation system vents and for mercury thermal recovery unit vents, 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) You must submit a Notification of Compliance Status in accordance with paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration. This Notification of Compliance Status must certify that you meet or will meet each work practice standard in § 63.8192. The washdown plan must also be submitted, and the Notification of Compliance Status must certify that you operate according to or will operate according to the plan.

(2) For each initial compliance demonstration that does include a performance test, 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). The Notification of Compliance Status must contain the information in § 63.9(h)(2)(ii)(A) through (G). The site-specific monitoring plan required in § 63.8242(c) must also be submitted.

### § 63.8254 What reports must I submit and when?

(a) Compliance report due dates. Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(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 § 63.8186 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source in § 63.8186.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(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, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source, if your title V 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 (a)(1) through (4) of this section.

(b) Compliance report contents. Each compliance report must contain the information in paragraphs (b)(1) through (3) of this section, and as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(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 startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.8246 that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period.

(6) If there were no periods during which the mercury concentration CMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during the which the mercury concentration CMS was out-of-control during the reporting period.

(7) For each deviation from the requirements for work practice standards in Tables 1 through 5 to this subpart that occurs at an affected source (including deviations where the response intervals were not adhered to as described in § 63.8192(c)), the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(8) For each deviation from an emission limitation (emission limit and operating limit) occurring at an affected source where you are using a mercury concentration CMS, in accordance with the site-specific monitoring plan required in § 63.8242(c), to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time of each instance in which a continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration of each instance in which a continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) 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.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each hazardous air pollutant that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in monitoring system, processes, or controls since the last reporting period.

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan required in § 63.8226(c), you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) Part 70 monitoring report. For each affected source, 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 for an affected source 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 and work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

### § 63.8256 What records must I keep?

(a) General records. You must keep the records in paragraphs (a)(1) and (2) 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.

(b) Records associated with the by-product hydrogen stream and end-box ventilation system vent emission limitations and the mercury thermal recovery unit vent emission limitations. You must keep the records in paragraphs (b)(1) through (5) of this section related to the emission limitations in § 63.8190(a)(2) through (3) and (b).

(1) Records of performance tests as required in § 63.10(b)(2)(viii).

(2) Records of the establishment of the applicable mercury concentration operating limits, including records of the mercury concentration monitoring conducted during the performance tests.

(3) Records of the continuous mercury concentration monitoring data.

(4) Records of the daily average elemental mercury concentration values.

(5) Records associated with your site-specific monitoring plan required in § 63.8242(c) (i.e., results of inspections, calibrations, and validation checks of each mercury concentration CMS).

(c) Records associated with the work practice standards. You must keep the records specified in Table 8 to this subpart related to the work practice standards in Tables 1 through 5 to this subpart. You must also maintain a copy of your current washdown plan and records of when each washdown occurs.

### § 63.8258 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 on site 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 can keep the records offsite for the remaining 3 years.

## Other Requirements and Information

### § 63.8262 What parts of the General Provisions apply to me?

Table 9 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

### § 63.8264 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. 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 has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives under § 63.6(g) to the non-opacity emission limitations in § 63.8190 and work practice standards in § 63.8192.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.8266 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

*Aqueous liquid* means a liquid mixture in which water is the predominant component.

*Brine* means an aqueous solution of alkali metal chloride, as sodium chloride salt solution or potassium chloride salt solution, that is used in the electrolyzer as a raw material.

*By-product hydrogen stream* means the hydrogen gas from each decomposer that passes through the hydrogen system and is burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere.

*Caustic* means an aqueous solution of alkali metal hydroxide, as sodium hydroxide or potassium hydroxide, that is produced in the decomposer.

*Caustic basket* means a fixture adjacent to the decomposer that contains a serrated funnel over which the caustic from the decomposer passes, breaking into droplets such that electric current is interrupted.

*Caustic system* means all vessels, piping, and equipment that convey caustic and remove mercury from the caustic stream. The caustic system begins at the decomposer and ends after the primary filters.

*Cell room* means a building or other structure in which one or more mercury cells are located.

*Control device* means a piece of equipment (such as condensers, coolers, chillers, heat exchangers, mist eliminators, absorption units, and adsorption units) that removes mercury from gaseous streams.

*Decomposer* means the component of a mercury cell in which mercury amalgam and water react in bed of graphite packing (within a cylindrical vessel), producing caustic and hydrogen gas and returning mercury to its elemental form for re-use in the process.

*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 and that is included in the operating permit 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 or whether or not such failure is permitted by this subpart.

*Electrolyzer* means the main component of the mercury cell that consists of an elongated, shallow steel trough that holds a layer of mercury as a flowing cathode. The electrolyzer is enclosed by side panels and a top that suspends metal anodes. In the electrolyzer, brine is fed between a flowing mercury cathode and metal anodes in the presence of electricity to produce chlorine gas and an alkali metal-mercury amalgam (mercury amalgam).

*Emission limitation* means any emission limit or operating limit.

*End box* means a component of a mercury cell for transferring materials between the electrolyzer and the decomposer. The inlet end box collects and combines raw materials at the inlet end of the cell, and the outlet end box separates and directs various materials either into the decomposer or out of the cell.

*End-box ventilation system* means all vessels, piping, and equipment that evacuate the head space of each mercury cell end box (and possibly other vessels and equipment) to the atmosphere. The end-box ventilation system begins at the end box (and other vessel or equipment which is being evacuated) and terminates at the end-box ventilation system vent. The end-box ventilation system includes all control devices.

*End-box ventilation system vent* means the discharge point of the end-box ventilation system to the atmosphere after all control devices.

*Hydrogen leak* means hydrogen gas (containing mercury vapor) that is escaping from the decomposer or hydrogen system.

*Hydrogen system* means all vessels, piping, and equipment that convey a by-product hydrogen stream. The hydrogen system begins at the decomposer and ends at the point where the by-product hydrogen stream is either burned as fuel, transferred to another process as raw material, or discharged directly to the atmosphere. The hydrogen system includes all control devices.

*In liquid mercury service* means containing or coming in contact with liquid mercury.

*Liquid mercury accumulation* means one or more liquid mercury droplets, or a pool of liquid mercury, present on the floor or other surface exposed to the atmosphere.

*Liquid mercury leak* means the liquid mercury that is dripping or otherwise escaping from process equipment.

*Liquid mercury spill* means a liquid mercury accumulation resulting from a liquid mercury that leaked from process equipment or that dripped during maintenance or handling.

*Mercury cell* means a device consisting of an electrolyzer and decomposer, with one or more end boxes, a mercury pump, and other components linking the electrolyzer and decomposer.

*Mercury cell amalgam seal pot* means a compartment through which mercury amalgam passes from an outlet end box to a decomposer.

*Mercury cell chlor-alkali plant* means all contiguous or adjoining property that is under common control, where mercury cells are used to manufacture product chlorine, product caustic, and by-product hydrogen and where mercury may be recovered from wastes.

*Mercury cell chlor-alkali production facility* means an affected source consisting of all cell rooms and ancillary operations used in the manufacture of product chlorine, product caustic, and by-product hydrogen at a mercury cell chlor-alkali plant.

*Mercury concentration CMS, or mercury concentration continuous monitoring system,* means a CMS, as defined in § 63.2, that continuously measures the concentration of mercury.

*Mercury-containing wastes* means waste materials containing mercury, which are typically classified under Resource Conservation and Recovery Act (RCRA) solid waste designations. K071 wastes are sludges from the brine system. K106 are wastewater treatment sludges. D009 wastes are non-specific mercury-containing wastes, further classified as either debris or nondebris (i.e., cell room sludges and carbon from decomposers).

*Mercury pump* means a component of a mercury cell for conveying elemental mercury re-created in the decomposer to the beginning of the mercury cell. A mercury pump is typically found either as an in-line mercury pump (near a mercury suction pot or mercury seal pot) or submerged mercury pump (within a mercury pump tank or mercury pump seal).

*Mercury recovery facility* means an affected source consisting of all processes and associated operations needed for mercury recovery from wastes at a mercury cell chlor-alkali plant.

*Mercury thermal recovery unit* means the retort(s) where mercury-containing wastes are heated to volatilize mercury and the mercury recovery/control system (control devices and other equipment) where the retort off-gas is cooled, causing mercury to condense and liquid mercury to be recovered.

*Mercury thermal recovery unit vent* means the discharge point of the mercury thermal recovery unit to the atmosphere after all recovery/control devices. This term encompasses both oven type vents and non-oven type vents.

*Mercury vacuum cleaner* means a cleanup device used to draw a liquid mercury spill or accumulation (via suction pressure) into a closed compartment.

*Non-oven type mercury thermal recovery unit vent* means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which the retort is either a rotary kiln or single hearth retort.

*Open-top container* means any container that does not have a tight-fitting cover that keeps its contents from being exposed to the atmosphere.

*Oven type mercury thermal recovery unit vent* means the discharge point to the atmosphere after all recovery/control devices of a mercury thermal recovery unit in which each retort is a batch oven retort.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Retort* means a furnace where mercury-containing wastes are heated to drive mercury into the gas phase. The types of retorts used as part of mercury thermal recovery units at mercury cell chlor-alkali plants include batch oven retorts, rotary kilns, and single hearth retorts.

*Spalling* means fragmentation by chipping.

*Sump* means a large reservoir or pit for wastewaters (primarily washdown waters).

*Trench* means a narrow channel or depression built into the length of a cell room floor that leads washdown materials to a drain.

*Vent hose* means a connection for transporting gases from the mercury cell.

*Washdown* means the act of rinsing a floor or surface with a stream of aqueous liquid to cleanse it of a liquid mercury spill or accumulation, generally by driving it into a trench.

*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.

**Tables to Subpart IIIII of Part 63**

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS

| For . . . | You must . . . |
|---|---|
| 1. Cell rooms | a. Construct each cell room interior using materials that are resistant to absorption of mercury, resistant to corrosion, facilitate the detection of liquid mercury spills or accumulations, and are easy to clean. |
| | b. Limit access around and beneath mercury cells in each cell room to prevent liquid mercury from being tracked into other areas. |
| | c. Provide adequate lighting in each cell room to facilitate the detection of liquid mercury spills or accumulations. |
| | d. Minimize the number of items stored in each cell room. |
| 2. Mercury cells and electrolyzers | a. Operate and maintain each electrolyzer, decomposer, end box, and mercury pump to minimize leakage of mercury. |
| | b. Prior to opening an electrolyzer for maintenance, do the following: (1) complete work that can be done before opening the electrolyzer in order to minimize the time required to complete maintenance when the electrolyzer is open (e.g., removing bolts from a side panel while the electrolyzer is cooling); (2) fill the electrolyzer with an aqueous liquid; (3) allow the electrolyzer to cool before opening; and (4) schedule and staff maintenance of the electrolyzer to minimize the time the electrolyzer is open. |
| | c. When the electrolyzer top is raised and before moving the top and anodes, thoroughly flush all visible mercury from the top and the anodes with an aqueous liquid. |
| | d. While an electrolyzer is open, keep the bottom covered with an aqueous liquid or maintain a continuous flow of aqueous liquid. |
| | e. During an electrolyzer side panel change, take measures to ensure an aqueous liquid covers or flows over the bottom. |
| | f. Each time an electrolyzer is opened, inspect and replace components, as appropriate. |

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

| For . . . | You must . . . |
|---|---|
| | g. If you step into an electrolyzer bottom, either remove all visible mercury from your footwear or replace them immediately after stepping out of the electrolyzer. |
| | h. If an electrolyzer is disassembled for overhaul maintenance or for any other reason, chemically clean the bed plate or thoroughly flush it with an aqueous liquid. |
| | i. Before transporting each electrolyzer part to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. |
| | j. After completing maintenance on an electrolyzer, check any mercury piping flanges that were opened for liquid mercury leaks. |
| | k. If a liquid mercury spill occurs during any maintenance activity on an electrolyzer, clean it up in accordance with the requirements in Table 3 to this subpart. |
| 3. Vessels in liquid mercury service | If you replace a vessel containing mercury that is intended to trap and collect mercury after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], replace it with a vessel that has a cone shaped bottom with a drain valve or other design that readily facilitates mercury collection. |
| 4. Piping and process lines in liquid mercury service. | a. Use piping with smooth interiors to avoid liquid mercury buildups within the pipe. |
| | b. To prevent mercury buildup after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], equip each new process line and piping system with adequate low point drains or mercury knock-out pots to facilitate mercury collection and recovery. |
| 5. Cell room floors | a. Maintain a coating on cell room floors that is resistant to absorption of mercury and that facilitates the detection of liquid mercury spills or accumulations. |
| | b. Maintain cell room floors such that they are smooth and free of cracking and spalling. |
| | c. Maintain troughs and trenches to prevent mercury accumulation in the corners. |
| | d. Maintain a layer of aqueous liquid on liquid mercury contained in trenches or drains and replenish the aqueous layer at least once per day. |
| | e. Keep the cell room floor clean and free of debris. |
| | f. If you step into a liquid mercury spill or accumulation, either remove all visible mercury from your footwear or replace your footwear immediately. |
| 6. End boxes | a. Either equip each end box with a fixed cover that is leak tight, or route the end box head space to an end-box ventilation system. |
| | b. For each end-box ventilation system: (1) maintain a flow of aqueous liquid over the liquid mercury in the end box and maintain the temperature of the aqueous liquid below its boiling point, (2) maintain a negative pressure in the end-box ventilation system, and (3) maintain the end-box ventilation system in good condition. |
| | c. Maintain each end-box cover in good condition and keep the end box closed when the cell is in service and when liquid mercury is flowing down the cell, except when operation or maintenance activities require short- term access. |
| | d. Keep all bolts and C-clamps used to hold the covers in place when the cell is in service and when liquid mercury is flowing down the cell. |
| | e. Maintain each access port stopper in an end-box cover in good sealing condition and keep each end-box access port closed when the cell is in service and when liquid mercury is flowing down the cell. |
| 7. Decomposers | a. Maintain each decomposer cover in good condition and keep each decomposer closed and sealed, except when maintenance activities require the cover to be removed. |
| | b. Maintain leak-tight connections between the decomposer and the corresponding cell components, hydrogen system piping, and caustic system piping, except when maintenance activities require access to these connections. |
| | c. Keep each mercury cell amalgam seal pot closed and sealed, except when operation or maintenance activities require short-term access. |
| | d. Prior to opening a decomposer, do the following: (1) fill the decomposer with an aqueous liquid or drain the decomposer liquid mercury into a container that meets requirements listed below for closed containers, (2) allow the decomposer to cool before opening, and (3) complete work that can be done before opening the decomposer. |
| | e. Take precautions to avoid mercury spills when changing graphite grids or balls in horizontal decomposers or graphite packing in vertical decomposers. If a spill occurs, you must clean it up in accordance with the requirements in Table 3 to this subpart. |
| | f. After each maintenance activity, use an appropriate technique (see Table 7 to this subpart) to check for hydrogen leaks. |
| | g. Before transporting any internal part from the decomposer (such as the graphite basket) to another work area, remove all visible mercury from the part or contain the part to prevent mercury from dripping during transport. |
| | h. Store carbon from decomposers in accordance with the requirements in Table 5 to this subpart until the carbon is treated or is disposed. |
| 8. Submerged mercury pumps | a. Provide a vapor outlet connection from each submerged pump to an end-box ventilation system. The connection must be maintained under negative pressure. |
| | b. Keep each mercury pump tank closed, except when maintenance or operation activities require the cover to be removed. |
| | c. Maintain a flow of aqueous liquid over the liquid mercury in each mercury pump tank and maintain the aqueous liquid at a temperature below its boiling point. |

TABLE 1 TO SUBPART IIIII OF PART 63—WORK PRACTICE STANDARDS—DESIGN, OPERATION, AND MAINTENANCE REQUIREMENTS—Continued

| For . . . | You must . . . |
|---|---|
| 9. Containers holding liquid mercury ..... | Maintain a layer of aqueous liquid over liquid mercury containers in each open-top container. Replenish the aqueous layer holding liquid at least once per day and collect the liquid mercury mercury from the container in accordance with the requirements in Table 4 to this subpart. |
| 10. Containers used to store liquid mercury. | a. Store liquid mercury in containers with tight fitting covers. |
| | b. Maintain the seals on the covers in good condition. |
| | c. Keep each container securely closed when mercury is not being added to, or removed from, the container. |
| 11. Caustic systems ..... | a. Maintain the seal between each caustic basket cover and caustic basket by using gaskets and other appropriate material. |
| | b. Prevent solids and liquids collected from back-flushing each primary caustic filter to contact floors or run into open trenches. |
| | c. Collect solids and liquids from back-flushing each primary caustic filter and store these mercury-containing wastes in accordance with the requirements in Table 5 to this subpart. |
| | d. Keep each caustic basket closed and sealed, except when operation or maintenance activities require short term access. |
| 12. Hydrogen systems ..... | a. Collect drips from each hydrogen seal pot and compressor seal in containers meeting the requirements in this table for open containers. These drips should not be allowed to run on the floor or in open trenches. |
| | b. Minimize purging of hydrogen from a decomposer into the cell room by either sweeping the decomposer with an inert gas or by routing the hydrogen to the hydrogen system. |
| | c. Maintain hydrogen piping gaskets in good condition. |
| | d. After any maintenance activities, use an appropriate technique (see Table 7 to this subpart) to check all hydrogen piping flanges that were opened for hydrogen leaks. |

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS

| You must inspect . . . | At least once each . . . | And if you find . . . | You must . . . |
|---|---|---|---|
| 1. Each vent hose on each mercury cell. | 12 hours ..... | a leaking vent hose ..... | take action immediately to correct the leak. |
| 2. Each open-top container holding liquid mercury. | 12 hours ..... | liquid mercury that is not covered by an aqueous liquid. | take action immediately to cover the liquid mercury with an aqueous liquid. |
| 3. Each end box ..... | 12 hours ..... | a. an end-box cover not securely in place .... | take action immediately to put the end-box cover securely in place. |
| | | b. an end-box stopper not securely in place | take action immediately to put the end-box stopper securely in place. |
| | | c. liquid mercury in an end box that is not covered by an aqueous liquid at a temperature below boiling. | take action immediately to cover the liquid mercury with an aqueous liquid. |
| 4. Each mercury amalgam seal pot. | 12 hours ..... | a seal pot cover that is not securely in place | take action immediately to put the seal pot cover securely in place. |
| 5. Each mercury seal pot ..... | 12 hours ..... | a mercury seal pot stopper not securely in place. | take action immediately to put the mercury seal pot stopper securely in place. |
| 6. Cell room floors ..... | month ..... | cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped. | repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency. |
| 7. Pillars and beams ..... | 6 months ..... | cracks, spalling, or other deficiencies that could cause liquid mercury to become trapped. | repair the crack, spalling, or other deficiency within 1 month from the time you identify the deficiency. |
| 8. Each caustic basket ..... | 12 hours ..... | a caustic basket cover that is not securely in place. | take action immediately to put the caustic basket cover securely in place. |
| 9. All equipment and piping in the caustic system. | 24 hours ..... | equipment that is leaking caustic ..... | initiate repair of the leaking equipment within 72 hours from the time that you identify the caustic leak. |
| 10. All floors and other surfaces where liquid mercury could accumulate in cell rooms and other production facilities and in mercury recovery facilities. | 12 hours ..... | a liquid mercury spill or accumulation ..... | take the required action specified in Table 3 to this subpart. |

TABLE 2 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED INSPECTIONS—Continued

| You must inspect . . . | At least once each . . . | And if you find . . . | You must . . . |
|---|---|---|---|
| 11. Each electrolyzer bottom, electrolyzer side panel, end box, mercury amalgam seal pot, decomposer, mercury pump, and hydrogen cooler, and all other vessels, piping, and equipment in liquid mercury service in the cell room. | 24 hours ..... | equipment that is leaking liquid mercury ..... | take the required action specified in Table 3 to this subpart. |
| 12. Each decomposer and all hydrogen piping up to the hydrogen header. | 12 hours ..... | equipment that is leaking hydrogen and/or mercury vapor. | take the required action specified in Table 3 to this subpart. |
| 13. All equipment in the hydrogen system from the start of the header to the last control device. | 3 months ..... | equipment that is leaking hydrogen and/or mercury vapor. | take the required action specified in Table 3 to this subpart. |

NOTE: See Table 7 of this subpart for examples of techniques for conducting the inspections required in this table.

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS

| During a required inspection or at any other time, if you find . . . | You must . . . |
|---|---|
| 1. A liquid mercury spill or accumulation | a. Initiate clean up of the liquid mercury spill or accumulation as soon as possible, but no later than 1 hour from the time you detect it.<br>b. Clean up liquid mercury using: (1) a mercury vacuum cleaner, (2) by washing the mercury to the nearest trench or sump, or (3) by using an alternative method. If you use an alternative method to clean up liquid mercury, you must submit a description of the method to the Administrator in your Notification of Compliance Status report.<br>c. If you use a mercury vacuum cleaner: (1) the vacuum cleaner must be designed to prevent generation of airborne mercury, (2) you must cap the ends of hoses after each use, and (3) after vacuuming, you must wash down the area.<br>d. Inspect all equipment in liquid mercury service in the surrounding area to identify the source of the liquid mercury within 1 hour from the time you detect the liquid mercury spill or accumulation.<br>e. If you identify leaking equipment as the source of the spill or accumulation, contain the dripping mercury, stop the leak, and repair the leaking equipment as specified below.<br>f. If you cannot identify the source of the liquid mercury spill or accumulation, re-inspect the area within 6 hours of the time you detected the liquid mercury spill or accumulation, or within 6 hours of the last inspection of the area. |
| 2. Equipment that is leaking liquid mercury. | a. Contain the liquid mercury dripping from the leaking equipment by placing a container under the leak within 30 minutes from the time you identify the liquid mercury leak.<br>b. The container must meet the requirement for open-top containers in Table 1 to this subpart.<br>c. Make a first attempt at stopping the leak within 1 hour from the time you identify the liquid mercury leak.<br>d. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the liquid mercury leak.<br>e. You can delay repair of equipment leaking liquid mercury if you either: (1) isolate the leaking equipment from the process so that it does not remain in mercury service; or (2) determine that you cannot repair the leaking equipment without taking the cell off line, provided that you contain the dripping mercury at all times as described above, and take the cell off line as soon as practicable, but no later than 48 hours from the time you identify the leaking equipment. You cannot place the cell back into service until the leaking equipment is repaired. |
| 3. A decomposer or hydrogen system piping up to the hydrogen header that is leaking hydrogen and/or mercury vapor. | a. Make a first attempt at stopping the leak within 1 hour from the time you identify the hydrogen and/or mercury vapor leak.<br>b. Stop the leak and repair the leaking equipment within 4 hours from the time you identify the hydrogen and/or mercury vapor leak.<br>c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment or take the cell off line until you repair the leaking equipment. |
| 4. Equipment in the hydrogen system, from the start of the hydrogen header to the last control device, that is leaking hydrogen and/or mercury vapor. | a. Make a first attempt at stopping the leak within 4 hours from the time you identify the hydrogen and/or mercury vapor leak.<br>b. Stop the leak and repair the header within 24 hours from the time you identify the hydrogen and/or mercury vapor leak. |

TABLE 3 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIRED ACTIONS FOR LIQUID MERCURY SPILLS AND ACCUMULATIONS AND HYDROGEN AND MERCURY VAPOR LEAKS—Continued

| During a required inspection or at any other time, if you find . . . | You must . . . |
|---|---|
| | c. You can delay repair of equipment leaking hydrogen and/or mercury vapor if you isolate the leaking equipment. |

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 4 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR MERCURY LIQUID COLLECTION

| You must collect liquid mercury from . . . | When | | Additional requirements | |
|---|---|---|---|---|
| | | | | |
| 1. Open-top containers ..... | a. at least once each 72 hours. | i. If you spill liquid mercury during collection or transport, you must take the action specified in Table 3 to this subpart for liquid mercury spills and accumulations. | (1) From the time that you collect liquid mercury into a temporary container until the time that you store the liquid mercury, you must keep it covered by an aqueous liquid. | (A) Within 4 hours from the time you collect the liquid mercury, you must transfer it from each temporary container to a storage container that meets the specifications in Table 1 to this subpart. |
| 2. Vessels, low point drains, mercury knock-out pots, and other closed mercury collection points. | a. at least once each week | See 1.a.i. above ..... | See 1.a.i.(1) above ..... | See 1.a.i.(A) above. |
| 3. All other equipment ..... | a. whenever maintenance activities require the opening of the equipment. | See 1.a.i. above ..... | See 1.a.i.(1) above ..... | See 1.a.i.(A) above. |

As stated in § 63.8192, you must meet the work practice standards in the following table:

TABLE 5 TO SUBPART IIIII OF PART 63.—WORK PRACTICE STANDARDS—REQUIREMENTS FOR HANDLING AND STORAGE OF MERCURY-CONTAINING WASTES

| For . . . | You must . . . |
|---|---|
| 1. Carbon media from decomposers and cell room sludges. | a. Store wastes in closed containers, or<br>b. Maintain a layer of aqueous liquid over wastes in open-top containers and replenish the aqueous layer at least once per week. |
| 2. All other mercury-containing wastes ... | a. Wash or chemically decontaminate wastes to remove visible mercury, or<br>b. Store wastes in closed containers. |

As stated in § 63.8192, your written washdown plan must address the elements contained in the following table:

TABLE 6 TO SUBPART IIIII OF PART 63.—REQUIRED ELEMENTS OF WASHDOWN PLANS

| For each of the following areas . . . | You must establish the following as part of your plan . . . |
|---|---|
| 1. Center aisles of cell rooms ..... | A description of the manner of washdown of the area, and the washdown frequency for the area. |
| 2. Electrolyzers. | |
| 3. End boxes and areas under end boxes. | |
| 4. Decomposers and areas under decomposers. | |
| 5. Caustic baskets and areas around caustic baskets. | |
| 6. Hydrogen system piping. | |
| 7. Basement floor of cell rooms. | |
| 8. Tanks. | |
| 9. Pillars and beams in cell rooms. | |
| 10. Mercury cell repair areas. | |
| 11. Maintenance shop areas. | |
| 12. Work tables. | |
| 13. Castings. | |
| 14. Storage areas for mercury-containing wastes. | |

As stated in Tables 1 and 2 of Subpart IIIII, examples of techniques for equipment problem identification, leak detection and mercury vapor measurements can be found in the following table:

TABLE 7 TO SUBPART IIIII OF PART 63.—EXAMPLES OF TECHNIQUES FOR EQUIPMENT PROBLEM IDENTIFICATION, LEAK DETECTION AND MERCURY VAPOR MEASUREMENTS

| To Detect . . . | You could use . . . | Principle of detection . . . |
|---|---|---|
| 1. Leaking vent hoses; liquid mercury that is not covered by an aqueous liquid in open-top containers or end boxes; end-box covers or stoppers, amalgam seal pot stoppers, or caustic basket covers not securely in place; cracks or spalling in cell room floors, pillars, or beams; caustic leaks; liquid mercury accumulations or spills; and equipment that is leaking liquid mercury. | Visual inspections. | |
| 2. Equipment that is leaking hydrogen and/or mercury vapor during required by Table 2 to inspections. this subpart. | a. Auditory and visual inspections. | |
| | b. Portable mercury vapor analyzer—ultraviolet light absorption detector.. | A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Mercury absorbs the incident light in proportion to its concentration in the air stream. |
| | c. Portable mercury vapor analyzer—gold film amalgamation detector.. | A sample of gas is drawn through a detection cell containing a gold film detector. Mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample. |
| | d. Portable short-wave ultraviolent light, fluorescent background—visual indication.. | Ultraviolet light is directed toward a fluorescent background positioned behind a suspected source of mercury emissions. Mercury vapor absorbs the ultraviolet light, projecting a dark shadow image on the fluorescent background. |
| | e. Portable combustible gas meter. | |
| 3. Level of mercury vapor in the cell room and other areas. | a. Portable mercury vapor analyzer—ultraviolet light absorption detector. | A sample of gas is drawn through a detection cell where ultraviolet light at 253.7 nanometers (nm) is directed perpendicularly through the sample toward a photodetector. Mercury absorbs the incident light in proportion to its concentration in the air stream. |
| | b. Portable mercury vapor analyzer—gold film amalgamation detector. | A sample of gas is drawn through a detection cell containing a gold film detector. Mercury amalgamates with the gold film, changing the resistance of the detector in proportion to the mercury concentration in the air sample. |
| | c. Permanganate impingement | A known volume of gas sample is absorbed in potassium permanganate solution. Mercury in the solution is determined using a cold vapor adsorption analyzer, and the concentration of mercury in the gas sample is calculated. |

As stated in § 63.8256(c), you must keep the records (related to the work practice standards) specified in the following table:

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS

| For each . . . | You must record the following information . . . |
|---|---|
| 1. Inspection required by Table 2 to this subpart ..... | Date and time the inspection was conducted. |
| 2. Of the following situations found during an inspection required by Table 2 to this subpart: leaking of vent hose; open-top container where liquid mercury is not covered by an aqueous liquid; end-box cover that is not securely in place; end-box stopper that is not securely in place; end box where liquid mercury is not covered by an aqueous liquid at a temperature below boiling; seal pot cover that is not securely in place; open or mercury seal pot stopper that is not securely in place; crack, spalling, or other deficiency in a cell room floor, pillar, or beam that could cause liquid mercury to become trapped; or caustic basket that is not securely in place. | a. Description the condition.<br>b. Location of the condition.<br>c. Date and time you identify the condition.<br>d. Description of the corrective action taken.<br>e. Date and time you successfully complete the corrective action. |
| 3. A caustic leak during an inspection required by Table 2 to this subpart. | a. Location of the leak.<br>b. Date and time you identify the leak. |

TABLE 8 TO SUBPART IIIII OF PART 63.—REQUIRED RECORDS FOR WORK PRACTICE STANDARDS—Continued

| For each . . . | You must record the following information . . . |
|---|---|
| | c. Date and time you successfully stop the leak and repair the leaking equipment. |
| 4. Liquid mercury spill or accumulation identified during an inspection required by Table 2 to this subpart or at any other time. | a. Location of the liquid mercury spill or accumulation. |
| | b. Estimate of the weight of liquid mercury. |
| | c. Date and time you detect the liquid mercury spill or accumulation. |
| | d. Method you use to clean up the liquid mercury spill or accumulation. |
| | e. Date and time when you clean up the liquid mercury spill or accumulation. |
| | f. Source of the liquid mercury spill or accumulation. |
| | g. If the source of the liquid mercury spill or accumulation is not identified, the time when you reinspect the area. |
| 5. Liquid mercury leak or hydrogen leak identified during an inspection required by Table 2 to this subpart or at any other time. | a. Location of the leak. |
| | b. Date and time you identify the leak. |
| | c. If the leak is a liquid mercury leak, the date and time that you successfully contain the dripping liquid mercury. |
| | d. Date and time you first attempt to stop the leak. |
| | e. Date and time you successfully stop the leak and repair the leaking equipment. |
| | f. If you take a cell off line or isolate the leaking equipment, the date and time you take the cell off line or isolate the leaking equipment, and the date and time you put the cell or isolated equipment back into service. |
| 6. Carbon media from decomposers and cell room sludges. | a. A statement that these wastes are stored in closed containers, or |
| | b. Date and time you replenish the aqueous layer over these wastes stored in open-top containers. |
| 7. All other mercury-containing wastes | a. A description of how you remove visible mercury, or |
| | b. A statement that these wastes are stored in closed containers. |

As stated in § 63.8262, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 9 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

| Citation | Subject | Applies to Subpart IIIII | Explanation |
|---|---|---|---|
| § 63.1 | Applicability | Yes. | |
| § 63.2 | Definitions | Yes. | |
| § 63.3 | Units and Abbreviations | Yes. | |
| § 63.4 | Prohibited Activities | Yes. | |
| § 63.5 | Construction/Reconstruction | Yes. | |
| § 63.6 (a)–(g), (i), (j) | Compliance with Standards and Maintenance Requirements. | Yes. | |
| § 63.6(h) | Compliance with Opacity and Visible Emission Standards. | No | Subpart IIIII does not have opacity and visible emission standards. |
| § 63.7 | Performance Testing Requirements | Yes. | Subpart IIIII specifies additional requirements related to site-specific test plans and the conduct of performance tests. |
| § 63.8 (a)(1), (a)(3); (b); (c)(1)–(4), (6)–(8); (d); (e); and (f)(1)–(5). | Monitoring Requirements | Yes. | |
| § 63.8(a)(2) | Continuous Monitoring System (CMS) Requirements. | No | Subpart IIIII requires a site-specific monitoring plan in lieu of a promulgated performance specification for a mercury concentration CMS. |
| § 63.8(a)(4) | Additional Monitoring Requirements for Control Devices in § 63.11. | No | Subpart IIIII does not require flares. |
| § 63.8(c)(5) | COMS Minimum Procedures | No | Subpart IIIII does not have opacity and visible emission standards. |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test | No | Subpart IIIII does not require CEMS. |
| § 63.8(g) | Data Reduction | No | Subpart IIIII specifies mercury concentration CMS data reduction requirements. |
| § 63.9(a)–(e), (g)–(j) | Notification Requirements | Yes. | |
| § 63.9(f) | Notification of VE/Opacity Test | No | Subpart IIIII does not have opacity and visible emission standards. |
| § 63.10(a); (b)(1); (b)(2)(i)–(xii), (xiv); (b)(3); (c); (d)(1)–(2), (4)–(5); (e); (f). | Recordkeeping/Reporting | Yes. | |
| § 63.10(b)(2) (xiii) | CMS Records for RATA Alternative | No | Subpart IIIII does not require CEMS. |

TABLE 9 TO SUBPART IIIII OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII—Continued

| Citation | Subject | Applies to Subpart IIIII | Explanation |
|---|---|---|---|
| § 63.10(d)(3) | Reporting Opacity or VE Observations | No | Subpart IIIII does not have opacity and visible emission standards. |
| § 63.11 | Flares | No | Subpart IIIII does not require flares. |
| § 63.12 | Delegation | Yes. | |
| § 63.13 | Addresses | Yes. | |
| § 63.14 | Incorporation by Reference | Yes. | |
| § 63.15 | Availability of Information | Yes. | |

[FR Doc. 02–15873 Filed 7–2–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[FRL–7229–6]**

## National Emission Standards for Hazardous Air Pollutants: Chlorine and Hydrochloric Acid Emissions From Chlorine Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed decision not to regulate.

**SUMMARY:** EPA proposes not to regulate chlorine and hydrochloric acid (HCl) emissions for the Chlorine Production source category. We have determined that no further control is necessary because chlorine and HCl have well-defined health thresholds, and chlorine and HCl air emissions from chlorine producers result in human exposures in the ambient air that are below the threshold values with an ample margin of safety. This notice does not address mercury emissions from mercury cell chlor-alkali plants. Those emissions are addressed in a separate action in the proposed rule section of this **Federal Register**.

**DATES:** *Comments.* Submit comments on or before September 3, 2002.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by July 23, 2002, a public hearing will be held on August 2, 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–2002–09, 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–2002–09, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina.

*Docket.* Docket No. A–2002–09 contains supporting information used in developing the notice of proposed action for the Chlorine Production source category. 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:** Mr. Iliam Rosario, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5308, facsimile: (919) 541–5600, electronic mail address: rosario.iliam@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (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 format. All comments and data submitted in electronic form must note the docket number: Docket No. A–2002–09. 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: OAQPS Document Control Office (C404–02), Attention: Iliam Rosario, Metals Group, Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711. 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 Cassie Posey, telephone number: (919) 541–0069. Persons interested in attending the public hearing must also call Cassie Posey 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 the proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in rule development. 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 will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The materials related to this notice of proposed action 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.

*WorldWide Web (www) Information.* In addition to being available in the docket, an electronic copy of today's notice of proposed action will also be available through EPA's www site. Following signature, a copy of the rule will be posted on our policy and

guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg.* The web site provides information and technology exchange in various areas of air pollution control. If more information regarding the web site is needed, call our web site help line at (919) 541–5384.

*Regulated entities.* Entities potentially affected by this action include facilities engaged in the production of chlorine. Affected categories and entities include those sources listed in the primary Standard Industrial Classification code 2812 or North American Information Classification System code 325181.

This description is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have 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:

I. Background
A. What is the source of authority for development of NESHAP?
B. What is the source category?
C. What are the health effects of chlorine and hydrogen chloride?
II. Summary of Proposed Action
III. Rationale for Proposed Action
A. What is our statutory authority under section 112(d)(4)?
B. What is the basis for our proposed action?
IV. Solicitation of Comments and Public Participation

## I. Background

### *A. What Is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA contains our authority for reducing emissions of hazardous air pollutants (HAP). Section 112(d) requires us to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of HAP listed pursuant to section 112(c). Section 112(d)(2) specifies that emission standards promulgated under the section shall require the maximum degree of reductions in emissions of the HAP subject to section 112 that are deemed achievable considering cost and any non-air quality health and environmental impacts and energy requirements.

National emission standards for hazardous air pollutants (NESHAP) reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as maximum achievable control technology (MACT).

The CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Section 112(d)(4) allows us to use discretion in developing risk-based standards for HAP ''for which a health threshold has been established'' provided that the standards achieve an ''ample margin of safety.''

### *B. What Is the Source Category?*

The Chlorine Production source category was initially listed as a major source of HAP pursuant to section 112(c)(1) of the CAA on July 16, 1992 (57 FR 31576). At the time of the initial listing, we defined the Chlorine Production source category as follows:

> * * * The Chlorine Production Source Category includes any facility engaged in the production of chlorine. The category includes, but is not limited to, facilities producing chlorine by the following production methods: diaphragm cell, mercury cell, membrane cell, hybrid fuel cell, Downs cell, potash manufacture, hydrochloric acid decomposition, nitrosyl chloride process, nitric acid/salt process, Kel-Chlor process, and sodium chloride/sulfuric acid process.

We know of no facilities that produce chlorine using hybrid fuel cells, the nitrosyl chloride process, the Kel-Chlor process, the sodium chloride/sulfuric acid process, or as a by-product from potash manufacturing. We have identified 45 facilities that produce chlorine using mercury cells, diaphragm cells, or membrane cells. Collectively, these facilities are referred to as chlor-alkali plants as they produce chlorine and alkali (sodium hydroxide) as co-products.

We have also identified three facilities that produce chlorine as a by-product: one from the production of sodium metal in Downs cell, another from the production of potassium nitrate fertilizer that uses the nitric acid/salt process, and a third that produces chlorine as a by-product from primary magnesium refining. In addition, we have identified a resin producer that produces chlorine both in a chlor-alkali plant and through the decomposition of HCl.

Of the 48 facilities that produce chlorine, we have identified 21 that are major sources, including 20 chlor-alkali plants and the one primary magnesium refining facility. The primary magnesium refining facility is itself a major source emitting on the order of 600 tons of chlorine and 3,000 tons of HCl yearly, and is, in fact, a separately listed source category. As such, it will be addressed on its own in a separate rulemaking.

None of the 20 chlor-alkali plants are major in and of themselves, but are major due to collocation. That is, they are part of a larger contiguous establishment that is a major source. These larger establishments include organic chemical manufacturers, polymer and resin producers, and pulp and paper mills, all of which are already subject to one or more NESHAP. For instance, the organic chemical manufacturers are subject to the Hazardous Organic NESHAP, or HON (40 CFR part 63, subparts F, G, and H). The HON is a comprehensive rule that covers process vent, transfer, storage tank, equipment leak and wastewater emissions from the production of almost 400 organic chemicals. More than 100 organic HAP are regulated under the HON.

Polymers and resins producers are subject to four separate NESHAP (40 CFR part 63, subparts U, W, JJJ, and OOO) and must control process vent, transfer, storage tank, equipment leak and wastewater emissions. Chlor-alkali facilities that are collocated with pulp and paper mills are covered by 40 CFR part 63, subpart S (Pulp and Paper MACT III) and 40 CFR part 63, subpart KK (Printing and Publishing MACT). Chlor-alkali production facilities are also collocated with the following source categories: hazardous waste pesticide active ingredients production (subject to 40 CFR part 63, subpart MMM), polyether polyols production (subject to 40 CFR part 63, subpart PPP), and polycarbonates production (subject to 40 CFR part 63, subpart YY). There is also the Miscellaneous Organic Chemical Products and Processes NESHAP, currently under development, which will cover a variety of smaller, specialty chemical manufacturing processes, many that utilize chlorine. Therefore, most major processes at the sites where chlor-alkali facilities are located are subject to, or will be subject to, NESHAP to reduce HAP emissions. In addition to NESHAP, the chlorine production facilities are themselves subject to rules pursuant to section 112(r) of the CAA for the prevention of accidental releases of chemicals (40 CFR part 68).

The primary HAP emitted from chlorine production facilities processes are chlorine and HCl.[1] In each of the three chlor-alkali electrolytic cell processes, an electric current is passed through a salt solution (brine) causing the dissociation of salt to produce

[1] The mercury cell chlor-alkali process also emits mercury. Those emissions are addressed in a separate proposal elsewhere in today's **Federal Register**.

chlorine gas and an alkaline solution. Chlorine is collected from the cell room and is cooled, dried, and condensed in the purification process. The dried, gaseous chlorine then may be cooled further and compressed and liquified using multiple-stage condensers in the compression/liquefaction operation. Chlorine can be emitted from the tail gas stream from the final liquefier, the cell room, and equipment in chlorine service. Hydrochloric acid is used to pretreat feed brine prior to entering a chlor-alkali cell and at other locations throughout the process to adjust pH. It can also be emitted from storage tanks and equipment in HCl service.

Since chlor-alkali processes produce both chlorine and hydrogen, it is common for a direct synthesis HCl production unit to be incorporated into a chlor-alkali facility. This is the situation at four of the 20 chlor-alkali facilities at major source plant sites. In the direct synthesis process, chlorine and hydrogen are burned together to produce HCl. The gaseous HCl stream is then routed to an absorber and concentrated to produce a liquid HCl product. In many instances at chlor-alkali facilities, gaseous chlorine-containing waste streams (such as the tail gas from the liquifiers) provide chlorine to the HCl production unit. Therefore, we consider these direct synthesis HCl production units to be a part of the chlor-alkali facilities. These direct synthesis HCl production units can emit HCl from the absorber vent and associated storage vessels and transfer racks.

### *C. What Are the Health Effects of Chlorine and Hydrogen Chloride?*

Acute (short-term) exposure to high levels of chlorine in humans can result in chest pain, vomiting, toxic pneumonitis, and pulmonary edema. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Chronic (long-term) exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions, and respiratory epithelial hyperplasia from chronic inhalation exposure to chlorine. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. We have not classified chlorine for potential carcinogenicity.

Hydrogen chloride 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. We have not classified HCl for carcinogenicity.

## II. Summary of Proposed Action

We are proposing not to regulate chlorine and HCl emissions from chlorine production processes. Under the authority of section 112(d)(4), we have determined that no further control is necessary because chlorine and HCl are ''health threshold pollutants,'' and chlorine and HCl levels emitted from chlorine production processes are below their threshold values within an ample margin of safety. Further, due to the fact that these two pollutants are the only HAP emitted in significant quantities from chlorine production plants, we are proposing not to develop any NESHAP for the Chlorine Production source category, with the exception of a NESHAP for mercury emissions from mercury cell chlor-alkali plants.

## III. Rationale for Proposed Action

This section explains the statutory basis for considering health thresholds when establishing standards, and the basis for today's proposed action, including a discussion of the risk assessment conducted to support the ample margin of safety decision.

### *A. What Is Our Statutory Authority Under Section 112(d)(4)?*

As stated previously in this notice, section 112 of the CAA includes exceptions to the general statutory requirement to establish emission standards based on MACT. Of relevance here, section 112(d)(4) allows us to develop risk-based standards for HAP ''for which a health threshold has been established'' provided that the standards achieve an ''ample margin of safety.'' Therefore, we believe we have the discretion under section 112(d)(4) to develop risk-based standards which may be less stringent than the corresponding floor-based MACT standards for some categories emitting threshold pollutants.

In deciding standards for this source category, we seek to assure that emissions from every source in the category or subcategory are less than the threshold level for an individual exposed at the upper end of the exposure distribution. The upper end of the exposure distribution is calculated using the ''high end exposure estimate,'' defined as a plausible estimate of individual exposure for those persons at the upper end of the exposure distribution, conceptually above the 90th percentile, but not higher than the individual in the population who has the highest exposure. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the ''ample margin of safety'' requirement in section 112(d)(4).

We emphasize that the use of section 112(d)(4) authority is wholly discretionary. As the legislative history indicates, cases may arise in which other considerations dictate that we should not invoke this authority to establish less stringent standards, despite the existence of a health effects threshold that is not jeopardized. For instance, we do not anticipate that we would set less stringent ''risk-based'' standards where evidence indicates a threat of significant or widespread environmental effects, although it may be shown that emissions from a particular source category do not approach or exceed a level requisite to protect public health with an ample margin of safety. We may also elect not to set less stringent risk-based standards where the estimated health threshold for a contaminant is subject to large uncertainty. Thus, in considering appropriate uses of our discretionary authority under section 112(d)(4), we consider other factors in addition to health thresholds, including uncertainty and potential ''adverse environmental effects,'' as that phrase is defined in section 112(a)(7).

### *B. What Is the Basis for Our Proposed Action?*

We are proposing in today's notice not to develop NESHAP for the Chlorine Production source category other than the mercury standards being proposed elsewhere in today's **Federal Register** for mercury cell processes. This decision is based on the following. First, we consider chlorine and HCl to be threshold pollutants. Second, we have defined threshold values in the form of Inhalation Reference Concentrations (RfC) and acute exposure guideline levels (AEGL). Third, chlorine and HCl are emitted from chlorine production plants (in the absence of additional control) in quantities that result in human exposure in the ambient air at levels well below the threshold values with an ample margin of safety. Finally, there are no adverse environmental

effects associated with these pollutants. The bases and supporting rationale for these conclusions are provided in the following sections.

1. Threshold Pollutants

For the purposes of section 112(d)(4), several factors are considered in our decision on whether a pollutant should be categorized as a health threshold pollutant. These factors include evidence and classification of carcinogenic risk and evidence of noncarcinogenic effects. For a detailed discussion of factors that we consider in deciding whether a pollutant should be categorized as a health threshold pollutant, please see the April 15, 1998 **Federal Register** document (63 FR 18766).

In the April 15, 1998 action cited above, we determined that HCl, a Group D pollutant, is a health threshold pollutant for the purpose of section 112(d)(4) of the CAA (63 FR 18753). We also believe that it is reasonable to classify chlorine as a Group D pollutant. There have been limited animal studies and observations of human occupational inhalation exposure for chlorine. There has been no evidence of a carcinogenic response in chronic, subchronic, or acute inhalation exposures in laboratory animal studies or from occupational inhalation exposure. Based on the limited negative carcinogenicity data, and on our knowledge of how chlorine reacts in the body and its likely mechanism of action, we presumptively consider chlorine to be a threshold pollutant.

2. Health Effects Exposure Assessment

We conducted a risk assessment to determine whether the emissions of chlorine and HCl from chlorine production plants at the current baseline levels are in quantities that are below the threshold values for chlorine and HCl within an ample margin of safety. The summary of this assessment is organized as follows: (1) Hazard identification and dose-response assessment, (2) emissions and release information, and (3) exposure assessment.

It is important to note that the risk assessment methodology applied here should not be interpreted as a standardized approach that sets a precedent for how EPA will analyze application of section 112(d)(4) in other cases. The approach presented here, including assumptions, models, and worst-case of sensitivity analysis, was selected to meet the unique needs of this particular case, to provide the appropriate level of detail and margin of safety given the data availability, chemicals, and emissions particular to this category.

Hazard Identification and Dose-Response Assessment

The RfC is a ''long-term'' threshold, defined as an estimate of a daily inhalation exposure that, over a lifetime, would not likely result in the occurrence of noncancer health effects in humans. We have determined that the RfC for HCl of 20 micrograms per cubic meter $\mu g/m^3$) is an appropriate threshold value for assessing risk to humans associated with exposure to HCl through inhalation (63 FR 18766, April 15, 1998). Therefore, we used this RfC as the threshold value in our exposure assessment for HCl emitted from chlorine production plants.

We also considered using the RfC for chlorine. In cases where we have not studied a chemical itself, we rely on the studies of other governmental agencies, such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the Office of Health Hazard Assessment of California's Environmental Protection Agency (CAL EPA), for RfC values. The CAL EPA developed an RfC value of 0.2 $\mu g/m^3$ for chlorine based on a large inhalation study with rats.

Since chlorine does not generally persist in the atmosphere, we evaluated the appropriateness of using this chlorine RfC for this assessment. Chlorine in the atmosphere photolyzes to chloride ions ($Cl^-$) and then quickly reacts with methane to form HCl in bright sunshine. The estimated chlorine lifetime under these conditions is approximately 10 minutes. Even though emissions of chlorine in the absence of sunshine (e.g., at nighttime) remain as chlorine in the atmosphere until sunlight emerges, we do not believe that use of the chlorine RfC was appropriate for this assessment since long-term exposure to significant levels of chlorine is unlikely. EPA requests comments on the appropriateness of using a chlorine RfC to assess impacts of long-term exposure in this case.

However, we did conclude that the health effects of the long-term exposure to the HCl formed from the chlorine emitted from chlorine production plants should be considered. Therefore, we calculated the amount of HCl that would be formed from the emitted chlorine and used the HCl RfC of 20 $\mu g/m^3$ for determining the long-term noncarcinogenic effects of the chlorine emissions.

In addition to these effects of long-term inhalation of HCl, we also considered whether thresholds for short-term exposure to chlorine and HCl should be considered in this assessment. Acute exposure guideline level toxicity values are estimates of adverse health effects due to a single exposure lasting 8 hours or less. The confidence in the AEGL (a qualitative rating or either low, medium, or high) is based on the number of studies available and the quality of the data. Consensus toxicity values for effects of acute exposures have been developed by several different organizations, and we are beginning to develop such values. A national advisory committee organized by the EPA has developed AEGL for priority chemicals for 30-minute, 1-hour, 4-hour, and 8-hour airborne exposures. They have also determined the levels of these chemicals at each exposure duration that will protect against discomfort (AEGL1), serious effects (AEGL2), and life-threatening effects or death (AEGL3). Hydrogen chloride has been assigned a 1-hour AEGL2 of 33,000 $\mu g/m^3$. Above this level, it is predicted that the general population, including sensitive individuals (such as asthmatics, children, or the elderly), could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape. This value is a medium confidence value based on the severe nasal or pulmonary histopathology observed in rats exposed to a high concentration of 1,950,000 $\mu g/m^3$ HCl for 30 minutes. The AEGL2 value for HCl is displayed in an EPA internal database, the Air Toxics Health Effects Database (ATHED), as the appropriate value to use in short-term modeling.

Chlorine has been assigned a 1-hour AEGL2 toxicity value of 5,800 $\mu g/m^3$. This value is based on a human inhalation exposure study that included a sensitive individual, and this AEGL value has a high confidence value (62 FR 58839). This AEGL2 value is also contained in EPA's ATHED as the appropriate value to use in short-term modeling.

We used these AEGL values as threshold values for assessing the inhalation health effects of short-term exposures to chlorine and HCl. While chlorine does photolyze and eventually form HCl, we concluded that it was appropriate to use the chlorine AEGL value of 5,800 $\mu g/m^3$ for this assessment since it would be possible for individuals to be exposed to chlorine for 1-hour periods at night or on cloudy days.

Emissions and Release Information

Under the authority of section 114, we collected chlorine and HCl emissions information for all chlorine production facilities at the 20 major source sites.

Chlorine and HCl emissions were reported for point sources and fugitive emissions from the chlorine production units at each site. For the four sites where direct synthesis HCl production units are part of the chlorine production facility, emissions were also reported.

Respondents provided maximum annual and hourly chlorine and HCl emissions (typically, permitted emission rates were provided) and release characteristics. According to the information submitted, plantwide annual chlorine emissions from chlorine production processes ranged from less than one kilogram per year to over 6 Megagrams per year (Mg/yr). Of the 20 plant sites, 11 reported HCl emissions from chlorine production (and for four sites, HCl production processes), which ranged from less than one kilogram per year to around 32 Mg/yr.

The hourly plantwide chlorine emissions from chlorine production processes ranged from less than 2 grams per hour (g/hr) to around 10 kilograms per hour (kg/hr). For the 11 sites reporting HCl emissions, the hourly HCl emissions ranged from less than 1 g/hr to around 1 kg/hr.

Ten of the plant sites did not report any fugitive emissions. We believe that it is reasonable to expect that all chlorine production facilities would have some fugitive emissions. Therefore, we developed emission factors based on the reported fugitive emissions and related capacities for those plant sites that did report fugitive emissions. These factors ranged from $6.3 \times 10^{-8}$ to 2.88 pounds per ton of chlorine production capacity. We used the maximum emission factor to conservatively estimate fugitive emissions for the 10 facilities that did not report fugitive emissions.

The release characteristics needed for the dispersion model included stack height, stack diameter, temperature, and exit velocity for point sources. For approximately 98 percent of the point sources reported, these parameters were provided in the section 114 responses. If release characteristics were not provided, we assigned default parameters based on data for the chlorine production industry in national emission databases and other data reported in response to the survey. The release characteristics needed for fugitive emission sources are release height and area. Release heights were provided for about 17 percent of the fugitive emission sources. For those fugitive emission sources for which information on release heights were not provided, we assumed that they were at 1 meter. No information was provided regarding the area of the fugitive emission sources. Therefore, we assumed an area of 2,000 square meters for every fugitive emission source, which is a standard default used in modeling.

Exposure Assessment

The exposure assessment was conducted for chlorine and HCl emissions from all chlorine production processes in the source category (*i.e.*, from the chlorine production processes at the 20 sites that are major sources of HAP). As discussed above, the emissions data and release characteristics provided directly from all 20 plants were used as inputs to the assessment.

The Industrial Source Complex—Short Term Dispersion Model, Version 3 (ISCST3), was used for this exposure assessment. Receptors were placed at the center of census blocks (based on the 2000 Census) within 2 kilometers of the site and in the population-weighted centers of census block groups or census tracks out to 50 kilometers. Meteorological data from the nearest representative meteorological station were used. EPA requests comments on how to consider locations of receptors in assessing potential impacts on an individual exposed at the upper end of the exposure distribution for a large number of diverse facilities.

To determine the impacts of long-term exposure to chlorine and HCl emissions from chlorine plants, we used the maximum annual emission values provided by the plants. As discussed above, we converted the chlorine emissions to HCl since chlorine only persists in the atmosphere for a short amount of time. Therefore, we modeled the annual average HCl concentration at each receptor that was the result of the combination of the HCl emissions and the chlorine emissions that were converted to HCl through photolysis and subsequent reaction with methane.

As noted earlier, ten of the plants did not report any fugitive emissions. For these plants, we modeled the reported point source emissions and then modeled the estimated fugitive emissions separately. We added the highest concentration resulting from point source emissions with the highest concentration resulting from the fugitive emissions to obtain a conservative estimate of the highest HCl concentration that would be expected.

The highest modeled annual average HCl concentration from any chlorine production plant was 0.6 $\mu g/m^3$. This is less than 3 percent of the HCl RfC of 20 $\mu g/m^3$. Over 15 million people live in the areas around these 19 plant sites. Of these people, only around 1,300 were exposed to annual average HCl concentrations greater than 1 percent of the RfC. In fact, well over 99 percent were exposed to annual average HCl concentrations less than 0.1 percent of the RfC.

To determine the impacts of short-term exposures to chlorine and HCl emissions from chlorine production plants, we used the maximum hourly emission values provided by the plants and obtained the highest individual hourly concentrations from the ISCST3 model. Separate runs were conducted for chlorine and HCl. The same process described above was used for plants that did not report any fugitive emissions.

The highest 1-hour chlorine concentration modeled was 346 $\mu g/m^3$, which is less than 6 percent of the AEGL2 1-hour threshold value for chlorine (5,800 $\mu g/m^3$). This highest 1-hour HCl modeled concentration was 120 $\mu g/m^3$, which is less than 1 percent of the AEGL2 1-hour threshold value for HCl (33,000 $\mu g/m^3$). We modeled these short-term concentrations for 5 years for each plant, which means concentrations were obtained for over 830,000 hours. Only around 75 hours (less than one hundredth of one percent) had modeled chlorine concentrations greater than 5 percent of the AEGL2 value, and no hours had modeled HCl concentrations greater than the AEGL2 value.

Given the fact that the highest modeled concentrations were so far below the threshold values, we elected to primarily evaluate the uncertainty and variability of this assessment qualitatively, coupled with a few basic sensitivity analyses. These sensitivity analyses focused on evaluating the uncertainties for the ''worst-case'' situations, as we were not concerned with uncertainties that resulted in even lower estimated risks.

We identified four potential areas of uncertainty/ variability in the exposure assessment described above. These are emissions, the fate and transport model, exposure estimates, and toxicological dose response. Each of these areas is briefly discussed in the following.

As emission rates increase, exposure and risk increase. As noted earlier, the facilities reported maximum annual and maximum hourly emission rates. Most often, the reported rates were the facility's permitted emission rates. In addition, for those facilities that did not report any fugitive emissions, we estimated and modeled fugitive emissions based on the highest emission factor. Therefore, we would expect actual emissions to be less than those modeled, and thus, we believe that the results are biased high.

The primary uncertainties identified that are associated with the fate and transport modeling were the inherent uncertainty associated with the trying to represent complex atmospheric processes with a series of equations in the ISCST3 model (which is beyond the scope of this assessment) and missing release parameters, particularly for fugitive emission sources.

For the point sources, around 2 percent of the parameters were missing. For each missing parameter, we assigned a default parameter that was within the ranges provided by the other respondents. Since the actual release characteristics could be either higher or lower than these defaults, the results could be biased either way for this small percentage of the point sources.

Release heights were only provided for 17 percent of the fugitive emission sources, which ranged from 1.8 meters to 9.1 meters. For the fugitive sources without heights provided, we used a default height of 1 meter, which is more conservative than any reported value. Therefore, we anticipated that this could bias the results high.

There was considerable uncertainty associated with the size and location of fugitive emission sources. We used a default area of 2,000 $m^2$ for every fugitive emission source, with dimensions approximately 45 meters by 45 meters. This is a generic default value that we typically use for modeling fugitive emission sources, and it is not based on information provided by actual chlorine production facilities. The southwest corner of this area was placed at the mid-point of the locations for all reported point sources for the facility. The lack of information regarding the true size and location of chlorine production facilities could bias the concentration estimates high or low.

Uncertainty and variability also exist in the exposure estimates and the toxicological dose response, most of which result in the overestimation of risk. The RfC and AEGL2 values used in the assessment, which were discussed above, may contain multiple uncertainty factors whose impact is to add degrees of conservatism resulting in an overestimation of noncancer effects. In addition, the RfC assumes that individuals would be continuously exposed to the modeled concentration. As we believe these factors would only decrease the risk estimates, we did not evaluate their impact.

As noted above, our focus was only on those uncertainties that might increase the risk estimates and, thus, impact our decision not to regulate HCl and chlorine emissions from this source category. Of the basic uncertainties discussed above, the factors that we believe could result in underestimated HAP concentrations (and, therefore, underestimated risks) include the default stack parameters for point sources and the default size and location of the fugitive emission sources.

We conducted a worst-case analysis for both long-term and short-term exposures to evaluate the potential upper-end impact of these uncertainties. For this analysis, we selected the single point source location from all plants that resulted in the highest estimated concentration people would be exposed to when run using a uniform emission rate. We then modeled the highest total facility emissions (maximum annual emissions for the long-term analysis and maximum hourly emissions for the short-term analysis) of chlorine and HCl at that point source location and used the most conservative stack parameters. We then chose the highest of these totals for chlorine and for HCl to put at the single point location. We also modeled a fugitive emission source using the highest reported emission factor coupled with the highest production capacity.

The results of this analysis show that, even with these worst-case conditions, the modeled concentrations were well below the threshold values. For the long-term impacts of the chlorine and HCl emissions (modeled as HCl, as discussed previously), the highest modeled annual HCl concentration was less than 5 $\mu g/m^3$, which is less than 23 percent of the HCl RfC. The highest modeled maximum 1-hour chlorine and HCl concentrations were around 2,500 $\mu g/m^3$ and 230 $\mu g/m^3$, respectively. These values represent around 44 percent of the 1-hour chlorine AEGL2 threshold value and less than 1 percent of the 1-hour HCl AEGL2.

3. Environmental Effects

The standards for emissions must also protect against significant and widespread adverse environmental effects to wildlife, aquatic life, and other natural resources. We did not conduct a formal ecological risk assessment. However, we have reviewed publications in the literature to determine if there would be reasonable expectation for serious or widespread adverse effects to natural resources.

We consider the following aspects of pollutant exposure and effects: Toxicity effects from acute and chronic exposures to expected concentrations around the source (as measured or modeled), persistence in the environment, local and long-range transport, and tendency for bio-magnification with toxic effects manifest at higher trophic levels.

As discussed above, the evidence available to date indicates that chlorine and HCl are threshold pollutants for the purposes of section 112(d)(4). Since chlorine is converted to HCl in the atmosphere, we did not perform a separate evaluation of chlorine exposure in this analysis.

No research has been identified for effects on terrestrial animal species beyond that cited in the development of the HCl RfC. Modeling calculations indicate that there is little likelihood of chronic or widespread exposure to HCl at concentrations above the threshold around chlorine production facilities. Based on these considerations, we believe that the RfC can reasonably be expected to protect against widespread adverse effects in other animal species as well.

Plants also respond to airborne HCl levels. Chronic exposure to about 600 $\mu g/m^3$ can be expected to result in discernible effects, depending on the plant species. Plants respond differently to HCl as an anhydrous gas than to HCl aerosols. Relative humidity is important in plant response; there appears to be a threshold of relative humidity above which plants will incur twice as much damage at a given dose. Effects include leaf injury and decrease in chlorophyll levels in various species given acute, 20-minute exposures of 6,500 to 27,000 $\mu g/m^3$. A field study reports different sensitivity to damage of foliage in 50 species growing in the vicinity of an anhydrous aluminum chloride manufacturer. American elm, bur oak, eastern white pine, basswood, red ash and several bean species were observed to be most sensitive. Concentrations of HCl in the air were not reported. Chloride ion in whole leaves was 0.2 to 0.5 percent of dry weight; sensitive species showed damage at the lower value, but tolerant species displayed no injury at the higher value. Injury declined with distance from the source with no effects observed beyond 300 meters. Maximum modeled long-term HCl concentrations (0.6 $\mu g/m^3$) are well below the 600 $\mu g/m^3$ chronic threshold, and the maximum short-term HCl concentration (346 $\mu g/m^3$) are far below the 6,500 $\mu g/m^3$ acute exposure threshold. Therefore, no adverse exposure effects are anticipated.

Prevailing meteorology strongly determines the fate of HCl in the atmosphere. However, HCl is not considered a strongly persistent pollutant, or one where long range transport is important in predicting its ecological effects. In the atmosphere, HCl can be expected to be absorbed into

aqueous aerosols, due to its great affinity for water, and removed from the troposphere by rainfall. In addition, HCl will react with hydroxy ions to yield water plus chloride ions. However, the concentration of hydroxy ions in the troposphere is low, so HCl may have a relatively long residence time in areas of low humidity. No studies are reported of HCl levels in ponds or other small water bodies or soils near major sources of HCl emissions. Toxic effects of HCl to aquatic organisms would likely be due to the hydronium ion, or acidity. Aquatic organisms in their natural environments often exhibit a broad range of pH tolerance. Effects of HCl deposition to small water bodies and to soils will primarily depend on the extent of neutralizing by carbonates or other buffering compounds. Chloride ions are essentially ubiquitous in natural waters and soils so minor increases due to deposition of dissolved HCl will have much less effect than the deposited hydronium ions. Deleterious effects of HCl on ponds and soils, where such effects might be found near a major source emitting to the atmosphere, likely will be local rather than widespread, as observed in plant foliage.

Effects of HCl on tissues are generally restricted to those immediately affected and are essentially acidic effects. The rapid solubility of HCl in aqueous media releases hydronium ions, which can be corrosive to tissue when above a threshold concentration. The chloride ions may be concentrated in some plant tissues, but may be distributed throughout the organism, as most organisms have chloride ions in their fluids. Leaves or other tissues exposed to HCl may show some concentration above that of their immediate environment; that is, some degree of bioconcentration can occur. However, long-term storage in specific organs and biomagnification of concentrations of HCl in trophic levels of a food chain would not be expected. Thus, the chemical nature of HCl results in deleterious effects, that when present, are local rather than widespread.

In conclusion, acute and chronic exposures to expected HCl and chlorine concentrations around the source are not expected to result in adverse toxicity effects. These pollutants are not persistent in the environment. Effects of HCl and chlorine on ponds and soils are likely to be local rather than widespread. Finally, chlorine and HCl are not believed to result in biomagnification or bioaccumulation in the environment. Therefore, we do not anticipate any adverse ecological effects from chlorine and HCl.

4. Summary of Basis for Proposed Action

The results of the exposure assessment showed exposure levels to chlorine and HCl emissions from chlorine production facilities are well below the health threshold values. Furthermore, the threshold values, for which the RfC and AEGL values were determined to be appropriate values, were not exceeded when taking into account an ample margin of safety. Finally, no significant or widespread adverse environmental effects from chlorine and HCl are anticipated. Therefore, under authority of section 112(d)(4), we have determined that further control of chlorine and HCl emissions from chlorine production facilities is not necessary.

## IV. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of this notice of proposed action from all interested parties. You need to submit appropriate supporting data and analyses with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. A–2002–09 (*see* **ADDRESSES**).

Dated: June 5, 2002.

**Christine Todd Whitman,**

*Administrator.*

[FR Doc. 02–15874 Filed 7–2–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
July 3, 2002

# Part III

# Department of the Treasury

## Customs Service

## Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Procedures; Notice

## DEPARTMENT OF THE TREASURY

### Customs Service

### Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of intent to distribute offset for Fiscal Year 2002.

**SUMMARY:** Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is Customs notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2002 in connection with antidumping duty orders or findings or countervailing duty orders. This document sets forth the list of individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings.

**DATES:** Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by September 3, 2002.

**ADDRESSES:** Written certifications should be addressed to: Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229 (ATTN: Jeffrey J. Laxague).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey J. Laxague, Office of Regulations and Rulings, (202–572–8876).

**SUPPLEMENTARY INFORMATION:**

## Background

The Continued Dumping and Subsidy Offset Act of 2000 (''CDSOA'') was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (''Act''). The provisions of the CDSOA are contained in Title X (sections 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that—

(A) Was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) Remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

*List of Orders or Findings and Affected Domestic Producers*

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC has supplied Customs with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case that are potentially eligible to receive an offset. This list appears at the end of this document.

*Customs Regulations Implementing the CDSOA*

It is noted that Customs published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the Customs Regulations (19 CFR part 159, subpart F (§§ 159.61—159.64)).

*Notice of Intent To Distribute Offset*

This document announces Customs intention to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2002 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. Section 159.62(a), Customs Regulations (19 CFR 159.62(a)), provides that Customs will publish such a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year.

*Certifications; Submission and Content*

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to Customs, indicating that the producer desires to receive a distribution.

As required by § 159.62(b), Customs Regulations (19 CFR 159.62(b)), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. However, although § 159.62(b) also provides that the dollar amounts subject to distribution that were contained in the special account for each listed order or finding as of June 1, 2002, would appear in this notice, because these dollar amounts were not available in time for inclusion in this publication, these amounts will instead be posted shortly on the Customs Web site (*www.customs.gov*), for purposes of enabling affected domestic producers to determine whether it would be worthwhile to file a certification in a given case.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice, where the member company does not appear on the list, should also consult § 159.61(b)(1)(i) or 159.61(b)(1)(ii), Customs Regulations, respectively (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)), concerning whether and, if so, the additional procedures under which such party may file a certification to claim an offset.

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification, in triplicate, to the Acting Assistant Commissioner, Office of Regulations and Rulings, Headquarters, containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(b), Customs Regulations (19 CFR 159.63(b)), certifications to obtain a distribution of an offset must be received by Customs 60 days after the date of publication of the notice of intent in the **Federal Register**.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (Product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also appear), including, if applicable, a specific room number or department;
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled ''Amount Claimed for Distribution'';
11. A statement of eligibility, as described in the section below entitled ''Eligibility to Receive Distribution''; and
12. A signature by a corporate officer legally authorized to bind the producer.

*Qualifying Expenditures Which May Be Claimed for Distribution*

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

*Amount Claimed for Distribution*

In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following: (1) The total amount of any qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution under 19 U.S.C. 1675c; and (3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in item ''(1)'' above minus the total amount that was the subject of any prior distribution as noted in item ''(2)'' above) (§ 159.63(b)(2)(i)–(b)(2)(iii), Customs Regulations (19 CFR 159.63(b)(2)(i)–(b)(2)(iii))).

Additionally, these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case (§ 159.61(c), Customs Regulations (19 CFR 159.61(c))).

*Eligibility To Receive Distribution*

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (§ 159.63(b)(3)(i), Customs Regulations (19 CFR 159.63(b)(3)(i))).

Furthermore, where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures (§ 159.63(b)(3)(ii), Customs Regulations (19 CFR 159.63(b)(3)(ii))).

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), Customs Regulations (19 CFR 159.63(b)(3)(iii)), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer would not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer would again not be considered an affected domestic producer entitled to receive a distribution. The records must be those that are normally kept in the ordinary course of business; these records must support each qualifying expenditure enumerated in the certification; and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

*Disclosure of Information in Certifications; Acceptance by Producer*

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), Customs Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

*List of Orders or Findings and Related Domestic Producers*

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section

below entitled ''Verification of Certification'').

*Review and Correction of Certification*

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer, as provided in § 159.63(c), Customs Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

*Verification of Certification*

Certifications are subject to Customs verification. Because of this, parties are required to maintain records supporting their claims for a period of three years after the filing of the certification (see § 159.63(d), Customs Regulations (19 CFR 159.63(d))).

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| A–588–028 | AA1921–111 | Roller chain/Japan | American Chain Association; Acme Chain Division, North American Rockwell; Atlas Chain & Precision Products; Diamond Chain; Link-Belt Chain Division, FMC; Morse Chain Division, Borg Warner; Rex Chainbelt. |
| A–401–040 | AA1921–114 | Stainless steel plate/Sweden | Jessop Steel. |
| A–588–041 | AA1921–115 | Synthetic methionine/Japan | Monsanto. |
| A–588–046 | AA1921–129 | Polychloroprene rubber/Japan | E.I. du Pont de Nemours. |
| A–122–047 | AA1921–127 | Elemental sulphur/Canada | Duval. |
| A–588–056 | AA1921–162 | Melamine/Japan | Melamine Chemical. |
| A–475–059 | AA1921–167 | Pressure-sensitive plastic tape/Italy. | Minnesota Mining & Manufacturing. |
| A–588–068 | AA1921–188 | Prestressed concrete steel wire strand/Japan. | American Spring Wire; Armco Steel; Bethlehem Steel; CF&I Steel; Florida Wire & Cable. |
| C–408–046 | 104–TAA–7 | Sugar/EU | No petition at the Commission; Commerce service list identifies: U.S. Beet Sugar Association; Florida Sugar Marketing and Terminal Association; American Sugar Cane League; American Sugarbeet Growers Association; Florida Sugar Cane League; Rio Grande Valley Sugar Growers Association; Michigan Sugar; Amstar Sugar; Sugar Cane Growers Cooperative of Florida; Alexander & Baldwin; Michigan Farm Bureau; H&R Brokerage; Talisman Sugar; American Farm Bureau Federation; Leach Farms; A.J. Yates; Hawaiian Agricultural Research Center; United States Beet Sugar Association; United States Cane Sugar Refiners' Association. |
| A–423–077 | AA1921–198 | Sugar/Belgium | Florida Sugar Marketing and Terminal Association. |
| A–427–078 | AA1921–199 | Sugar/France | Florida Sugar Marketing and Terminal Association. |
| A–428–082 | AA1921–200 | Sugar/Germany | Florida Sugar Marketing and Terminal Association. |
| A–122–085 | 731–TA–3 | Sugar and syrups/Canada | Amstar Sugar. |
| A–427–098 | 731–TA–25 | Anhydrous sodium metasilicate/France. | PQ. |
| A–427–001 | 731–TA–44 | Sorbitol/France | Lonza; Pfizer. |
| A–570–007 | 731–TA–149 | Barium chloride/China | Chemical Products. |
| A–570–101 | 731–TA–101 | Greige polyester cotton printcloth/China. | Alice Manufacturing; Clinton Mills; Dan River; Greenwood Mills; Hamrick Mills; M. Lowenstein; Mayfair Mills; Mount Vernon Mills. |
| C–357–004 | 701–TA–A | Carbon steel wire rod/Argentina | Atlantic Steel; Continental Steel; Georgetown Steel; North Star Steel; Raritan River Steel. |
| A–357–007 | 731–TA–157 | Carbon steel wire rod/Argentina | Atlantic Steel; Continental Steel; Georgetown Steel; North Star Steel; Raritan River Steel. |
| A–469–007 | 731–TA–126 | Potassium permanganate/Spain | Carus Chemical. |
| A–570–001 | 731–TA–125 | Potassium permanganate/China. | Carus Chemical. |
| A–570–002 | 731–TA–130 | Chloropicrin/China | LCP Chemicals & Plastics; Niklor Chemical. |
| C–533–063 | 303–TA–13 | Iron metal castings/India | Campbell Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Pinkerton Foundry; U.S. Foundry & Manufacturing; Vulcan Foundry. |
| A–122–503 | 731–TA–263 | Iron construction castings/Canada. | Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry. |
| A–351–503 | 731–TA–262 | Iron construction castings/Brazil | Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
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| A–570–502 | 731–TA–265 | Iron construction castings/China. | Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry. |
| C–351–504 | 701–TA–249 | Heavy iron construction castings/Brazil. | Alhambra Foundry; Allegheny Foundry; Bingham & Taylor; Campbell Foundry; Charlotte Pipe & Foundry; Deeter Foundry; East Jordan Foundry; Le Baron Foundry; Municipal Castings; Neenah Foundry; Opelika Foundry; Pinkerton Foundry; Tyler Pipe; U.S. Foundry & Manufacturing; Vulcan Foundry. |
| A–351–605 | 731–TA–326 | Frozen concentrated orange juice/Brazil. | Florida Citrus Mutual. |
| A–570–825 | 731–TA–653 | Sebacic acid/China | Union Camp. |
| C–122–404 | 701–TA–224 | Live swine/Canada | National Pork Producers Council; Wilson Foods. |
| A–357–405 | 731–TA–208 | Barbed wire and barbless wire strand/Argentina. | CF&I Steel; Davis Walker; Forbes Steel & Wire; Oklahoma Steel Wire. |
| A–570–501 | 731–TA–244 | Natural bristle paint brushes/China. | Baltimore Brush; Bestt Liebco; Elder & Jenks; EZ Paintr; H&G Industries; Joseph Lieberman & Sons; Purdy; Rubberset; Thomas Paint Applicators; Wooster Brush. |
| A–570–003 | 731–TA–103 | Cotton shop towels/China | Milliken; Texel Industries; Wikit. |
| C–535–001 | 701–TA–202 | Cotton shop towels/Pakistan | Milliken. |
| C–333–401 | 701–TA–E | Cotton shop towels/Peru | No case at the Commission; Commerce service list identifies: Durafab; Kleen-Tex Industries; Pavis & Harcourt; Lewis Eckert Robb; Milliken. |
| A–538–802 | 731–TA–514 | Cotton shop towels/Bangladesh | Milliken. |
| A–570–504 | 731–TA–282 | Petroleum wax candles/China | Candle-Lite; Colonial Candle of Cape Cod; Lenox Candles; Lumi-Lite Candle; Meuch-Kreuzer Candle; National Candle Association; WNS. |
| A–588–045 | AA1921–124 | Steel wire rope/Japan | AMSTED Industries. |
| A–201–806 | 731–TA–547 | Carbon steel wire rope/Mexico | Bridon American; Macwhyte; Paulsen Wire Rope; The Rochester Corporation; Williamsport; Wire-rope Works; Wire Rope Corporation of America; United Automobile, Aerospace and Agricultural Implement Workers (Local 960). |
| A–580–811 | 731–TA–546 | Carbon steel wire rope/Korea | Bridon American; Macwhyte; Paulsen Wire Rope; The Rochester Corporation; Williamsport; Wire-rope Works; Wire Rope Corporation of America; United Automobile, Aerospace and Agricultural Implement Workers (Local 960). |
| A–351–505 | 731–TA–278 | Malleable cast iron pipe fittings/Brazil. | Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing. |
| A–580–507 | 731–TA–279 | Malleable cast iron pipe fittings/Korea. | Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing. |
| A–583–507 | 731–TA–280 | Malleable cast iron pipe fittings/Taiwan. | Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing. |
| A–588–605 | 731–TA–347 | Malleable cast iron pipe fittings/Japan. | Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing. |
| A–549–601 | 731–TA–348 | Malleable cast iron pipe fittings/Thailand. | Stanley G. Flagg; Grinnell; Stockham Valves & Fittings; U-Brand; Ward Manufacturing. |
| A–570–506 | 731–TA–298 | Porcelain-on-steel cooking ware/China. | General Housewares. |
| A–201–504 | 731–TA–297 | Porcelain-on-steel cooking ware/Mexico. | General Housewares. |
| A–583–508 | 731–TA–299 | Porcelain-on-steel cooking ware/Taiwan. | General Housewares. |
| C–201–505 | 701–TA–265 | Porcelain-on-steel cooking ware/Mexico. | General Housewares. |
| A–580–601 | 731–TA–304 | Top-of-the-stove stainless steel cooking ware/Korea. | Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex. |
| C–580–602 | 701–TA–267 | Top-of-the-stove stainless steel cooking ware/Korea. | Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex. |
| A–583–603 | 731–TA–305 | Top-of-the-stove stainless steel cooking ware/Taiwan. | Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex. |
| C–583–604 | 701–TA–268 | Top-of-the-stove stainless steel cooking ware/Taiwan. | Farberware; Regal Ware; Revere Copper & Brass; WearEver/Proctor Silex. |
| C–351–604 | 701–TA–269 | Brass sheet and strip/Brazil | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |

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| A–351–603 | 731–TA–311 | Brass sheet and strip/Brazil | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–122–601 | 731–TA–312 | Brass sheet and strip/Canada | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–580–603 | 731–TA–315 | Brass sheet and strip/Korea | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–427–602 | 731–TA–313 | Brass sheet and strip/France | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| C–427–603 | 701–TA–270 | Brass sheet and strip/France | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–428–602 | 731–TA–317 | Brass sheet and strip/Germany | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–475–601 | 731–TA–314 | Brass sheet and strip/Italy | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–401–601 | 731–TA–316 | Brass sheet and strip/Sweden | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; Olin; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–588–704 | 731–TA–379 | Brass sheet and strip/Japan | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; North Coast Brass & Copper; Olin; Pegg Metals; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–421–701 | 731–TA–380 | Brass sheet and strip/Netherlands. | American Brass; Bridgeport Brass; Chase Brass & Copper; Hussey Copper; The Miller Company; North Coast Brass & Copper; Olin; Pegg Metals; Revere Copper Products; Allied Industrial Workers of America; International Association of Machinists & Aerospace Workers; Mechanics Educational Society of America (Local 56); United Steelworkers of America. |
| A–831–801 | 731–TA–340–A | Solid urea/Armenia | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–822–801 | 731–TA–340–B | Solid urea/Belarus | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–447–801 | 731–TA–340–C | Solid urea/Estonia | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |

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| A–451–801 | 731–TA–340–D | Solid urea/Lithuania | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–485–601 | 731–TA–339 | Solid urea/Romania | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–821–801 | 731–TA–340–E | Solid urea/Russia | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–842–801 | 731–TA–340–F | Solid urea/Tajikistan | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–843–801 | 731–TA–340–G | Solid urea/Turkmenistan | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–823–801 | 731–TA–340–H | Solid urea/Ukraine | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| A–844–801 | 731–TA–340–I | Solid urea/Uzbekistan | Agrico Chemical; American Cyanamid; CF Industries; First Mississippi; Mississippi Chemical; Terra International; W.R. Grace. |
| C–508–605 | 701–TA–286 | Industrial phosphoric acid/Israel | Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical. |
| A–423–602 | 731–TA–365 | Industrial phosphoric acid/Belgium. | Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical. |
| A–489–602 | 731–TA–364 | Aspirin/Turkey | Dow Chemical; Monsanto; Norwich-Eaton. |
| A–122–605 | 731–TA–367 | Color picture tubes/Canada | Philips Electronic Components Group; Zenith Electronics Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America. |
| A–588–609 | 731–TA–368 | Color picture tubes/Japan | Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America. |
| A–580–605 | 731–TA–369 | Color picture tubes/Korea | Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America. |
| A–559–601 | 731–TA–370 | Color picture tubes/Singapore | Philips Electronic Components Group; Zenith Electronics; Industrial Union Department, AFL–CIO; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Union of Electronic, Electrical, Technical, Salaried and Machine Workers; United Steelworkers of America. |
| A–588–054 | AA1921–143 | Tapered roller bearings 4 inches and under/Japan. | No companies identified as petitioners at the Commission; Commerce service list identifies: Mitsubishi; Nissan Motor; Yamaha Motors; NSK; Hoover-NSK Bearing; ITOCHU International; Toyota Motor Sales; Timken; Nippon Seiko; Kawasaki Heavy Duty Industries; Komatsu America; Nachi Western; Ford Motor; Federal Mogul; Itocho; Kanematsu-Goshu USA; Nissan Motor USA; Nachi America; Motorambar; Honda; General Motors; Sumitomo; Koyo Seiko; American Honda Motor; Subaru of America; Suzuki Motor; Kubota Tractor; Isuzu; Nachi-Fujikoshi; NTN. |
| A–570–601 | 731–TA–344 | Tapered roller bearings/China | Timken; Torrington. |
| A–437–601 | 731–TA–341 | Tapered roller bearings/Hungary. | Timken; Torrington. |
| A–485–602 | 731–TA–345 | Tapered roller bearings/Romania. | Timken; Torrington. |
| A–588–604 | 731–TA–343 | Tapered roller bearings over 4 inches/Japan. | Timken; Torrington. |
| A–427–801 | 731–TA–392–A | Ball bearings/France | MPB; Torrington. |
| A–427–801 | 731–TA–392–B | Cylindrical roller bearings/France. | MPB; Torrington. |
| A–427–801 | 731–TA–392–C | Spherical plain bearings/France | Torrington. |
| A–428–801 | 731–TA–391–A | Ball bearings/Germany | MPB; Torrington. |

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| A–428–801 | 731–TA–391–B | Cylindrical roller bearings/Germany. | MPB; Torrington. |
| A–428–801 | 731–TA–391–C | Spherical plain bearings/Germany. | Torrington. |
| A–475–801 | 731–TA–393–A | Ball bearings/Italy | MPB; Torrington. |
| A–475–801 | 731–TA–393–B | Cylindrical roller bearings/Italy | MPB; Torrington. |
| A–588–804 | 731–TA–394–A | Ball bearings/Japan | Kubar Bearings; MPB; Torrington. |
| A–588–804 | 731–TA–394–B | Cylindrical roller bearings/Japan. | Kubar Bearings; MPB; Torrington. |
| A–588–804 | 731–TA–394–C | Spherical plain bearings/Japan | Kubar Bearings; Torrington. |
| A–485–801 | 731–TA–395 | Ball bearings/Romania | MPB; Torrington. |
| A–559–801 | 731–TA–396 | Ball bearings/Singapore | MPB; Torrington. |
| A–401–801 | 731–TA–397–A | Ball bearings/Sweden | MPB; Torrington. |
| A–401–801 | 731–TA–397–B | Cylindrical roller bearings/Sweden. | MPB; Torrington. |
| A–412–801 | 731–TA–399–A | Ball Bearings/United Kingdom | MPB; Torrington. |
| A–412–801 | 731–TA–399–B | Cylindrical roller bearings/United Kingdom. | MPB; Torrington. |
| A–588–703 | 731–TA–377 | Internal combustion industrial forklift trucks/Japan. | Hyster; Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities; Allied Industrial Workers of America; Independent Lift Truck Builders Union; International Association of Machinists & Aerospace Workers; United Shop & Service Employees. |
| A–588–706 | 731–TA–384 | Nitrile rubber/Japan | Uniroyal Chemical. |
| A–583–008 | 731–TA–132 | Small diameter carbon steel pipe and tube/Taiwan. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Copperweld Tubing J&L Steel; Kaiser Steel; Merchant Metals; Pittsburgh Tube; Southwestern Pipe; Western Tube & Conduit. |
| C–489–502 | 701–TA–253 | Welded carbon steel pipe and tube/Turkey. | Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube. |
| A–549–502 | 731–TA–252 | Welded carbon steel pipe and tube/Thailand. | Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube. |
| A–533–502 | 731–TA–271 | Welded carbon steel pipe and tube/India. | Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube. |
| A–489–501 | 731–TA–273 | Welded carbon steel pipe and tube/Turkey. | Allied Tube & Conduit; American Tube; Bernard Epps; Bock Industries; Bull Moose Tube; Central Steel Tube; Century Tube; Copperweld Tubing; Cyclops; Hughes Steel & Tube; Kaiser Steel; Laclede Steel; Maruichi American; Maverick Tube; Merchant Metals; Phoenix Steel; Pittsburgh Tube; Quanex; Sharon Tube; Southwestern Pipe; UNR-Leavitt; Welded Tube; Western Tube & Conduit; Wheatland Tube. |
| A–122–506 | 731–TA–276 | Oil country tubular goods/Canada. | CF&I Steel; Copperweld Tubing; Cyclops; KPC; Lone Star Steel; LTV Steel; Maverick Tube; Quanex; U.S. Steel. |
| A–583–505 | 731–TA–277 | Oil country tubular goods/Taiwan. | CF&I Steel; Copperweld Tubing; Cyclops; KPC; Lone Star Steel; LTV Steel; Maverick Tube; Quanex; U.S. Steel. |
| A–559–502 | 731–TA–296 | Small diameter standard and rectangular pipe and tube/Singapore. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Cyclops; Hannibal Industries; Laclede Steel; Pittsburgh Tube; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |
| A–583–803 | 731–TA–410 | Light-walled rectangular tube/Taiwan. | Bull Moose Tube; Hannibal Industries; Harris Tube; Maruichi American; Searing Industries; Southwestern Pipe; Western Tube & Conduit. |
| A–357–802 | 731–TA–409 | Light-walled rectangular tube/Argentina. | Bull Moose Tube; Hannibal Industries; Harris Tube; Maruichi American; Searing Industries; Southwestern Pipe; Western Tube & Conduit. |
| A–351–809 | 731–TA–532 | Circular welded nonalloy steel pipe/Brazil. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |

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| A–580–809 | 731–TA–533 | Circular welded nonalloy steel pipe/Korea. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |
| A–201–805 | 731–TA–534 | Circular welded nonalloy steel pipe/Mexico. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |
| A–583–814 | 731–TA–536 | Circular welded nonalloy steel pipe/Taiwan. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |
| A–307–805 | 731–TA–537 | Circular welded nonalloy steel pipe/Venezuela. | Allied Tube & Conduit; American Tube; Bull Moose Tube; Century Tube; CSI Tubular Products; Cyclops; Laclede Steel; LTV Tubular Products; Maruichi American; Sharon Tube; Western Tube & Conduit; Wheatland Tube. |
| A–588–707 | 731–TA–386 | Granular polytetrafluoroethylene/Japan. | E.I. du Pont de Nemours; ICI Americas. |
| A–475–703 | 731–TA–385 | Granular polytetrafluoroethylene/Italy. | E.I. du Pont de Nemours; ICI Americas. |
| A–351–602 | 731–TA–308 | Carbon steel butt-weld pipe fittings/Brazil. | Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend. |
| A–583–605 | 731–TA–310 | Carbon steel butt-weld pipe fittings/Taiwan. | Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend. |
| A–588–602 | 731–TA–309 | Carbon steel butt-weld pipe fittings/Japan. | Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America; Weldbend. |
| A–570–814 | 731–TA–520 | Carbon steel butt-weld pipe fittings/China. | Hackney; Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America. |
| A–549–807 | 731–TA–521 | Carbon steel butt-weld pipe fittings/Thailand. | Hackney; Ladish; Mills Iron Works; Steel Forgings; Tube Forgings of America. |
| A–484–801 | 731–TA–406 | Electrolytic manganese dioxide/Greece. | Chemetals; Kerr-McGee; Rayovac. |
| A–588–806 | 731–TA–408 | Electrolytic manganese dioxide/Japan. | Chemetals; Kerr-McGee; Rayovac. |
| A–428–802 | 731–TA–419 | Industrial belts/Germany | The Gates Rubber Company; The Goodyear Tire and Rubber Company. |
| A–475–802 | 731–TA–413 | Industrial belts/Italy | The Gates Rubber Company; The Goodyear Tire and Rubber Company. |
| A–588–807 | 731–TA–414 | Industrial belts/Japan | The Gates Rubber Company; The Goodyear Tire and Rubber Company. |
| A–559–802 | 731–TA–415 | Industrial belts/Singapore | The Gates Rubber Company; The Goodyear Tire and Rubber Company. |
| A–427–009 | 731–TA–96 | Industrial nitrocellulose/France | Hercules. |
| A–351–804 | 731–TA–439 | Industrial nitrocellulose/Brazil | Hercules. |
| A–570–802 | 731–TA–441 | Industrial nitrocellulose/China | Hercules. |
| A–428–803 | 731–TA–444 | Industrial nitrocellulose/Germany. | Hercules. |
| A–588–812 | 731–TA–440 | Industrial nitrocellulose/Japan | Hercules. |
| A–580–805 | 731–TA–442 | Industrial nitrocellulose/Korea | Hercules. |
| A–412–803 | 731–TA–443 | Industrial nitrocellulose/United Kingdom. | Hercules. |
| A–479–801 | 731–TA–445 | Industrial nitrocellulose/Yugoslavia. | Hercules. |
| A–122–804 | 731–TA–422 | Steel rails/Canada | Bethlehem Steel; CF&I Steel. |
| C–122–805 | 701–TA–297 | Steel rails/Canada | Bethlehem Steel; CF&I Steel. |
| A–588–811 | 731–TA–432 | Drafting machines/Japan | Vemco. |
| A–588–810 | 731–TA–429 | Mechanical transfer presses/Japan. | Allied Products; United Autoworkers of America; United Steelworkers of America. |
| A–570–803 | 731–TA–457–A | Axes and adzes/China | Warwood Tool; Woodings-Verona. |
| A–570–803 | 731–TA–457–B | Bars and wedges/China | Warwood Tool; Woodings-Verona. |
| A–570–803 | 731–TA–457–C | Hammers and sledges/China | Warwood Tool; Woodings-Verona. |
| A–570–803 | 731–TA–457–D | Picks and mattocks/China | Warwood Tool; Woodings-Verona. |
| A–570–805 | 731–TA–466 | Sodium thiosulfate/China | Calabrian. |
| A–428–807 | 731–TA–465 | Sodium thiosulfate/Germany | Calabrian. |
| A–412–805 | 731–TA–468 | Sodium thiosulfate/United Kingdom. | Calabrian. |
| C–469–004 | 701–TA–178 | Stainless steel wire rod/Spain | AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Colt Industries; Cyclops; Guterl Special Steel; Joslyn Stainless Steels; Republic Steel. |
| A–533–808 | 731–TA–638 | Stainless steel wire rod/India | AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |

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| A–351–819 | 731–TA–636 | Stainless steel wire rod/Brazil | AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–427–811 | 731–TA–637 | Stainless steel wire rod/France | AL Tech Specialty Steel; Armco Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–580–810 | 731–TA–540 | Welded ASTM A–312 stainless steel pipe/Korea. | Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America. |
| A–583–815 | 731–TA–541 | Welded ASTM A–312 stainless steel pipe/Taiwan. | Avesta Sandvik Tube; Bristol Metals; Crucible Materials; Damascus Tubular Products; United Steelworkers of America. |
| A–403–801 | 731–TA–454 | Fresh and chilled Atlantic salmon/Norway. | Heritage Salmon; The Coalition for Fair Atlantic Salmon Trade. |
| C–403–802 | 701–TA–302 | Fresh and chilled Atlantic salmon/Norway. | Heritage Salmon; The Coalition for Fair Atlantic Salmon Trade. |
| A–580–807 | 731–TA–459 | Polyethylene terephthalate film/Korea. | E.I. du Pont de Nemours; Hoechst Celanese; ICI Americas. |
| A–570–804 | 731–TA–464 | Sparklers/China | B.J. Alan; Diamond Sparkler; Elkton Sparkler. |
| A–588–702 | 731–TA–376 | Stainless steel butt-weld pipe fittings/Japan. | Flowline; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–580–813 | 731–TA–563 | Stainless steel butt-weld pipe fittings/Korea. | Gerlin; Markovitz Enterprises; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–583–816 | 731–TA–564 | Stainless steel butt-weld pipe fittings/Taiwan. | Gerlin; Markovitz Enterprises; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–201–802 | 731–TA–451 | Gray portland cement and clinker/Mexico. | Alamo Cement; Blue Circle; BoxCrow Cement; Calaveras Cement; Capitol Aggregates; Florida Crushed Stone; Gifford-Hill; Hanson Permanente Cement; Ideal Basic Industries; National Cement Company of Alabama; National Cement Company of California; Phoenix Cement; Southdown; Tarmac America; Texas Industries; Independent Workers of North America (Locals 49, 52, 89, 192, and 471); International Union of Operating Engineers (Local 12). |
| A–588–815 | 731–TA–461 | Gray portland cement and clinker/Japan. | Calaveras Cement; Hanson Permanente Cement; National Cement Company of California; Southdown; Independent Workers of North America (Locals 49, 52, 89, 192, and 471); International Union of Operating Engineers (Local 12). |
| A–307–803 | 731–TA–519 | Gray portland cement and clinker/Venezuela. | Florida Crushed Stone; Southdown; Tarmac America. |
| C–307–804 | 303–TA–21 | Gray portland cement and clinker/Venezuela. | Florida Crushed Stone; Southdown; Tarmac America. |
| A–588–817 | 731–TA–469 | Electroluminescent flat-panel displays/Japan. | The Cherry Corporation; Electro Plasma; Magnascreen; OIS Optical Imaging Systems; Photonics Technology; Planar Systems; Plasmaco. |
| A–570–808 | 731–TA–474 | Chrome-plated lug nuts/China | Consolidated International Automotive; Key Manufacturing McGard. |
| A–583–810 | 731–TA–475 | Chrome-plated lug nuts/Taiwan | Consolidated International Automotive; Key Manufacturing McGard. |
| A–122–814 | 731–TA–528 | Pure magnesium/Canada | Magnesium Corporation of America. |
| C–122–815 | 701–TA–309–A | Alloy magnesium/Canada | Magnesium Corporation of America. |
| C–122–815 | 701–TA–309–B | Pure magnesium/Canada | Magnesium Corporation of America. |
| A–557–805 | 731–TA–527 | Extruded rubber thread/Malaysia. | Globe Manufacturing; North American Rubber Thread. |
| A–843–802 | 731–TA–539 | Uranium/Kazakhstan | Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers. |
| A–821–802 | 731–TA–539–C | Uranium/Russia | Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers. |
| A–844–802 | 731–TA–539–F | Uranium/Uzbekistan | Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers. |
| A–823–802 | 731–TA–539–E | Uranium/Ukraine | Ferret Exploration; First Holding; Geomex Minerals; IMC Fertilizer; Malapai Resources; Pathfinder Mines; Power Resources; Rio Algom Mining; Solution Mining; Total Minerals; Umetco Minerals; Uranium Resources; Oil, Chemical and Atomic Workers. |
| A–583–080 | AA1921–197 | Carbon steel plate/Taiwan | No petition (self-initiated by Treasury); Commerce service list identifies: U.S. Steel; China Steel; Bethlehem Steel. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| C–423–806 | 701–TA–319 | Cut-to-length carbon steel plate/Belgium. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–351–818 | 701–TA–320 | Cut-to-length carbon steel plate/Brazil. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–428–817 | 701–TA–322 | Cut-to-length carbon steel plate/Germany. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–201–810 | 701–TA–325 | Cut-to-length carbon steel plate/Mexico. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–469–804 | 701–TA–326 | Cut-to-length carbon steel plate/Spain. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–401–804 | 701–TA–327 | Cut-to-length carbon steel plate/Sweden. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| C–412–815 | 701–TA–328 | Cut-to-length carbon steel plate/United Kingdom. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–423–805 | 731–TA–573 | Cut-to-length carbon steel plate/Belgium. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–351–817 | 731–TA–574 | Cut-to-length carbon steel plate/Brazil. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–122–823 | 731–TA–575 | Cut-to-length carbon steel plate/Canada. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–405–802 | 731–TA–576 | Cut-to-length carbon steel plate/Finland. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–428–816 | 731–TA–578 | Cut-to-length carbon steel plate/Germany. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–201–809 | 731–TA–582 | Cut-to-length carbon steel plate/Mexico. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–455–802 | 731–TA–583 | Cut-to-length carbon steel plate/Poland. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–485–803 | 731–TA–584 | Cut-to-length carbon steel plate/Romania. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–469–803 | 731–TA–585 | Cut-to-length carbon steel plate/Spain. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–401–805 | 731–TA–586 | Cut-to-length carbon steel plate/Sweden. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |
| A–412–814 | 731–TA–587 | Cut-to-length carbon steel plate/United Kingdom. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; United Steelworkers of America. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| C–401–401 | 701–TA–231 | Cold-rolled carbon steel flat products/Sweden. | Bethlehem Steel; Chaparral; U.S. Steel. |
| C–428–817 | 701–TA–340 | Cold-rolled carbon steel flat products/Germany. | Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| C–580–818 | 701–TA–342 | Cold-rolled carbon steel flat products/Korea. | Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–428–814 | 731–TA–604 | Cold-rolled carbon steel flat products/Germany. | Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–580–815 | 731–TA–607 | Cold-rolled carbon steel flat products/Korea. | Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–421–804 | 731–TA–608 | Cold-rolled carbon steel flat products/Netherlands. | Armco Steel; Bethlehem Steel; California Steel Industries; Gulf States Steel; Inland Steel Industries; LTV Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| C–427–810 | 701–TA–348 | Corrosion-resistant carbon steel flat products/France. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| C–428–817 | 701–TA–349 | Corrosion-resistant carbon steel flat products/Germany. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| C–580–818 | 701–TA–350 | Corrosion-resistant carbon steel flat products/Korea. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–602–803 | 731–TA–612 | Corrosion-resistant carbon steel flat products/Australia. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–122–822 | 731–TA–614 | Corrosion-resistant carbon steel flat products/Canada. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–427–808 | 731–TA–615 | Corrosion-resistant carbon steel flat products/France. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–428–815 | 731–TA–616 | Corrosion-resistant carbon steel flat products/Germany. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–588–826 | 731–TA–617 | Corrosion-resistant carbon steel flat products/Japan. | Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Lukens Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–580–816 | 731–TA–618 | Corrosion-resistant carbon steel flat products/Korea. | Armco Steel; Bethlehem Steel; California Steel Industries; Geneva Steel; Gulf States Steel; Inland Steel Industries; LTV Steel; Lukens Steel; National Steel; Nextech; Sharon Steel; Theis Precision Steel; Thompson Steel; U.S. Steel; WCI Steel; United Steelworkers of America. |
| A–570–815 | 731–TA–538 | Sulfanilic acid/China | R–M Industries. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| A–533–806 | 731–TA–561 | Sulfanilic acid/India | R–M Industries. |
| C–533–807 | 701–TA–318 | Sulfanilic acid/India | R–M Industries. |
| A–570–806 | 731–TA–472 | Silicon metal/China | American Alloys; Elkem Metals; Globe Metallurgical; Silicon Metaltech; SiMETCO; SKW Alloys; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–351–806 | 731–TA–471 | Silicon metal/Brazil | American Alloys; Globe Metallurgical; Silicon Metaltech; SiMETCO; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–357–804 | 731–TA–470 | Silicon metal/Argentina | American Alloys; Elkem Metals; Globe Metallurgical; Silicon Metaltech; SiMETCO; SKW Alloys; International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693); Oil, Chemical and Atomic Workers (Local 389); Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60); United Steelworkers of America (Locals 5171, 8538, and 12646). |
| A–570–819 | 731–TA–567 | Ferrosilicon/China | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–843–804 | 731–TA–566 | Ferrosilicon/Kazakhstan | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–823–804 | 731–TA–569 | Ferrosilicon/Ukraine | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| C–307–808 | 303–TA–23 | Ferrosilicon/Venezuela | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–821–804 | 731–TA–568 | Ferrosilicon/Russia | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–307–807 | 731–TA–570 | Ferrosilicon/Venezuela | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–351–820 | 731–TA–641 | Ferrosilicon/Brazil | AIMCOR; Alabama Silicon; American Alloys; Globe Metallurgical; Silicon Metaltech; Oil, Chemical and Atomic Workers (Local 389); United Autoworkers of America (Local 523); United Steelworkers of America (Locals 2528, 3081, 5171, and 12646). |
| A–823–805 | 731–TA–673 | Silicomanganese/Ukraine | Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639). |
| A–351–824 | 731–TA–671 | Silicomanganese/Brazil | Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639). |
| A–570–828 | 731–TA–672 | Silicomanganese/China | Elkem Metals; Oil, Chemical and Atomic Workers (Local 3–639). |
| A–583–820 | 731–TA–625 | Helical spring lock washers/Taiwan. | Illinois Tool Works. |
| A–570–822 | 731–TA–624 | Helical spring lock washers/China. | Illinois Tool Works. |
| A–533–809 | 731–TA–639 | Forged stainless steel flanges/India. | Gerlin; Ideal Forging; Maass Flange; Markovitz Enterprises. |
| A–583–821 | 731–TA–640 | Forged stainless steel flanges/Taiwan. | Gerlin; Ideal Forging; Maass Flange; Markovitz Enterprises. |
| A–421–805 | 731–TA–652 | Aramid fiber/Netherlands | E.I. du Pont de Nemours. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| C–475–812 | 701–TA–355 | Grain-oriented silicon electrical steel/Italy. | Allegheny Ludlum; Armco Steel; Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union. |
| A–588–831 | 731–TA–660 | Grain-oriented silicon electrical steel/Japan. | Allegheny Ludlum; Armco Steel; United Steelworkers of America. |
| A–475–811 | 731–TA–659 | Grain-oriented silicon electrical steel/Italy. | Allegheny Ludlum; Armco Steel. Butler Armco Independent Union; United Steelworkers of America; Zanesville Armco Independent Union. |
| A–570–831 | 731–TA–683 | Fresh garlic/China | A&D Christopher Ranch; Belridge Packing; Colusa Produce; Denice & Filice Packing; El Camino Packing; The Garlic Company; Vessey and Company. |
| A–570–826 | 731–TA–663 | Paper clips/China | ACCO USA; Labelon/Noesting; TRICO Manufacturing. |
| A–570–827 | 731–TA–669 | Cased pencils/China | Blackfeet Indian Writing Instrument; Dixon-Ticonderoga; Empire Berol; Faber-Castell; General Pencil; J.R. Moon Pencil; Musgrave Pen & Pencil; Panda; Writing Instrument Manufacturers Association, Pencil Section. |
| A–570–830 | 731–TA–677 | Coumarin/China | Rhone-Poulenc. |
| A–351–825 | 731–TA–678 | Stainless steel bar/Brazil | AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America. |
| A–533–810 | 731–TA–679 | Stainless steel bar/India | AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America. |
| A–588–833 | 731–TA–681 | Stainless steel bar/Japan | AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America. |
| A–469–805 | 731–TA–682 | Stainless steel bar/Spain | AL Tech Specialty Steel; Carpenter Technology; Crucible Specialty Metals; Electralloy; Republic Engineered Steels; Slater Steels; Talley Metals Technology; United Steelworkers of America. |
| A–570–836 | 731–TA–718 | Glycine/China | Chattem; Hampshire Chemical. |
| A–570–832 | 731–TA–696 | Pure magnesium/China | Dow Chemical; Magnesium Corporation of America; International Union of Operating Engineers (Local 564); United Steelworkers of America (Local 8319). |
| A–570–835 | 731–TA–703 | Furfuryl alcohol/China | QO Chemicals. |
| A–549–812 | 731–TA–705 | Furfuryl alcohol/Thailand | QO Chemicals. |
| A–821–807 | 731–TA–702 | Ferrovanadium and nitrided vanadium/Russia. | Shieldalloy Metallurgical. |
| A–549–813 | 731–TA–706 | Canned pineapple/Thailand | Maui Pineapple; International Longshoreman's and Warehouseman's Union. |
| A–357–809 | 731–TA–707 | Seamless pipe/Argentina | Koppel Steel; Quanex; Timken; United States Steel. |
| A–351–826 | 731–TA–708 | Seamless pipe/Brazil | Koppel Steel; Quanex; Timken; United States Steel. |
| A–428–820 | 731–TA–709 | Seamless pipe/Germany | Koppel Steel; Quanex; Timken; United States Steel. |
| A–475–814 | 731–TA–710 | Seamless pipe/Italy | Koppel Steel; Quanex; Timken; United States Steel. |
| C–475–815 | 701–TA–362 | Seamless pipe/Italy | Koppel Steel; Quanex; Timken; United States Steel. |
| C–475–817 | 701–TA–364 | Oil country tubular goods/Italy | IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe. |
| A–357–810 | 731–TA–711 | Oil country tubular goods/Argentina. | IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe. |
| A–475–816 | 731–TA–713 | Oil country tubular goods/Italy | Bellville Tube; IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe. |
| A–588–835 | 731–TA–714 | Oil country tubular goods/Japan | IPSCO; Koppel Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel. |
| A–580–825 | 731–TA–715 | Oil country tubular goods/Korea | Bellville Tube; IPSCO; Koppel Steel; Lone Star Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe. |
| A–201–817 | 731–TA–716 | Oil country tubular goods/Mexico. | IPSCO; Koppel Steel; Maverick Tube; Newport Steel; North Star Steel; U.S. Steel; USS/Kobe. |
| A–570–840 | 731–TA–724 | Manganese metal/China | Elkem Metals; Kerr-McGee. |
| A–570–842 | 731–TA–726 | Polyvinyl alcohol/China | Air Products and Chemicals. |
| A–588–836 | 731–TA–727 | Polyvinyl alcohol/Japan | Air Products and Chemicals. |
| A–583–824 | 731–TA–729 | Polyvinyl alcohol/Taiwan | Air Products and Chemicals. |
| A–588–838 | 731–TA–739 | Clad steel plate/Japan | Lukens Steel. |
| C–475–819 | 701–TA–365 | Pasta/Italy | A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni. |
| C–489–806 | 701–TA–366 | Pasta/Turkey | A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni. |
| A–475–818 | 731–TA–734 | Pasta/Italy | A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
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| A–489–805 | 731–TA–735 | Pasta/Turkey | A. Zerega's Sons; American Italian Pasta; Borden; Gooch Foods; Hershey Foods; Pasta USA; Philadelphia Macaroni. |
| A–428–821 | 731–TA–736 | Large newspaper printing presses/Germany. | Rockwell Graphics Systems. |
| A–588–837 | 731–TA–737 | Large newspaper printing presses/Japan. | Rockwell Graphics Systems. |
| A–201–820 | 731–TA–747 | Fresh tomatoes/Mexico | Accomack County Farm Bureau; Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers; Florida Farm Bureau Federation; Florida Fruit and Vegetable Association; Florida Tomato Exchange; Florida Tomato Growers Exchange; Gadsden County Tomato Growers Association; South Carolina Tomato Association. |
| A–588–839 | 731–TA–740 | Sodium azide/Japan | American Azide. |
| A–570–844 | 731–TA–741 | Melamine institutional dinnerware/China. | Carlisle Food Service Products; Lexington United; Plastics Manufacturing. |
| A–560–801 | 731–TA–742 | Melamine institutional dinnerware/Indonesia. | Carlisle Food Service Products; Lexington United; Plastics Manufacturing. |
| A–583–825 | 731–TA–743 | Melamine institutional dinnerware/Taiwan. | Carlisle Food Service Products; Lexington United; Plastics Manufacturing. |
| A–570–846 | 731–TA–744 | Brake rotors/China | Brake Parts; Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers; Kelsey Hayes; Kinetic Parts Manufacturing; Iroquois Tool Systems; Overseas Auto Parts; Wagner Brake. |
| A–489–807 | 731–TA–745 | Steel; concrete reinforcing bar/Turkey. | AmeriSteel; Auburn Steel; Birmingham Steel; Commercial Metals; Marion Steel; New Jersey Steel;. |
| A–588–840 | 731–TA–748 | Gas turbo-compressor systems/Japan. | Demag Delaval; Dresser-Rand; United Steelworkers of America. |
| A–570–847 | 731–TA–749 | Persulfates/China | FMC. |
| A–570–848 | 731–TA–752 | Crawfish tail meat/China | Crawfish Processors Alliance. |
| A–588–841 | 731–TA–750 | Vector supercomputers/Japan | Cray Research. |
| A–570–849 | 731–TA–753 | Cut-to-length carbon steel plate/China. | Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| A–821–808 | 731–TA–754 | Cut-to-length carbon steel plate/Russia. | Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| A–791–804 | 731–TA–755 | Cut-to-length carbon steel plate/South Africa. | Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel United Steelworkers of America. |
| A–823–808 | 731–TA–756 | Cut-to-length carbon steel plate/Ukraine. | Bethlehem Steel; Geneva Steel; Gulf States Steel; National Steel; U.S. Steel United Steelworkers of America. |
| A–570–850 | 731–TA–757 | Collated roofing nails/China | Illinois Tool Works; International Staple and Machines; Stanley-Bostitch. |
| A–583–826 | 731–TA–759 | Collated roofing nails/Taiwan | Illinois Tool Works; International Staple and Machines; Stanley-Bostitch. |
| A–583–827 | 731–TA–762 | SRAMs/Taiwan | Micron Technology. |
| A–337–803 | 731–TA–768 | Fresh Atlantic salmon/Chile | Atlantic Salmon of Maine; Cooke Aquaculture US; DE Salmon; Global Aqua USA; Island Aquaculture; Maine Coast Nordic; Scan Am Fish Farms; Treats Island Fisheries; Trumpet Island Salmon Farm. |
| C–475–821 | 701–TA–373 | Stainless steel wire rod/Italy | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–475–820 | 731–TA–770 | Stainless steel wire rod/Italy | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–588–843 | 731–TA–771 | Stainless steel wire rod/Japan | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–580–829 | 731–TA–772 | Stainless steel wire rod/Korea | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–469–807 | 731–TA–773 | Stainless steel wire rod/Spain | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–401–806 | 731–TA–774 | Stainless steel wire rod/Sweden. | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–583–828 | 731–TA–775 | Stainless steel wire rod/Taiwan | AL Tech Specialty Steel; Carpenter Technology; Republic Engineered Steels; Talley Metals Technology; United Steelworkers of America. |
| A–337–804 | 731–TA–776 | Preserved mushrooms/Chile | L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning. |

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| A–570–851 | 731–TA–777 | Preserved mushrooms/China | L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning; |
| A–533–813 | 731–TA–778 | Preserved mushrooms/India | L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning. |
| A–560–802 | 731–TA–779 | Preserved mushrooms/Indonesia. | L.K. Bowman; Modern Mushroom Farms; Monterey Mushrooms; Mount Laurel Canning; Mushroom Canning; Southwood Farms; Sunny Dell Foods; United Canning. |
| C–423–809 | 701–TA–376 | Stainless steel plate in coils/Belgium. | Allegheny Ludlum; Armco Steel; Lukens Steel; United Steelworkers of America. |
| C–475–823 | 701–TA–377 | Stainless steel plate in coils/Italy. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America. |
| C–791–806 | 701–TA–379 | Stainless steel plate in coils/South Africa. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America. |
| A–423–808 | 731–TA–788 | Stainless steel plate in coils/Belgium. | Allegheny Ludlum; Armco Steel; Lukens Steel; North American Stainless; United Steelworkers of America. |
| A–122–830 | 731–TA–789 | Stainless steel plate in coils/Canada. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless. |
| A–475–822 | 731–TA–790 | Stainless steel plate in coils/Italy. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; United Steelworkers of America. |
| A–580–831 | 731–TA–791 | Stainless steel plate in coils/Korea. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America. |
| A–791–805 | 731–TA–792 | Stainless steel plate in coils/South Africa. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America. |
| A–583–830 | 731–TA–793 | Stainless steel plate in coils/Taiwan. | Allegheny Ludlum; Armco Steel; J&L Specialty Steel; Lukens Steel; North American Stainless; United Steelworkers of America. |
| A–560–803 | 731–TA–787 | Extruded rubber thread/Indonesia. | North American Rubber Thread. |
| A–588–846 | 731–TA–807 | Hot-rolled carbon steel flat products/Japan. | Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| C–351–829 | 701–TA–384 | Hot-rolled carbon steel flat products/Brazil. | Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–351–828 | 731–TA–806 | Hot-rolled carbon steel flat products/Brazil. | Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–821–809 | 731–TA–808 | Hot-rolled carbon steel flat products/Russia. | Bethlehem Steel; California Steel Industries; Gallatin Steel; Geneva Steel; Gulf States Steel; IPSCO; Ispat/Inland; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; WCI; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–427–814 | 731–TA–797 | Stainless steel sheet and strip/France. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–428–825 | 731–TA–798 | Stainless steel sheet and strip/Germany. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–475–824 | 731–TA–799 | Stainless steel sheet and strip/Italy. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–588–845 | 731–TA–800 | Stainless steel sheet and strip/Japan. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–580–834 | 731–TA–801 | Stainless steel sheet and strip/Korea. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |

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| A–201–822 | 731–TA–802 | Stainless steel sheet and strip/Mexico. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; North American Stainless; United Steelworkers of America. |
| A–583–831 | 731–TA–803 | Stainless steel sheet and strip/Taiwan. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–412–818 | 731–TA–804 | Stainless steel sheet and strip/United Kingdom. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| C–427–815 | 701–TA–380 | Stainless steel sheet and strip/France. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| C–475–825 | 701–TA–381 | Stainless steel sheet and strip/Italy. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| C–580–835 | 701–TA–382 | Stainless steel sheet and strip/Korea. | Allegheny Ludlum; Armco Steel; Bethlehem Steel; J&L Specialty Steel; Butler Armco Independent Union; North American Stainless; United Steelworkers of America; Zanesville Armco Independent Organization. |
| A–570–852 | 731–TA–814 | Creatine monohydrate/China | Pfanstiehl Laboratories. |
| C–427–817 | 701–TA–387 | Cut-to-length carbon steel plate/France. | Bethlehem Steel; Geneva Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| C–533–818 | 701–TA–388 | Cut-to-length carbon steel plate/India. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| C–560–806 | 701–TA–389 | Cut-to-length carbon steel plate/Indonesia. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| C–475–827 | 701–TA–390 | Cut-to-length carbon steel plate/Italy. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| C–580–837 | 701–TA–391 | Cut-to-length carbon steel plate/Korea. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| A–427–816 | 731–TA–816 | Cut-to-length carbon steel plate/France. | Bethlehem Steel; Geneva Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| A–533–817 | 731–TA–817 | Cut-to-length carbon steel plate/India. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| A–560–805 | 731–TA–818 | Cut-to-length carbon steel plate/Indonesia. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| A–475–826 | 731–TA–819 | Cut-to-length carbon steel plate/Italy. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; U.S. Steel; United Steelworkers of America. |
| A–588–847 | 731–TA–820 | Cut-to-length carbon steel plate/Japan. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| A–580–836 | 731–TA–821 | Cut-to-length carbon steel plate/Korea. | Bethlehem Steel; Geneva Steel; Gulf States Steel; IPSCO Steel; National Steel; Tuscaloosa Steel; U.S. Steel; United Steelworkers of America. |
| A–507–502 | 731–TA–287 | Raw in-shell pistachios/Iran | Blackwell Land; California Pistachio Orchard; T.M. Duche Nut; Keenan Farms; Kern Pistachio Hulling & Drying; Los Ranchos de Poco Pedro; Pistachio Producers of California. |
| C–507–501 | None | Raw in-shell pistachios/Iran | No case at the Commission; no service list at Commerce. |
| C–507–601 | None | Roasted in-shell pistachios/Iran | No case at the Commission; no service list at Commerce. |
| A–821–811 | 731–TA–856 | Ammonium nitrate/Russia | Agrium; Air Products and Chemicals; Mississippi Chemical; El Dorado Chemical; Nitram; LaRoche; Wil-Gro Fertilizer. |
| A–580–839 | 731–TA–825 | Polyester staple fiber/Korea | E.I. du Pont de Nemours; Arteva Specialties S.a.r.l.; Wellman; Intercontinental Polymers. |
| A–583–833 | 731–TA–826 | Polyester staple fiber/Taiwan | Arteva Specialties S.a.r.l.; Wellman; Intercontinental Polymers. |
| A–570–855 | 731–TA–841 | Non-frozen apple juice concentrate/China. | Coloma Frozen Foods; Green Valley Apples of California; Knouse Foods Coop; Mason County Fruit Packers Coop; Tree Top. |
| A–588–852 | 731–TA–853 | Structural steel beams/Japan | Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America. |
| C–580–842 | 701–TA–401 | Structural steel beams/Korea | Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America. |

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| A–580–841 | 731–TA–854 | Structural steel beams/Korea | Northwestern Steel and Wire; Nucor-Yamato Steel; TXI-Chaparral Steel; United Steelworkers of America. |
| A–570–856 | 731–TA–851 | Synthetic indigo/China | Buffalo Color; United Steelworkers of America. |
| A–588–850 | 731–TA–847 | Large-diameter carbon steel seamless pipe/Japan. | North Star Steel; Timken; U.S. Steel; USS/Kobe; United Steelworkers of America. |
| A–588–851 | 731–TA–847 | Small-diameter carbon steel seamless pipe/Japan. | Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America. |
| A–791–808 | 731–TA–850 | Small-diameter carbon steel seamless pipe/South Africa. | Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America. |
| A–485–805 | 731–TA–849 | Small-diameter carbon steel seamless pipe/Romania. | Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America. |
| A–201–827 | 731–TA–848 | Large-diameter carbon steel seamless pipe/Mexico. | North Star Steel; Timken; U.S. Steel; USS/Kobe; United Steelworkers of America. |
| A–851–802 | 731–TA–846 | Small-diameter carbon steel seamless pipe/Czech Republic. | Koppel Steel; North Star Steel; Sharon Tube; Timken; U.S. Steel; USS/Kobe; Vision Metals' Gulf States Tube; United Steelworkers of America. |
| A–570–853 | 731–TA–828 | Aspirin/China | Rhodia. |
| A–580–812 | 731–TA–556 | DRAMs of 1 megabit and above/Korea. | Micron Technology; NEC Electronics; Texas Instruments. |
| A–475–828 | 731–TA–865 | Stainless steel butt-weld pipe fittings/Italy. | Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–557–809 | 731–TA–866 | Stainless steel butt-weld pipe fittings/Malaysia. | Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–565–801 | 731–TA–867 | Stainless steel butt-weld pipe fittings/Philippines. | Markovitz Enterprises; Gerlin; Shaw Alloy Piping Products; Taylor Forge Stainless. |
| A–588–856 | 731–TA–888 | Stainless steel angle/Japan | Slater Steels; United Steelworkers of America. |
| A–580–846 | 731–TA–889 | Stainless steel angle/Korea | Slater Steels; United Steelworkers of America. |
| A–469–810 | 731–TA–890 | Stainless steel angle/Spain | Slater Steels; United Steelworkers of America. |
| A–588–015 | AA1921–66 | Television receivers/Japan | AGIV (USA); Casio Computer; CBM America; Citizen Watch; Funai Electric; Hitachi; Industrial Union Department; Matsushita; Mitsubishi Electric; NEC; Orion Electric; J.C. Penny; Philips Electronics; Philips Magnavox; P.T. Imports; Sanyo; Sharp; Toshiba; Toshiba America Consumer Products; Victor Company of Japan; Montgomery Ward; Zenith Electronics. |
| A–822–804 | 731–TA–873 | Steel concrete reinforcing bar/Belarus. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–570–860 | 731–TA–874 | Steel concrete reinforcing bar/China. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–560–811 | 731–TA–875 | Steel concrete reinforcing bar/Indonesia. | AmeriSteel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–580–844 | 731–TA–877 | Steel concrete reinforcing bar/Korea. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–449–804 | 731–TA–878 | Steel concrete reinforcing bar/Latvia. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–841–804 | 731–TA–879 | Steel concrete reinforcing bar/Moldova. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–455–803 | 731–TA–880 | Steel concrete reinforcing bar/Poland. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–823–809 | 731–TA–882 | Steel concrete reinforcing bar/Ukraine. | AmeriSteel; Auburn Steel; Birmingham Steel; Border Steel; CMC Steel Group; Marion Steel; Nucor Steel; Rebar Trade Action Coalition; Riverview Steel. |
| A–823–810 | 731–TA–894 | Ammonium nitrate/Ukraine | Agrium Air Products and Chemicals; Committee for Fair Ammonium Nitrate Trade; El Dorado Chemical; LaRoche Industries; Mississippi Chemicals; Nitram; Prodica. |
| A–570–862 | 731–TA–891 | Foundry coke/China | ABC Coke; Citizens Gas and Coke Utility; Erie Coke; Tonawanda Coke; United Steelworkers of America. |
| C–357–815 | 701–TA–404 | Hot-rolled steel products/Argentina. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–357–814 | 731–TA–898 | Hot-rolled steel products/Argentina. | Bethlehen Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |

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| A–791–809 | 731–TA–905 | Hot-rolled steel products/South Africa. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dymanics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–580–008 | 731–TA–134 | Color television receivers/Korea | Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color television. |
| A–583–009 | 731–TA–135 | Color television receivers/Taiwan. | Independent Radionic Workers of America; International Brotherhood of Electrical Workers; International Union of Electrical, Radio and Machine Workers; Industrial Union Department, AFL–CIO; Committee to Preserve American Color Television. |
| A–122–006 | AA1921–49 | Steel jacks/Canada | Bloomfield Manufacturing (Harrah); Seaburn Metal Products. |
| A–588–029 | AA1921–85 | Fish netting of man-made fiber/Japan. | Jovanovich Supply; LFSI; Trans-Pacific Trading. |
| A–588–038 | AA1921–98 | Bicycle speedometers/Japan | Avocet; Cat Eye; Diversified Products; N.S. International; Sanyo Electric; Stewart-Warner. |
| A–588–055 | AA1921–154 | Acrylic sheet/Japan | Polycast Technology. |
| C–351–037 | 104–TAA–21 | Cotton Yarn/Brazil | Harriet & Henderson Yarns; LaFar Industries; American Yarn Spinners Association. |
| A–588–005 | 731–TA–48 | High power microwave amplifiers/Japan. | Aydin; MCL. |
| A–122–401 | 731–TA–196 | Red raspberries/Canada | Rader farms; Ron Roberts; Shuksan Frozen Food; Northwest Food Producers' Association; Oregon Caneberry Commission; Washington Red Raspberry Commission. |
| A–588–405 | 731–TA–207 | Cellular mobile telephones/Japan. | E.F. Johnson; Motorola. |
| C–421–601 | 701–TA–278 | Fresh cut flowers/Netherlands | Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association. |
| A–301–602 | 731–TA–329 | Fresh cut flowers/Colombia | Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Pajaro Valley Greenhouses; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association. |
| A–331–602 | 731–TA–331 | Fresh cut flowers/Ecuador | Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association. |
| A–201–601 | 731–TA–333 | Fresh cut flowers/Mexico | Burdette Coward; Gold Coast Uanko Nursery; Hollandia Wholesale Florist; Manatee Fruit; Monterey Flower Farms; Topstar Nursery; California Floral Council; Floral Trade Council; Florida Flower Association. |
| A–401–603 | 731–TA–354 | Stainless steel hollow products/Sweden. | AL Tech Specialty steel; Allegheny Ludlum Steel; ARMCO; Carpenter Technology; Crucible Materials; Damacus Tubular Products; Specialty Tubing Group. |
| A–508–604 | 731–TA–366 | Industrial phosphoric acid/Israel | Albright & Wilson; FMC; Hydrite Chemical; Monsanto; Stauffer Chemical. |
| A–588–802 | 731–TA–389 | 3.5″ microdisks/Japan | Verbatim. |
| A–588–809 | 731–TA–426 | Small business telephone systems/Japan. | American Telephone & Telegraph; Comdial; Eagle Telephonic. |
| A–583–806 | 731–TA–428 | Small business telephone systems/Taiwan. | American Telephone & Telegraph; Comdial; Eagle Telephonic. |
| A–580–803 | 731–TA–427 | Small business telephone systems/Korea. | American Telephone & Telegraph; Comdial; Eagle Telephonic. |
| A–570–811 | 731–TA–497 | Tungsten ore concentrates/China. | Curtis Tungsten; U.S. Tungsten. |
| A–427–804 | 731–TA–553 | Hot-rolled lead and bismuth carbon steel products/France. | Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel. |
| C–427–805 | 701–TA–315 | Hot-rolled lead and bismuth carbon steel products/France. | Bethlehem Steel; Inland Steel Industries; USS/Kobe Steel. |
| A–588–823 | 731–TA–571 | Professional electric cutting tools/Japan. | Black & Decker. |
| A–821–805 | 731–TA–697 | Pure magnesium/Russia | Dow Chemical; Magnesium Corporation of America; International Union of Operating Engineers; United Steelworkers of America. |
| C–533–821 | 701–TA–405 | Hot-rolled steel products/India | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| C–560–813 | 701–TA–406 | Hot-rolled steel products/Indonesia. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |

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| C–791–810 | 701–TA–407 | Hot-rolled steel products/South Africa. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| C–549–818 | 701–TA–408 | Hot-rolled steel products/Thailand. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–570–865 | 731–TA–899 | Hot-rolled steel products/China | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–533–820 | 731–TA–900 | Hot-rolled steel products/India | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–560–812 | 731–TA–901 | Hot-rolled steel products/Indonesia. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–834–806 | 731–TA–902 | Hot-rolled steel products/Kazakhstan. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dymanics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–421–807 | 731–TA–903 | Hot-rolled steel products/Netherlands. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Independent Steelworkers; United Steelworkers of America. |
| A–485–806 | 731–TA–904 | Hot-rolled steel products/Romania. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Independent Steelworkers; United Steelworkers of America. |
| A–583–835 | 731–TA–906 | Hot-rolled steel products/Taiwan. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–549–817 | 731–TA–907 | Hot-rolled steel products/Thailand. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–823–811 | 731–TA–908 | Hot-rolled steel products/Ukraine. | Bethlehem Steel; Gallatin Steel; IPSCO; LTV Steel; National Steel; Nucor; Steel Dynamics; U.S. Steel; Weirton Steel; Independent Steelworkers; United Steelworkers of America. |
| A–570–864 | 731–TA–895 | Pure magnesium (granular)/China;. | Concerned Employees of Northwest Alloys; Magnesium Corporation of America; United Steelworkers of America; United Steelworkers of America (Local 8319). |
| A–588–857 | 731–TA–919 | Welded large diameter line pipe/Japan;. | American Cast Iron Pipe; Berg Steel Pipe; Bethlehem Steel; Napa Pipe/Oregon Steel Mills; Saw Pipes USA; Stupp; U.S. Steel. |
| A–201–828 | 731–TA–920 | Welded large diameter line pipe/Mexico. | American Cast Iron Pipe; Berg Steel Pipe; Bethlehem Steel; Napa Pipe/Oregon Steel Mills; Saw Pipes USA; Stupp; U.S. Steel. |
| C–357–813 | 701–TA–402 | Honey/Argentina | American Honey Producers Association; Sioux Honey Association. |
| A–357–812 | 731–TA–892 | Honey/Argentina | American Honey Producers Association; Sioux Honey Association. |
| A–570–863 | 731–TA–893 | Honey/China | American Honey Producers Association; Sioux Honey Association. |
| A–570–866 | 731–TA–921 | Folding gift boxes/China | Field Container; Harvard Folding Box; Sterling Packaging; Superior Packaging. |
| A–427–818 | 731–TA–909 | Low enriched uranium/France | USEC. |
| C–427–819 | 701–TA–409 | Low enriched uranium/France | USEC. |
| C–428–829 | 701–TA–410 | Low enriched uranium/Germany. | USEC. |
| C–421–809 | 701–TA–411 | Low enriched uranium/Netherlands. | USEC. |
| C–412–821 | 701–TA–412 | Low enriched uranium/United Kingdom. | USEC. |
| A–427–820 | 731–TA–913 | Stainless steel bar/France | Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |
| A–428–830 | 731–TA–914 | Stainless steel bar/Germany | Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |
| A–475–829 | 731–TA–915 | Stainless steel bar/Italy | Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |
| A–580–847 | 731–TA–916 | Stainless steel bar/Korea | Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |
| A–412–822 | 731–TA–918 | Stainless steel bar/United Kingdom. | Carpenter Technology; Crucible Specialty Metal Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |

| Commerce Case No. | Commission Case No. | Product/country | Petitioners/supporters |
|---|---|---|---|
| C–475–830 | 701–TA–413 | Stainless steel bar/Italy | Carpenter Technology; Crucible Specialty Metals; Electralloy; Empire Specialty Steel; Republic Technologies International; Slater Steels; United Steelworkers of America. |
| A–570–867 | 731–TA–922 | Automotive replacement glass windshields/China. | Apogee Enterprises; PPG Industries; Safelite Glass. |
| A–588–854 | 731–TA–860 | Tin-mill products/Japan | Weirton Steel; Independent Steelworkers; United Steelworkers of America. |

Dated: June 27, 2002.

**Sandra L. Bell,**

*Acting Assistant Commissioner, Office of Regulations and Rulings.*

[FR Doc. 02–16693 Filed 6–28–02; 12:59 pm]

**BILLING CODE 4820–02–P**

Federal Register

Wednesday,
July 3, 2002

Part IV

# Department of Health and Human Services

## Announcement of Anticipated Availability of Funds for Family Planning Clinical Specialty Training Projects; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Announcement of Anticipated Availability of Funds for Family Planning Clinical Specialty Training Projects

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Population Affairs (OPA) announces the availability of approximately $1,000,000 to support two Family Planning Clinical Specialty Training grants, as authorized under Section 1003 of the PHS Act. The training projects to be funded will provide specialized, evidence-based information to clinical providers working in family planning services projects funded under Title X of the PHS Act. This training will enable Title X clinical service providers to maintain a high level of clinical knowledge and skill in family planning and reproductive health.

**Authority:** Section 1003 of the Public Health Service (PHS) Act.

**DATES:** Applications must be received in the Office of Grants Management, or clearly postmarked, not later than August 12, 2002. Applications which do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

**ADDRESSES:** Applications kits may be requested from, and applications submitted to: Office of Grants Management, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814.

Application kits are also available online at the Office of Population Affairs (OPA) Web site at *http://opa.osophs.dhhs.gov* or may be requested by FAX at 301–594–5980.

**FOR FURTHER INFORMATION CONTACT:** Administrative and Budgetary Requirements: Andrea Brandon, Office of Grants Management/Office of Population Affairs, 301–594–4012.

*Program Requirements:* Kathleen Woodall, Office of Family Planning/Office of Population Affairs, 301–594–4008.

**SUPPLEMENTARY INFORMATION:**

### Definitions

For the purposes of this announcement, the following definitions apply:

*Advanced practice nurse*—a registered professional nurse who has graduated from an educational program beyond basic nursing preparation, and is currently recognized to practice as an advanced practice nurse in at least one state, including current licensure as a registered nurse in that state .

*Application*—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

*Eligible applicants*—any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a Title X Family Planning Clinical Specialty Training grant. Faith-based organizations are eligible to apply for these Title X Family Planning Clinical Specialty Training grants.

*Evidence-based*—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

*Family planning clinical specialty training*—specialized, evidence-based family planning training, the purpose of which is to promote and improve the knowledge, skills, and abilities of persons delivering clinical family planning services.

*Family planning training*—job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services.

*Grant*—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a grantee or recipient is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

*Health care practitioner*—an advanced practice nurse, physician's assistant, Doctor of Medicine or Doctor of Osteopathy who is recognized by a state to practice within the scope of the applicable state practice act or law.

*Project*—those activities described in the grant application and supported under the approved budget.

*Registered professional nurse*—a nurse who has graduated from a state-approved nursing education program and is currently licensed to practice as a registered nurse in at least one state.

### Statutory and Regulatory Background

Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide the training for personnel to carry out family planning service programs. (Catalog of Federal Domestic Assistance Number 93.260). Section 1008 of the Act, as amended, stipulates that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the ''Program Guidelines for Project Grants for Family Planning Services,'' issued in January 2001. Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the Office of Grants Management, Office of Population Affairs (at the address above), or downloaded from the Office of Population Affairs Web site at *http://opa.osophs.dhhs.gov.*

### Program Background

From the early 1970s until the year 2000, the Office of Family Planning in the Office of Population Affairs funded certificate family planning/women's health nurse practitioner training programs in order to prepare registered professional nurses to serve the clinical needs of clients in Title X family planning services projects. Changes in state practice requirements and the health care system, as well as the increasing availability of more broadly prepared providers, under-utilization of the Title X-supported nurse practitioner training programs, and the growing diversity of populations served in Title

X family planning services projects (including an increasing number of males) prompted a reassessment of the need for the nurse practitioner training program. This reassessment prompted the transition depicted in the March 23, 1999, **Federal Register** Notice (64 FR 14080) requesting applications for Family Planning Nurse Practitioner and Specialty Training grants. This announcement phased-out full-course certificate nurse practitioner training, and replaced it with targeted specialty training in family planning and reproductive health for credentialed advanced practice nurses, physician's assistants, and physicians. These projects have been in operation for two years.

Title X family planning services project grantees, training providers, and Federal Title X staff have recently identified a need to also provide clinical training for registered professional nurses working in family planning projects who are not advanced practice nurses. This component has been incorporated into this solicitation for applications, but may not include training for procedures or practices that are beyond the scope of nursing practice, as delineated by the Nurse Practice Act for the specific state.

**Role and Operation of the Clinical Specialty Training Program**

The purpose of the clinical specialty training program is to ensure that health care practitioners and registered professional nurses working in Title X family planning services projects have the knowledge, skills, and abilities necessary to provide effective, high quality clinical family planning services. This announcement solicits applications from all eligible applicants, including faith-based organizations, to support two clinical specialty training programs, as follows:

(1) One grant with a range of $450,000–$500,000 to support a clinical specialty training program in PHS Regions I–V:

*Region I* (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont); *Region II* (New Jersey, New York, Puerto Rico and the Virgin Islands); *Region III* (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia); *Region IV* (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); *Region V* (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin).

(2) One grant with a funding range of $450,000–$500,000 to support a clinical specialty training program in PHS Regions VI–X:

*Region VI* (Arkansas, Louisiana, New Mexico, Texas and Oklahoma); *Region VII* (Iowa, Kansas, Missouri and Nebraska); *Region VIII* (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming); *Region IX* (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of Northern Mariana Islands, Republic of Palau and Guam); *Region X* (Alaska, Idaho, Oregon and Washington).

The training programs funded under this announcement will be responsible for design and delivery of specialty training for health care practitioners and registered professional nurses which will enhance knowledge, skills, and abilities in the provision of family planning and reproductive health services in Title X-funded projects. Each grantee funded under this announcement will be expected to conduct two types of training activities: (1) Specialty training specific to the provision of clinical family planning and reproductive health for health care practitioners in Title X family planning services projects; and (2) Training courses relevant to the provision of family planning and reproductive health services where continuing education credits are granted for registered nurses and health care practitioners in Title X family planning services projects. Training provided with these grant funds is not intended to substitute for formal nurse practitioner education, but rather to enhance the ability of multiple levels of clinical providers to deliver quality family planning and reproductive health services within the scope of applicable State practice acts or laws. Training content and design should be adjusted to the skill and practice role of the target audience as well as the scope of practice as delineated in applicable State practice acts or laws.

Content of specialty training may vary depending on the needs of the service providers in the applicable regions. However, the course offerings should promote and improve family planning and reproductive health knowledge and clinical skills as they relate to the provision of family planning services in Title X-funded projects. The full clinical specialty training course is available only to health care practitioners as defined in this announcement. Registered professional nurses, as defined in this announcement, may participate only in continuing education courses that are not intended to train on procedures or practices that are appropriate to the role of the health care practitioner. Training content described in the application should include the following topics: (1) Abstinence education and counseling; (2) HIV/AIDS and sexually transmitted disease (STD) education and counseling; and (3) Intimate partner violence and compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest. At a minimum, successful specialty training applications will include a description of how the following components will be implemented in the training program:

- Training specific to provision of clinical family planning and reproductive health services in Title X-funded projects, including training on abstinence education and counseling, and HIV/AIDS and STD education and counseling;
- Face-to-face didactic and supervised clinical courses for increasing knowledge and enhancing clinical skills of health care practitioners in selected content areas (*e.g.*, women's reproductive health, men's reproductive health, IUD insertion, etc.);
- Methodology for evaluating the knowledge, competence and skill level of health care practitioners and registered professional nurses after completion of training as compared with their knowledge, competence and skill level prior to completion of training;
- Availability of continuing education credit through on-site and/or distance learning for registered professional nurses and health care practitioners;
- Clinical mentor/preceptorship arrangements for health care practitioners returning to practice settings;
- Training in identifying and providing appropriate counseling and referral in cases of intimate partner violence;
- Training in identifying cases of child abuse, child molestation, sexual abuse, rape, or incest, and in complying with applicable state reporting laws.

The content and number of offerings should be based on an assessment of the need of the Title X family planning service providers in the applicable regions. Offerings should be designed and delivered in a manner appropriate to the content and professional preparation of the participants. The on-site didactic and supervised clinical components of specialty course offerings should provide adequate time for instruction and interaction with faculty, but must not exceed a total of three weeks per course. In order to assure integration into practice of the knowledge and skills learned in the on-site component of specialty training

offerings, successful applicants will include a strategy for incorporating a clinical mentorship/preceptorship component for students returning to their practice settings. Distance learning components should provide an opportunity for interaction with faculty if needed, and reasonable time for completion of the offering(s). Successful applicants will demonstrate the ability to maximize available resources to achieve the objectives of the program.

**Project Requirements and Management**

The successful applicants will be responsible for all costs associated with training program administration and management, and for training costs directly associated with the on-site portion of Title X-sponsored trainee preparation (*e.g.*, educational materials, classroom and clinical training sites, *etc.*). The training projects are not expected to be responsible for transportation, housing and other personal expenses incurred by trainees. However, training projects should be prepared to assist trainees with making necessary arrangements at a reasonable cost. There is no required match for this Federal grant.

Each of the two training programs is intended to provide training primarily for Title X family planning services projects located in the applicable regions. However, applicants may apply for admission to the alternate program on a space-available basis and to access offerings unique to that program.

The design of the specialty training program, including the curricula, must be consistent with Title X statute and regulations. The application should demonstrate the applicant's expertise and ability to develop, implement, manage and evaluate clinical training in family planning and reproductive health.

As part of the application, the applicant should submit a proposed curriculum outline for the specialty training course, as well as projected admissions criteria, training plan, and a course schedule for the first year of the grant. In addition, the projected number of continuing education courses and subject areas should be submitted with the application. Within 60 days of the Notice of Grant Award, a finalized curriculum outline, admissions criteria, training plan, course schedule, and continuing education course offerings will be negotiated with the Office of Family Planning (OFP). In succeeding years, the training plan, course schedule, and continuing education courses will be a part of the continuation application. Any changes to the curriculum outline or admissions criteria after the first year must also be submitted as part of the continuation application. The cost to the grant per Title X-supported student for the specialty course may not exceed $4,000. The maximum cost to the grant for continuing education units must be specified in the application, but may not exceed $20 per contact hour.

Successful applicants will be responsible for the overall management of training activities within the scope of the approved training plan. This responsibility includes:

- Meeting national or State recognition requirements as a provider of continuing education through a national nursing organization or one of its constituents;
- Facilitating the award of continuing education units (CEUs) to program participants;
- Considering for admission trainees from Title X-funded services projects before accepting privately-funded students;
- Conducting an annual assessment of the need for family planning and reproductive health training for Title X clinical service providers in the applicable regions;
- Maintaining data on training activities and trainees sufficient to allow evaluation by accrediting bodies, licensing bodies, and OPA;
- Developing and implementing an evaluation plan which assesses all aspects of the training program and is consistent with the scope of the training program. Evaluation should include not only the content of the clinical specialty training, the delivery mechanisms, and how well the offerings met the needs of the trainee and sponsoring agency, but also a description of how the training program will be evaluated in terms of improving the quality of care provided;
- Submitting to OPA, as part of the annual progress report, the following data regarding trainees and training activities:

1. *Trainees:* state; sponsoring agency including funding source (*i.e.*, Title X or non-Title X); race/ethnicity; professional classification (*e.g.*, registered professional nurse, type of health care practitioner); courses/offerings attended; course completion data; and number of CEUs awarded.

2. *Training activities:* title of course/offering; location; hours on site (didactic and clinical)/hours distance learning; course content; number of CEUs offered; number and professional classification of attendees; faculty data; outcome information.

Successful applicants will be required to work closely with Title X Family Planning Central and Regional Office staffs and a network of agencies which include Title X service providers and training advisory committees. Working in collaboration with the Regional Training Centers for Family Planning is strongly encouraged.

Grantees will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects. Grantees will be required to participate in at least one meeting with the Office of Family Planning/OPA each year.

**Application Requirements**

Any public or private nonprofit organization located in a state is eligible to apply for a Title X Family Planning Clinical Specialty Training grant. If the successful applicant is not physically located within one of the applicable regions, a major training facility of the organization must be located within the cluster of regions the applicant will serve. Awards will be made only to those organizations or agencies which demonstrate the capability of providing the proposed services and which have met all applicable requirements.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents. It is the practice of the Office of Population Affairs to maintain a summary of funded grants, and to post this information on the OPA Web site. The abstract will be used as the basis for this posting and for other requests for summary information.

As described earlier, the application must include the proposed curriculum outline for the specialty training course, admissions criteria, training plan, and course schedule for the first year of the training project, as well as the projected continuing education courses.

Applications must be submitted on the Form OPHS–1(Revised 6/01) and in the manner prescribed in the application kits available from the Office of Grants Management, Office of Population Affairs and on the Web site. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

A copy of the legislation and regulations governing this program will be included as part of the application kit package. Applicants should use the legislation, regulations and other information included in this

announcement to guide them in developing their applications. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may provide curriculum vitae, curriculum, or examples of organizational capabilities, or other supplemental information. Applicants are required to submit an original application and two copies.

Applications must be submitted in accordance with the deadline requirements of this announcement. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which are postmarked or delivered to the Office of Grants Management after the deadline date will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the applicable parts of 42 CFR part 59, subpart C, will not be accepted for review, and will be returned to the applicant.

**Application Consideration and Assessment**

Eligible applications will be reviewed by a panel of independent reviewers and will be assessed according to the following criteria:

1. The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205 (20 points);

2. The extent to which the proposed clinical specialty training program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (20 points);

3. The extent to which the training program promises to fulfill the family planning services delivery needs of the area to be served, which may include, among other things:

(i) Development of clinical family planning and reproductive health knowledge and expertise within family planning services projects to provide orientation and in-service training to their own staffs;

(ii) Improvement of the family planning services delivery skills of registered professional nurses and health care practitioners;

(iii) Improvement in the utilization and career development of clinical providers in family planning projects;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources; (20 points total for this section)

4. The competence of the project staff in relation to the services to be provided (15 points);

5. The administrative and management capability and competence of the applicant (15 points); and

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (10 points).

In making grant award decisions, the Director, Office of Population Affairs, will fund those projects which will, in her judgement, best promote the purposes of section 1003 of the Act, within the limits of funds available for such projects.

Grants will be approved for project periods of up to three years and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

**Review Under Executive Order 12372**

Applications under this announcement are subject to the review requirements of Executive Order 12372, as implemented by 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOC's which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by applicant regarding the submission to the relevant SPOC. The SPOC should forward any comment(s) to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

**Notification of Grant Award**

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: June 7, 2002.

**Mireille B. Kanda,**

*Acting Director, Office of Population Affairs.*

[FR Doc. 02–16732 Filed 7–2–02; 8:45 am]

BILLING CODE 4150–34–P

Federal Register

Wednesday,
July 3, 2002

# Part V

# The President

## Executive Order 13268—Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13268 of July 2, 2002**

## Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 13129 of July 4, 1999, with respect to the Taliban, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and the Al-Qaida organization, has been significantly altered given the success of the military campaign in Afghanistan, and hereby revoke that order and terminate the national emergency declared in that order with respect to the Taliban. At the same time, and in order to take additional steps with respect to the grave acts of terrorism and threats of terrorism committed by foreign terrorists, the continuing and immediate threat of further attacks on United States nationals or the United States, and the national emergency described and declared in Executive Order 13224 of September 23, 2001, I hereby order:

**Section 1.** The Annex to Executive Order 13224 of September 23, 2001, is amended by adding thereto the following persons in appropriate alphabetical order:

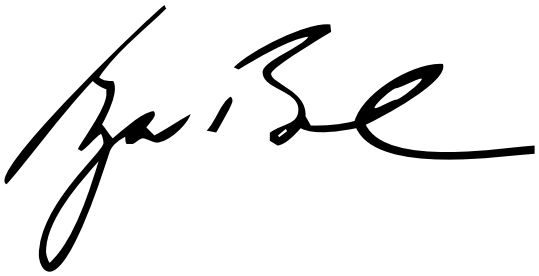
Mohammed Omar (aka, Amir al-Mumineen [Commander of the Faithful])

The Taliban.

**Sec. 2.** For the purposes of this order and Executive Order 13224 of September 23, 2001, the term ''the Taliban'' is also known as the ''Taleban,'' ''Islamic Movement of Taliban,'' ''the Taliban Islamic Movement,'' ''Talibano Islami Tahrik,'' and ''Tahrike Islami'a Taliban''. The Secretary of State, in consultation with the Secretary of the Treasury, is hereby authorized to modify the definition of the term ''the Taliban,'' as appropriate.

**Sec. 3.** Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 4.** Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the Taliban shall not affect any action taken or proceeding pending not finally concluded or determined as of the date of this order, or any action or proceeding based on any act committed prior to the date of this order, or any rights or duties that matured or penalties that were incurred prior to the date of this order.



THE WHITE HOUSE,
*July 2, 2002.*

[FR Doc. 02–16951
Filed 7–2–02; 11:09 am]
Billing code 3195–01–P

Federal Register

Wednesday,
July 3, 2002

# Part VI

# The President

## Proclamation 7575—Lewis and Clark Bicentennial

Federal Register
Vol. 67, No. 128
Wednesday, July 3, 2002

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7575 of June 28, 2002**

## Lewis and Clark Bicentennial

**By the President of the United States of America**

**A Proclamation**

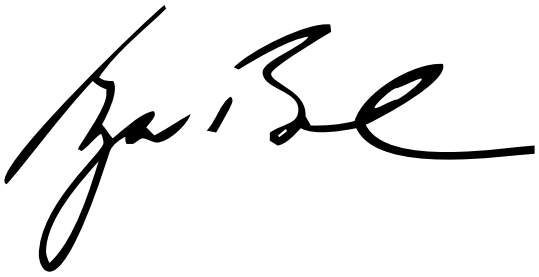
Nearly 200 years ago, President Thomas Jefferson sent an expedition westward to find and map a transcontinental water route to the Pacific Ocean. With approval from the Congress, Captains Meriwether Lewis and William Clark embarked on their legendary 3-year journey to explore the uncharted West. The expedition included 33 permanent party members, known as the Corps of Discovery.

Their effort to chart the area between the Missouri River and the Pacific Coast set these courageous Americans on a remarkable scientific voyage that changed our Nation. In successfully completing the overland journey between the Missouri and Columbia River systems, they opened the unknown West for future development. During their exploration, Lewis and Clark collected plant and animal specimens, studied Indian cultures, conducted diplomatic councils, established trading relationships with tribes, and recorded weather data. To accomplish their goals, the Corps of Discovery relied on the assistance and guidance of Sakajawea, a Shoshone Indian woman.

As we approach the 200th anniversary of Lewis and Clark's expedition, we commend their resourcefulness, determination, and bravery. This Bicentennial should also serve to remind us of our Nation's outstanding natural resources. Many of these treasures first detailed by Lewis and Clark are available today for people to visit, study, and enjoy. As the commemoration of this journey begins in 2003, I encourage all Americans to celebrate the accomplishments of Lewis and Clark and to recognize their contributions to our history.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby designate 2003 through 2006 as the Lewis and Clark Bicentennial. I ask all Americans to observe this event with appropriate activities that honor the achievements of the Lewis and Clark Expedition. I also direct Federal agencies to work in cooperation with each other, States, tribes, communities, and the National Council of the Lewis and Clark Bicentennial to promote educational, cultural, and interpretive opportunities for citizens and visitors to learn more about the natural, historical, and cultural resources that are significant components of the Lewis and Clark story.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth 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. 02–16965
Filed 7–2–02; 11:44 am]
Billing code 3195–01–P

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**Federal Register**

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